

Tuatahi First Fibre Limited Submission on Commerce Commission New Zealand Approach Paper for the Copper Services Investigation under section 69AH of the Telecommunications Act

22 May 2024

Introduction

1. Thank you for the opportunity to provide feedback on the Commerce Commissions proposed approach to the investigation into whether Schedule 1 should be altered, in respect to relevant copper services.
2. Tuatahi agree with the Commission assessment that there have been significant developments in the telecommunications landscape since the Act was first established, particularly since the last Schedule 3 review in 2016.
3. As such it is important that the Commission review existing regulation and determine whether it is still fit for purpose. It is important that the Commission undertake this review in line with the regulatory purpose statement "*to promote competition in telecommunications markets for long-term benefit of end-users*"¹. The end user options available should be central to the review, to ensure that end users don't have access to copper services removed without comparable substitutes available. This is of particular concern in rural settings.
4. The Commission noted that this Copper Services investigation is occurring at the same time as the fibre fixed line access service (FFLAS) deregulation review, and where appropriate will be aiming to ensure alignment of timing and approach. We consider alignment of approach appropriate, as the Commissions description of evolution in the technologies available in the broadband market is applicable to the material increase in access to fibre alternatives as well.

Response to specific items in the approach paper

5. While Tuatahi do not operate any copper networks, nor supply retail services to end users, we have an adjacent interest as a Local Fibre Company (LFC). We provide the following feedback on specific items that touch on areas of concern for us.

Chapter 5 – Economic Framework

6. Tuatahi consider the proposed economic framework outlined in chapter 5 broadly appropriate, noting that in the telecommunications sector, it is not appropriate to consider product categories in isolation when identifying alternatives. Rather the various technologies (copper, fibre, fixed wireless, satellite, etc) form a wider broadband market, where there are competitive constraints felt across categories. For example, as noted by One NZ "*the price of FWA will be constrained by the price at which consumers can obtain alternative types of broadband, e.g., fibre*"².

¹ Section 18, Telecommunications Act 2001

² One NZ Preliminary response of One NZ to the submission by 2degrees to the Commerce Commission regarding the clearance application by One NZ relating to the proposed acquisition of Dense Air (2023, 18 December) at [4.2]

7. When considering the broadband market as whole, the Commission's consideration of market competitiveness also needs to be holistic. We agree with the Commission outline of the factors it will consider at 82.1 and 82.2.

Chapter 6 – Defining the copper services

8. Tuatahi considers getting the definition of the geographical areas correct critical in ensuring the review process is centred around the end user. We therefore agree with the Commission's proposal to consider geographic areas via the number of alternative networks present.

Chapter 7 – Identifying alternative services

9. As noted above in paragraph 6, identifying whether alternative services are comparable substitutes in the broadband market is not a simple task, as alternative products each have different service capabilities and price points which naturally provide a competitive constraint within the wider broadband market.
10. This market is characterised by a chain of substitution involving different technologies with different price points, giving a wide range of options for consumers. A 2016 OECD report explains the competitive dynamic observed³:

“Consider a situation where end-users may choose between two extremely different broadband services in terms of speed: on the one hand, they can use a service with almost symmetrical uploading and downloading speed of 100 Mbps provided over fibre-to-the-home (FTTH) network while on the other hand they can use a basic asymmetrical ADSL service with downloading and uploading speeds of 2Mbps and 256Kbps respectively. Even though these two services are not direct substitutes they can belong in the same market as long as there is a chain of substitution between them. Such chain of substitution exists where the price of a broadband access service provided over ADSL is constrained by the price of the service provided over FTTH network. Such constraint, in turn, exists if substitution exists, for example, between ADSL and VDSL, on the one hand, and VDSL and FTTH on the other.

This means that the relevant market may comprise products that may differ substantially in terms of characteristics (such as speed) and price. Such broadly defined markets reflect the economic purpose of market definition since the boundaries of the market are defined by the extent to which products and services, even if provided over different networks, exercise competitive constraint on each other's prices.”

³ https://www.oecd.org/daf/competition/Defining_Relevant_Market_in_Telecommunications_web.pdf

Considering these market characteristics, the Commission should not take a narrow approach to economic substitution.

Chapter 8 – Assessing Competition

11. Tuatahi support the proposal outlined by the Commission at paragraphs 117 to 119, to take a forward-looking approach to the competition analysis, focusing on current and future state of competition.
12. We consider it appropriate to take a forward-looking approach, as the competitive landscape and alternate technologies available have evolved quickly and are projected to continue doing so. The introduction of fibre, fixed wireless and LOE satellite options have all occurred within the last 10 years, with Whangārei the first City to complete its fibre rollout in 2014⁴. There has been rapid change within the last 3 years alone, with the launch of 5G and LEO satellite options hitting the market from 2021.
13. The rapid pace of change looks set to continue, with Amazon also set to trial their LEO satellite product in New Zealand within the year⁵, introducing another competitor to the market.
14. We note this forward-looking approach differs to the approach proposed for the Fibre fixed line access service deregulation review currently under consultation, but believe that it reflects the rapid pace of change in the broadband market.

Conclusion

15. Tuatahi agree with the Commission commentary regarding the evolving telecommunications landscape, and the effect evolution of technology has had on competition in the broadband market. We generally support the approach proposed by the Commission to the copper services investigation, but emphasise that the Commission should not take a narrow view when identifying economic substitutes due to the well documented nature of the market.


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⁴ Dinsdale M (2014, 9 May), Speeding ahead as first ultra-fast city, *Northern Advocate* https://www.nzherald.co.nz/northern-advocate/news/speeding-ahead-as-first-ultra-fast-city/PFS3IEURX2TVXS665Q3X7G6RIM/?c_id=1503450&objectid=11252286

⁵ Grant A, Head of Public Policy ANZSEA, Amazon Project Kuiper. As announced at the TUANZ Rural Connectivity symposium 2024 during the *Developments in Satellite* session (2024, 8 May)