

Promoting competition in telecommunications markets as part of fibre information disclosure (ID) and price- quality (PQ) regulation

**Consultation on competition risks, opportunities and the corresponding
role of ID and PQ regulation**

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Associated documents

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| 21 May 2019 | | Ingo Vogelsang and Martin Cave "Pricing under the new regulatory framework provided by Part 6 of the Telecommunications Act" (21 May 2019). |
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Chapter 1 Introduction

Purpose of this paper

- 1.1 Our next task in developing the regulatory regime for fibre is to determine information disclosure (ID) requirements for all providers of fibre fixed line access services (FFLAS) and a price-quality (PQ) path for Chorus Limited (Chorus) from 1 January 2022 until 31 December 2024 (first regulatory period).

Table 1.1 FFLAS providers regulated under Part 6¹

| ID-regulated providers | PQ regulated providers |
|---|------------------------|
| Chorus Limited (Chorus) | Chorus |
| Enable Networks Limited (Enable) | |
| Northpower Fibre Limited (Northpower 1) | |
| Northpower LFC2 Limited (Northpower 2) | |
| UltraFast Fibre Limited (UltraFast) | |

- 1.2 As specified in s 166(2) of the Telecommunications Act 2001 (the Act), in determining how ID and PQ regulation applies from the start of the first regulatory period, we must make determinations that we consider best give, or are likely to best give, effect:²
- 1.2.1 to the purpose in s 162 of the Act;³ and
- 1.2.2 to the extent we consider it relevant, to the promotion of workable competition in telecommunication markets for the long-term benefit of end-users of telecommunication services.⁴
- 1.3 The purpose of this paper is to invite submissions (via the survey) on:
- 1.3.1 the key risks that may lead to a lessening of competition in telecommunications markets, and key opportunities to promote competition in telecommunication markets; and
- 1.3.2 the role that the ID requirements for all regulated fibre service providers (regulated providers) and the PQ path for Chorus can play in mitigating these risks or seizing these opportunities.

¹ Telecommunications (Regulated Fibre Service Providers) Regulations 2019, regs 5 and 6.

² Telecommunications Act 2001, s166(2).

³ Telecommunications Act 2001, s166(2)(a).

⁴ Telecommunications Act 2001, s166(2)(b).

- 1.4 The focus of this paper is on risks or opportunities that are material and which we can mitigate in the first regulatory period using ID and PQ.
- 1.5 As a result of this exercise, we aim to have:
- 1.5.1 a better-informed view on the extent to which promoting workable competition—s 166(2)(b)—is relevant to our decisions on ID/PQ.
 - 1.5.2 richer information on the competition risks, opportunities and the corresponding role of ID and PQ.
 - 1.5.3 ID and PQ determinations that are more likely—where relevant—to best give (or are likely to best give) effect to s 166(2)(b) compared with a counterfactual where we did not consult. That is, we have an improved understanding of what competition-related ID information to specify for regulated providers, and an improved understanding of what elements of the PQ determination require consideration of the promotion of workable competition and how.
- 1.6 The outcome of this consultation will inform our more detailed development of ID and PQ regulation as we work towards a draft decision on our ID requirements, and the PQ path for the first regulatory period, in Q2 2021.

How to provide your views

- 1.7 The survey is available [here](#). Please provide your views via the survey by **5pm on 25 February 2021**.
- 1.8 We encourage you to answer the survey. We have designed it with the objective of getting the information that will enable us to be targeted; to focus the development of ID and PQ regulation to mitigate the key risks to competition.
- 1.9 If you consider it necessary, you can also submit a written submission via our online submission form [here](#) by **5pm on 25 February 2021**.

Background

- 1.10 In making our ID and PQ determinations, under s 166(2)(b) we are required to make decisions that best give, or are likely to best give, effect to the promotion of workable competition in telecommunication markets for the long-term benefit of end-users of telecommunication services. This is a mandatory consideration, but only in cases where we consider that it is ‘relevant’.⁵

⁵ Telecommunications Act 2001, s166(2)(b).

