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Fibre fixed line access service deregulation review – Mercury cross-submission

Mercury welcomes the opportunity to provide a brief, public cross-submission to the Commerce Commission’s (the Commission) fibre fixed-line access service deregulation review. We appreciate the additional time that was allocated to the cross-submission deadline.

We have assessed all the submissions to the Commission’s consultation and our view remains unchanged. That is, Mercury considers that there are no reasonable grounds to start a FFLAS deregulation review at this time.

In our view, the current regulatory framework plays a crucial role in maintaining competitive balance and ensuring access for entities without their own networks, such as ourselves.

As 2degrees notes “the main relevant changes in the telecommunications market have been the phase out of copper (reducing choice for consumers) and the emergence of alternative technologies such as fixed wireless”. We would add that:

1. the quality and availability of fixed wireless does not represent a close economic substitute to FFLAS-based services (for example, in terms of pricing (both recurring and non-recurring prices), speed, data allowances, and latency and other performance characteristics).; and
2. most importantly, wireless broadband services ultimately rely on access to FFLAS to deliver customer functionality.

In fact, there are still far too many edge cases, particularly at the wholesale service provider infrastructure level, where there the market relies on Chorus and the other LFCs to deliver downstream services. We agree with OneNZ who explains “there is no realistic prospect of any other party replicating fibre connections to residential end users” and currently, we are constrained in our capacity to switch providers if the price of FFLAS is increased, or if the quality diminishes.

While 5G technology offers significant advancements in wireless communication, including potentially higher speeds and lower latency, at the end of the day for many consumers, it complements rather than directly competes with fibre broadband. In addition, while 5G is highly efficient for mobile connectivity and can support high-speed internet access, its performance can be affected by physical obstacles and other complex coverage issues. Fibre’s physical connection offers consistent performance irrespective of these factors.

We note there is an attempt to narrow the focus of each FFLAS service, but we agree with Spark that “a narrow focus on each FFLAS service will not adequately draw out the issues necessary to inform a regulatory review and may instead deliver false positives if not viewed in light of that broader role fibre plays.”

For example, in response to Enable and Tuatahi’s proposal that bitstream PON services “should be further divided into fast (up to and including 300Mbps download), faster (301Mbps to 1Gbps), and fastest (above 1Gbps) PON bitstream services which allows for analysis of the specific competitive constraints on each separate product group” we note that this oversimplifies the diverse needs of consumers whose needs are not static and can vary significantly based on factors such as household size, usage patterns, and the specific online activities they engage in.



It also fails to recognise the competitive constraint that higher and lower speed services place on each other. Such an approach would undermine the core objective of the anchor service which is to provide a competitive constraint on the price of the non-anchor products through the “chain of substitution” from higher to lower speeds. Enable and Tuatahi presume that there are hard breaks in the market between separate broadband speeds at 300Mbps and 1Gbps. Dividing the broadband market in this way fails to recognise those consumers who might choose between broadband speeds that are slightly greater or less than 300Mbps or 1Gbps, and who therefore provide a “link” in the chain of substitution along the range of available broadband speeds. Arbitrarily dividing the market at 300Mphs and 1Gbps, or some other broadband speed, has the effect of cutting that link.

From our perspective as an access seeker, the existing regulatory framework will remain crucial for ensuring fair access to essential network infrastructure and to promote the long-term benefit of end-users. In our view, there are significant risks and costs associated with deregulating too early, including reduced competition, the potential to stifle innovation from smaller challenger brands, and negative impacts on consumer prices and service quality.

Finally, for the removal of doubt we remain firm in our belief that any assessment of market changes hereon should be from 1 January 2022. Changing the assessment date will affect the consistency and predictability of the Commission’s regulatory framework. Any retrospective adjustments could introduce uncertainty and potentially impact future investment decisions both in the telecommunications market, and other adjacent industries.

If you have any questions about this submission, please do not hesitate to contact me.

Yours sincerely,
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