

Cross- submission on Section 201 Draft Guidance

8 July 2021

C H ● R U S

Chorus cross-submission

1. This is Chorus' cross-submission on the Commerce Commission's (**Commission**) draft guidance on s 201 – geographically consistent pricing, dated 27 May. As outlined in our submission (dated 24 June), we agree with the Commission's position that s 201 applies only to Chorus' fibre fixed-line access (**FFLAS**) services that are subject to price-quality regulation.¹
2. The purpose of Part 6, including s 201, is to *"promote the long-term benefit of end-users...by promoting outcomes that are consistent with outcomes produced in workably competitive markets"*. The Commission has noted that workable competition is consistent with the purpose of Part 6. Enable and UFF acknowledge that they face competition from competing technologies.² It would not promote workable competition if Chorus' FFLAS were subject to more regulation in LFC areas than the incumbent UFB FFLAS provider. Nor would such an approach align with any principle of regulatory best practice.
3. We reassert that in LFC areas, such regulation is not necessary or appropriate as competition is present to constrain prices. If s 201 were applied in LFC areas, workable competition would be constrained to the benefit of those incumbent LFCs but the detriment of consumers.
4. The Enable/UFF submission³ is therefore not supported by the wording or policy intent of s 201. In particular:
 - The claim the Commission is incorrectly using regulations⁴ to limit s 201 is a mischaracterisation of the Commission's reasoning. Rather, the Commission's guidance applies the words of s 201 and specifically the words *"a regulated fibre service provider who is subject to price-quality regulation"*, to determine the scope of the GCP obligation. The Commission has correctly recognised that the effect of those words is to align the scope of the GCP obligation with the scope of price-quality regulation, as Parliament intended.
 - We disagree that the Commission has not placed any weight on the words *"regardless of the geographical location of the end user"*. As the Commission has explained, the effect of those words is to prohibit Chorus from charging different prices for end users based on the location of those end users.
 - We disagree that Chorus would strategically undermine competition in LFC areas. The application of price-quality regulation means that profits are constrained in PQ-FFLAS areas, and cost allocation requirements address any potential cross subsidisation concerns. This ensures that competition between Chorus and LFCs is workable and responsive to the market dynamics – thereby promoting the purpose of Part 6.
 - Lastly, applying GCP to areas where Chorus FFLAS is subject only to price-quality regulation is more consistent with the policy intent to help address the digital divide because the network footprint covers areas that range significantly in

¹ Chorus submission on section 201 – draft guidance (dated 24 June 2021), at para 6.

² Enable/UFF submission to the Commission, Fibre emerging views (dated 16 July 2019), p 10.

³ Enable/UFF submission on section 201 – draft guidance (dated 24 June 2021).

⁴ Telecommunications (Regulated Fibre Service Providers) Regulations 2019.

density and remoteness. In contrast, Chorus' FFLAS that is only subject to information disclosure regulation covers largely urban areas, where the incumbent LFCs offer FFLAS at flat monthly rental prices.