- 1.11 This stands alongside our obligation to make decisions that best give effect, or are likely to best give effect, to the s 162 purpose statement, adding a further requirement to consider whether there is potential for our decisions to promote actual workable competition (rather than the outcomes of workable competition) for the long-term benefit of all telecommunications end-users.
- 1.12 In our fibre input methodologies (IMs) main final decisions reasons paper, we provided additional clarity on how we planned to incorporate this requirement into our decision-making process--at that stage of regime development--with our high-level 'competition screening' considerations, which we present in paragraph 2.15.⁶ The competition screening considerations are one of the three limbs of our economic framework.⁷ These considerations help us assess whether our decisions might be relevant to competition in telecommunications markets.
- 1.13 To assist us in our work in developing and implementing the new fibre regulation, we formed an expert advisory panel.⁸ We asked our advisory panel to provide an opinion on a framework we could use to determine whether it is relevant to promote workable competition in a given telecommunications market, and if so, when and how it would be relevant to do so.⁹
- 1.14 Our 'competition screening' considerations are the partial practical application, at this stage of regime development, of the advisory panel's more fully-fledged framework for promoting competition.
- 1.15 Earlier in the process, we also considered how we should reflect the potentially competitive nature of the telecommunications sector and the requirements of s 166(2)(b).¹⁰ In particular, whether there was a need for:
- 1.15.1 a competition principle that elaborates on the requirement in s 166(2)(b) to (where relevant) promote workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services; and

⁶ Commerce Commission "Fibre input methodologies: Main final decisions - reasons paper" (13 October 2020), paragraph 2.384.

⁷ Commerce Commission "Fibre information disclosure and price-quality regulation: Proposed process and approach for the first regulatory period" (15 September 2020), paragraph 3.79.

⁸ Our expert advisory panel for fibre comprises Ingo Vogelsang and Martin Cave. See Commerce Commission "Fibre input methodologies: Main final decisions - reasons paper" (13 October 2020), Appendix B.

⁹ Ingo Vogelsang and Martin Cave "Framework for promoting competition" (19 November 2019).

¹⁰ Commerce Commission "Fibre regulation emerging views - technical paper" (21 May 2019), pages 33-37.

- 1.15.2 a pricing principle that could be used practically in a range of ways in the regime for ID and/or PQ regulation that could promote efficient prices and could help promote infrastructure - or access-based competition.¹¹
- 1.16 We asked the advisory panel to provide an opinion on the potential usefulness of adopting additional economic principles along the above lines from the outset of the regime. They recommended that we do not adopt additional principles given the pricing constraints the Act already imposes on Chorus, and the stage of the regime development.¹²
- 1.17 After considering stakeholders' submissions, we reached the view that no additional economic principles (including on competition and pricing) were required at this stage.¹³
- 1.18 In addition, we also considered and decided not to develop binding pricing methodologies IM at this stage.¹⁴
- 1.19 The advisory panel considered whether the following potential principles linked to the promotion of competition may be helpful in thinking about risks/opportunities to competition when setting the fibre input methodologies (IMs), and/or ID and PQ regulation. They concluded the following:¹⁵
- 1.19.1 A principle requiring no foreclosure:¹⁶ is not likely to add additional constraints on Chorus' prices given that layer 1 unbundling is subject to rules specified in the Act (at s 200) and that Chorus does not offer other downstream services.¹⁷

¹¹ For example, pricing principles could be used to inform disclosures under ID or inform potential future price regulation set under PQ regulation.

¹² Ingo Vogelsang and Martin Cave "Pricing under the new regulatory framework provided by Part 6 of the Telecommunications Act" (21 May 2019).

¹³ Commerce Commission "Fibre regulation emerging views - technical paper" (21 May 2019), paragraphs 131, 135.

¹⁴ Commerce Commission "Fibre input methodologies: Main final decisions - reasons paper" (13 October 2020), paragraphs 9.173 to 9.177.

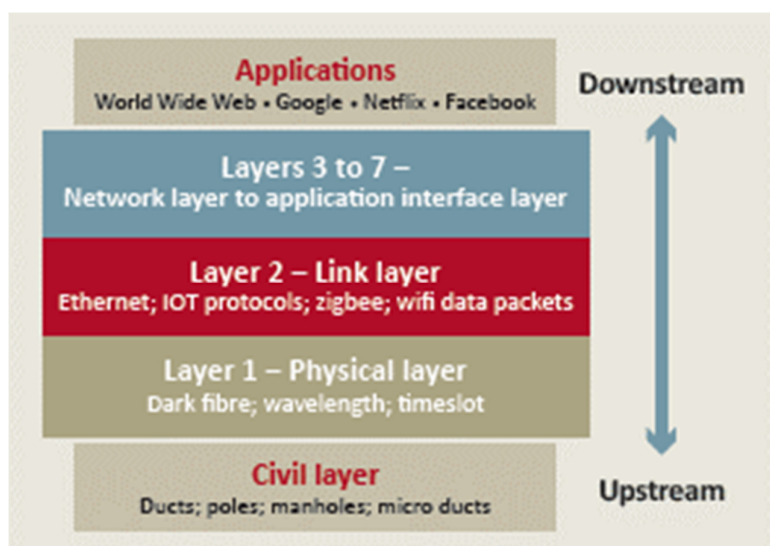
¹⁵ Commerce Commission "Fibre regulation emerging views - technical paper" (21 May 2019), paragraph 129.

¹⁶ This discussion also applies to other regulated providers.

¹⁷ In addition, regulated providers are required under Part 4AA of the Act to provide (through an undertaking) unbundled layer 1 services in a way that achieves equivalence and non-discrimination. Telecommunications Act 2001, s 156AD(2)(c). We provide a summary of the equivalence and non-discrimination obligations here: https://comcom.govt.nz/data/assets/pdf_file/0020/231068/Equivalence-and-Non-discrimination-information-sheet-22-December-2020.pdf.

- 1.19.2 A principle requiring no pricing below costs (ie, no predatory pricing): is likely unnecessary given that Chorus is subject to a number of price constraints (eg, on anchor services) and given that predatory prices might be difficult to distinguish in practice from low prices due to competition;
- 1.19.3 A principle requiring pricing between incremental and stand-alone costs: while sound, such a principle would impose a significant monitoring burden on both Chorus and us given the detailed cost information at the service level that would have to be collected.
- 1.20 In terms of specific competition-related content in the fibre IMs, examples include:
- 1.20.1 Capex IM: information requirements and assessment factors related to competition effects, including specific information for categories of capital expenditure that have potential impacts on competition in PQ FFLAS and other telecommunications markets.
- 1.20.2 Cost allocation IM: the cost allocation 'cap' (and generally the accounting-base allocation approach (ABAA)), which constrains cost allocation between services (by requiring that services bear at least their non-avoidable costs). This helps mitigate the risk of anti-competitive pricing (eg, below-cost).

Figure 1.1 Telecommunication networks: 'upstream' and 'downstream' layers



Source: Commerce Commission.

Chapter 2 Approach to assessing relevance of competition for ID and PQ regulation

- 2.1 In this chapter we set out our approach to assessing the relevance of competition in developing ID and PQ regulation. This approach reflects material we have already published and consulted on.¹⁸
- 2.2 The approach we use is based on:
- 2.2.1 the framework for promoting competition provided by our expert advisory panel;¹⁹ and
 - 2.2.2 our own 'competition screening' considerations.
- 2.3 We are at the early stages of identifying potential risks to competition based on a high-level understanding of industry structure and regulated providers' possible incentives to compete or exclude competitors.²⁰
- 2.4 We are keen for stakeholders to help us validate the risks we have identified, rank them in importance, and identify missing ones.
- 2.5 Figure 2.1 below illustrates the approach we have taken.²¹

¹⁸ Commerce Commission "Fibre input methodologies - Draft decision paper" (19 November 2019), paragraphs X.16, 2.253 to 2.265.

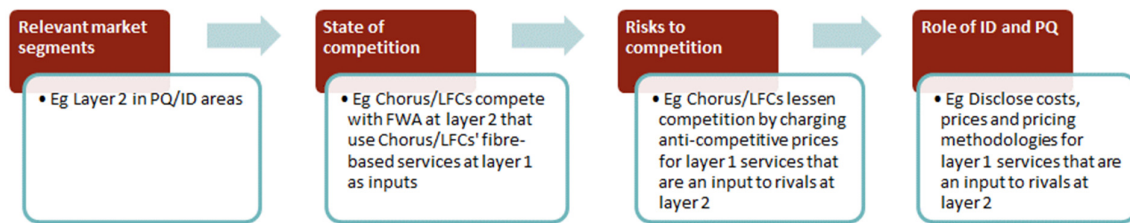
¹⁹ Ingo Vogelsang and Martin Cave "Framework for promoting competition" (19 November 2019).

²⁰ We call these risks to competition 'theories of harm' in our competition work, where we would do an in-depth competition assessment. For example, in a merger or restrictive trade practices investigation involving a potential substantial lessening of competition (ie a violation of competition laws). More details of the approach we follow is here: Commerce Commission "Mergers and acquisitions Guidelines" (July 2019). We note that fibre regulated providers are also subject to general competition law in addition to Part 6 of the Telecommunications Act 2001 (ie Part 2 and 3 of the Commerce Act).

²¹ For a merger (or investigation into anti-competitive cartel or unilateral conduct) the general steps are:

- (i) consider theories of harm (how the conduct could harm competition). This may be horizontal, vertical or conglomerate. The key is the extent to which the conduct creates or maintains market power exercise either unilaterally or jointly.
- (ii) define the relevant markets and gather evidence to assess how the conduct affects competition in those markets and provides support or otherwise for the identified theories of harm. The focus is on how the conduct affects competitive constraints and changes the ability and/or incentive to exercise market power.

Figure 2.1 Approach to assessing competition-related risks, role of ID/PQ regulation



Notes:

- Layer 1 is the physical layer which includes physical fibre optic cables and other passive network elements like splitters. Layer 2 is the data link layer which transfers data between adjacent points in a network.
- LFC: local fibre company.
- FWA: fixed-wireless access.

*Relevant market segment*²²

2.6 The first stage is to identify relevant market segments. This helps us identify (and assess, if required) the competitive constraints that the firms selling services in that market likely face.

2.7 We defined four market segments as a starting point to guide and organise our thinking. In more in-depth competition assessments, we would also use the defined market to assess the intensity of competition within it.²³

2.8 We have used the following four market segments for this exercise (future assessments may define different ones):

- Layer 2, PQ areas
- Layer 2, ID-only areas
- Layer 1, PQ areas
- Layer 1, ID-only areas

State of competition

2.9 The second stage is to identify the current state of competition (ie is there competition? Who are the main players?). That is what we have done for this exercise.

²² In our competition work this is called 'market definition'.

²³ Commerce Commission "Mergers and acquisitions Guidelines" (July 2019), chapter 3. We have not sought to define a market as we would do when investigating a merger or potentially anti-competitive conduct.

- 2.10 This stage could be much more involved, if required. For example, assessing the intensity of competition in the current state by examining the incentives for suppliers to win and retain business by offering customers a better deal than rivals', and the likely future development of competition in the relevant markets under different scenarios (eg under further regulatory interventions or deregulation).

Risks to existing competition or opportunities to promote competition

- 2.11 The third stage is about considering whether there are risks that competition may be lessened, or opportunities for us to further promote competition in how we regulate.
- 2.12 To assess the risks to competition, we considered whether the firms competing in the relevant market segment have the ability and the incentive to lessen competition. (eg, engage in anti-competitive pricing, bundling etc.). This includes exercising market power either individually, or collectively where there are overlaps (eg, LFC areas where Chorus also operates).
- 2.13 The resulting risks are not ranked in terms of likelihood nor impact on competition.

Role of ID and PQ regulation

- 2.14 Our focus at this stage of the process is to determine ID requirements for regulated providers and a PQ path for Chorus for the first regulatory period. Therefore, we are most interested in risks that can be mitigated (or opportunities that can be promoted) using these regulatory tools.
- 2.15 Using our 'competition screening' considerations can be helpful. In applying the considerations in the context of a specific ID or PQ decision, we ask ourselves whether the decision:
- 2.15.1 has a role in mitigating risks to competition at any telecommunications market level; and/or
 - 2.15.2 could be used to promote competition at a given market level that would result in expected net benefits to telecommunications end-users in the long-term.
- 2.16 It is important to also consider the risk of regulatory failure or unintended consequences of regulation when thinking about intervening in markets. This seems relevant in the current context, where we are transitioning from one regulatory regime to another, and the level of uncertainty is high, and information availability is low.

- 2.17 One way to take this into account is to initially rely more on ID regulation to improve everyone's understanding of competition in the relevant markets, and regulated providers' conduct. By improving transparency for interested persons, this has the added benefit of deterring anti-competitive conduct.

Chapter 3 Applying our approach: competition risks and opportunities

- 3.1 In this chapter we present our initial assessment of the relevance of competition in determining ID requirements and a PQ path for Chorus for the first regulatory period.
- 3.2 The main output is table 3.1. It summarises our current view of the main risks and opportunities to competition in telecommunication markets, and the role that ID and PQ regulation can play to mitigate them.
- 3.3 Figure 3.1 provides an overview of the risks contained in table 3.1. It aims to make it easier for stakeholders to get an 'at a glance' perspective of the table's contents.
- 3.4 We have identified one key opportunity to promote competition. It relates to developing an evidence base to allow interested persons to understand the impact that the requirement in s 201 on geographically consistent pricing may have on competition.²⁴
- 3.5 Briefly, the key issue is that prices are likely to be higher/lower than cost reflective in urban/rural areas. This is because costs to provide FFLAS in urban and rural areas differ. This may result in competitive outcomes that are not for the long-term benefit of end-users of telecommunication services, as follows:
 - 3.5.1 Rural areas: these tend to be high-cost areas. The combination of low prices relative to costs in these areas does not encourage potential competitors to enter and challenge the incumbent with different/innovative services that end-users in these areas may find valuable.
 - 3.5.2 Urban areas: these tend to be low-cost areas. The combination of high prices relative to costs in these areas overly encourages competitors to enter (potentially at above efficient costs). This is positive for end-users in urban areas, as they may get greater choice and lower prices in the shorter term, but it threatens the sustainability of both geographically consistent pricing, and competition in urban areas if deregulated.

²⁴ As set out in our market studies guidelines, applicable laws and regulation can be a feature of a market that could affect competition. Commerce Commission "Market Studies Guidelines" (19 November 2020), paragraph 20.8.

Figure 3.1 Modes of competition in telecommunications markets mapped onto risks

| | PQ areas | ID-only areas |
|----------------|---|--|
| Layer 2 | Access-based competition (eg FWA, 5G, unbundlers) | Access-based competition (eg FWA, 5G, unbundlers) |
| | Infrastructure-based competition (eg HFC, satellite) | Infrastructure-based competition (eg Chorus copper, HFC, satellite) |
| | Risks #: A, C, D, G, M, N, O | Risks #: B, E, F, H, I, L, M, N, O |
| Layer 1 | Upstream competition for layer 1 backhaul services between Chorus and larger RSPs | Competition upstream between Chorus and LFCs to provide input services |
| | Risk #: K, P | Risk #: J |

Notes:

- FWA: fixed-wireless access.
- HFC: hybrid fibre-coaxial.
- RSP: retail service provider.

- 3.6 Table 3.1 below contains the risks to competition that we have identified. It provides context to enable stakeholders to understand the thinking behind the risks listed in the survey.
- 3.7 As mentioned, these risks are not ranked in terms of likelihood nor impact on competition. We think that the firms competing in the market are in some ways best placed to help us identify the most important risks. That is why we have prepared a survey on this.
- 3.8 The survey questions relate to the risks contained in the column labelled "Risks to competition".

Table 3.1 Risks and opportunities to promote competition in telecommunication markets

| Risk # | Risk name | Market segment | Description of competition | Risks to competition ²⁵ | Possible role of ID/PQ |
|--------|--------------|-------------------|--|--|---|
| A | Inputs price | Layer 2, PQ areas | Chorus competes with providers of telecommunication services at layer 2 (eg fixed wireless access (FWA) or unbundlers)) that use Chorus' FFLAS at layer 1 (eg DFAS, ²⁶ ICABS, ²⁷ tail extension) as inputs | Chorus lessens competition by charging anti-competitive prices for layer 1 services that are an input to rival competitors downstream at layer 2. This raises the costs of downstream rivals, making them less competitive | <p>ID: disclose prices and pricing methodologies for products that are an input to services provided by RSPs²⁸ in relevant market segments. In addition, we must specify "product groups" under ID, and may specify additional FFLAS classes. When applying these definitions (alongside the cost allocation IM or a cost allocation method for product groups) these costs could be used to calculate cost-based prices. Interested persons may use these to assess their costs or prices</p> <p>PQ: in future periods we may be able to recommend altering/imposing price constraints on some input services.²⁹ We can specify additional FFLAS classes which could be required to flow into operating cost and asset allocations. These costs could then be used to calculate and specify cost-based prices (applicable from 2025)</p> |

²⁵ Please note these are risk statements about a fibre provider's possible future conduct. It may or may not have occurred in the past or be occurring presently.

²⁶ Direct fibre access service.

²⁷ Intra candidate area backhaul service.

²⁸ Retail service provider.

²⁹ An input service in this context is an intermediate service that an RSP needs to purchase in order to provide its final service to end-users.

| Risk # | Risk name | Market segment | Description of competition | Risks to competition ²⁵ | Possible role of ID/PQ |
|--------|----------------|------------------------|--|---|---|
| B | Inputs price | Layer 2, ID-only areas | LFCs ³⁰ compete with providers of telecommunication services at layer 2 (eg fixed wireless access (FWA) or unbundlers) that use LFCs' (and potentially Chorus') fibre-based services at layer 1 as inputs | LFCs lessen competition by charging anti-competitive prices for layer 1 services that are an input to rival competitors downstream at layer 2. This raises the costs of downstream rivals, making them less competitive | <p>ID: disclose prices and pricing methodologies. In addition, we must specify "product groups" under ID, and may specify additional FFLAS classes. When applying these definitions (alongside the cost allocation IM or a cost allocation method for product groups) these costs could be used to calculate cost-based prices. Interested persons may use these to assess their costs or prices</p> <p>Prospect of additional regulation/deregulation in respect of persons who provide FFLAS (s 210 and recommendations under s 226 to the Minister</p> |
| C | Inputs quality | Layer 2, PQ areas | Chorus competes with providers of telecommunication services at layer 2 (eg fixed wireless access (FWA) or unbundlers) that use Chorus' fibre-based services at layer 1 (eg DFAS, ICABS, tail extension) as inputs | Chorus lessens competition through the non-price terms (including quality) for layer 1 services that are an input to rival competitors downstream at layer 2. This negatively impacts downstream rivals, making them less competitive | <p>ID: disclose non-price terms of input services; performance against relevant quality metrics; and enforcement against contraventions of information disclosure requirements</p> <p>PQ: set quality standards and enforce where there is a contravention of a price-quality requirement; assess sufficiency of proposed expenditure</p> |

³⁰ Local fibre companies other than Chorus.

| Risk # | Risk name | Market segment | Description of competition | Risks to competition ²⁵ | Possible role of ID/PQ |
|--------|-------------------|------------------------|---|--|---|
| D | Inputs investment | Layer 2, PQ areas | Chorus competes with providers of telecommunication services at layer 2 (eg fixed wireless access (FWA) or unbundlers)) that use Chorus' fibre-based services at layer 1 (eg DFAS, ICABS, tail extension) as inputs | Chorus lessens competition through insufficient investment in layer 1 services that are an input to rival competitors downstream at layer 2. This negatively impacts downstream rivals, making them less competitive | ID: disclose non-price terms of input services; performance against relevant quality metrics; and enforcement against any disclosure obligations PQ: set and enforce minimum quality standards; assess sufficiency of proposed expenditure |
| E | Inputs quality | Layer 2, ID-only areas | LFCs compete with providers of telecommunication services at layer 2 (eg fixed wireless access (FWA) or unbundlers)) that use LFCs' (and potentially Chorus') fibre-based services at layer 1 as inputs | LFCs lessen competition through the non-price terms (including quality) for layer 1 services that are an input to rival competitors downstream at layer 2. This negatively impacts downstream rivals, making them less competitive | ID: disclose non-price terms of input services; performance against relevant quality metrics; and enforcement against any disclosure obligations Prospect of increasing regulation on regulated providers currently subject only to ID regulation by also imposing PQ regulation under s 226 |
| F | Inputs investment | Layer 2, ID-only areas | LFCs compete with providers of telecommunication services at layer 2 (eg fixed wireless access (FWA) or unbundlers)) that use LFCs' (and potentially Chorus') fibre-based services at layer 1 as inputs | LFCs lessen competition through insufficient investment in layer 1 services that are an input to rival competitors downstream at layer 2. This negatively impacts downstream rivals, making them less competitive | ID: disclose non-price terms of input services; performance against relevant quality metrics; and enforcement against any disclosure obligations Prospect of increasing regulation from ID to PQ for relevant services |

| Risk # | Risk name | Market segment | Description of competition | Risks to competition ²⁵ | Possible role of ID/PQ |
|--------|------------------------|------------------------|--|---|--|
| G | Downstream competition | Layer 2, PQ areas | Chorus competes with other non-fibre fixed line access service providers (eg hybrid fibre coaxial), and with providers of telecommunications services at layer 2 (eg fixed wireless access (FWA) or unbundlers)) | Chorus lessens competition by charging anti-competitive prices for specific layer 2 services where it faces competition (eg lower speed broadband) | ID: disclose prices and pricing methodologies of the various layer 2 services Prospect of deregulating certain services that face competition (ie reducing the scope of FFLAS), and/or changing the form of control to price caps for those services that face no competition |
| H | Downstream competition | Layer 2, ID-only areas | Chorus, other LFCs and non-fibre FLAS providers (eg hybrid fibre coaxial) compete with each other, and with providers of telecommunication services at layer 2 (eg fixed wireless access (FWA) or unbundlers)) | LFCs lessen competition by charging anti-competitive prices for specific layer 2 services where they face competition (eg lower speed broadband) | ID: disclose prices and pricing methodologies of the various layer 2 services ID: report on cost allocation outcomes (to assess compliance with cost allocation IM) and pricing in ID-only and PQ areas |
| I | Downstream competition | Layer 2, ID-only areas | Chorus, other LFCs and non-fibre FLAS providers (eg hybrid fibre coaxial) compete with each other, and with providers of telecommunication services at layer 2 (eg fixed wireless access (FWA) or unbundlers)) | Chorus lessens competition by charging anti-competitive prices at layer 2 in ID-only areas, enabled by inappropriate allocation of costs between ID-only and PQ areas | ID: disclose prices and pricing methodologies of the various layer 2 services ID: report on cost allocation outcomes (to assess compliance with cost allocation IM) and pricing in ID-only and PQ areas |

| Risk # | Risk name | Market segment | Description of competition | Risks to competition ²⁵ | Possible role of ID/PQ |
|--------|---------------------------|------------------------|---|--|--|
| J | Upstream competition | Layer 1, ID-only areas | LFCs compete with Chorus to provide input services to providers of telecommunication services that operate at layer 2 and above | Chorus lessens competition by charging anti-competitive prices at layer 1 in ID-only areas, enabled by inappropriate allocation of costs between ID-only and PQ areas | ID: disclose prices, pricing methodologies and costs allocated to the various input services in relevant market segments |
| K | Layer 1 + Layer2 bundles | Layer 1, PQ areas | Chorus competes for layer 1 backhaul ³¹ services with larger RSPs | Chorus bundles layer 2 products with layer 1 backhaul products, such as ICABS, in a way that makes entry into the backhaul market uneconomic (eg, not enough contestable volumes) | ID: disclose contract terms |
| L | Different Layer 2 bundles | Layer 2, ID-only areas | Chorus competes for layer 2 connections with other LFCs | Chorus bundles layer 2 products between PQ and ID-only areas that have exclusionary effect on LFCs in ID-only areas (eg, prices in PQ areas are lower if you also purchase your ID areas requirements from Chorus) | ID: Monitor the prices of any bundles offered (any conditions associated with the bundle price) |

³¹ Backhaul is the intermediary link in a telecommunications network between the edge of the network (eg, copper or fibre connecting homes, or mobile sites) and the core network (eg, internet gateways and content provision).

| Risk # | Risk name | Market segment | Description of competition | Risks to competition ²⁵ | Possible role of ID/PQ |
|--------|--------------------|-----------------------------|---|---|--|
| M | Incentive payments | Layer 2, PQ + ID-only areas | Chorus competes with other non-fibre FLAS providers (eg hybrid fibre coaxial), and with providers of telecommunications services at layer 2 (eg fixed wireless access (FWA) or unbundlers)) | Chorus lessens competition by making anti-competitive incentive payments to attract/retain end-users (price terms) | <p>ID: ex-post report on aggregate amounts paid broken down by geographic area, product (to see if there is any targeting) and number of end-users affected; conditions attached to the payment (eg, if the customer breaks the contract after 10 months, is the payment 'clawed-back', are they only offered to RSPs that have FWA offers, etc)³²</p> <p>PQ: ex-ante assessment whether proposed incentive payments are likely to be anti-competitive and potentially adjust expenditure allowance accordingly; potentially assessing this expenditure as part of an individual capex proposal</p> |
| N | Incentive payments | Layer 2, PQ + ID-only areas | Chorus competes with other non-fibre FLAS providers (eg hybrid fibre coaxial), and with providers of telecommunications services at layer 2 (eg fixed wireless access (FWA) or unbundlers)) | Chorus lessens competition by imposing anti-competitive conditions attached to the incentive payments (non-price terms) | <p>ID: ex-post report on aggregate amounts paid broken down by geographic area, product (to see if there is any targeting) and number of end-users affected; conditions attached to the payment (eg, if the customer breaks the contract after 10 months, is the payment 'clawed-back', are they only offered to RSPs that have FWA offers, etc)</p> <p>PQ: ex-ante assessment whether proposed incentive payments are likely to be anti-competitive and adjust expenditure allowance accordingly; potentially assessing this expenditure as part of an individual capex proposal</p> |

³² These are only suggestions. In reaching final decisions on ID requirements we would consider stakeholder views (including feedback received as part of this consultation). Additional considerations include the need for confidentiality vs. the benefits of public disclosure, or whether other regulatory tools are better placed to mitigate this risk, such as enforcing compliance with non-discrimination obligations.

| Risk # | Risk name | Market segment | Description of competition | Risks to competition ²⁵ | Possible role of ID/PQ |
|--------|-----------------------------------|-----------------------------|--|--|--|
| O | Below cost network expansion | Layer 2, PQ + ID-only areas | Chorus competes with LFCs to grow the network in new developments within other LFCs' areas (ID-only areas) and at the edges of the other LFCs' networks (PQ-areas) | Chorus prevents LFCs from expanding their network (limiting growth opportunities for LFCs within their own areas and preventing entry into Chorus' PQ areas) by undercharging for laying new network / connections - ie, cross-subsidising the network expansion and recovering the costs elsewhere | <p>PQ: appropriate cost allocation between PQ and ID should limit Chorus' ability to do this within ID-only areas, though may not resolve all issues since Chorus will still have a wider 'ID base' to recover from than individual LFCs (eg, they could still target one LFC area like Christchurch and recover the costs from another LFC area like Northpower's area)</p> <p>ID: monitoring bids / capital contributions / prices for connecting new developments within ID-only areas and close to ID-only areas could reveal whether this is an issue</p> |
| P | Geographically consistent pricing | Layer 1 and 2, PQ areas | Chorus competes with other non-fibre fixed line access service providers (eg hybrid fibre coaxial), and with providers of telecommunications services at layer 2 (eg fixed wireless access (FWA) or unbundlers)) | <p>Rural areas: these tend to be high-cost areas. The combination of low prices relative to costs in these areas does not encourage potential competitors to enter and challenge the incumbent with different/innovative services that end-users in these areas may find valuable.</p> <p>Urban areas: these tend to be low-cost areas. The combination of high prices relative to costs in these areas overly encourages competitors to enter (potentially at above efficient costs). This is positive for end-users in urban areas, as they may get greater choice and lower prices in the shorter term, but it threatens the sustainability of both geographically consistent pricing, and competition in urban areas if deregulated.</p> | ID: disclose costs, prices, revenues and quality of relevant products and services in urban and rural areas. This can inform broader summary and analysis of trends in market dynamics such as entry, exit, growth of competitors, profitability etc |