# Cross-submission in response to the Commerce Commission's proposed approach on the new regulatory framework for fibre

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# Executive summary

2degrees is pleased to note the level of support and agreement, including from Chorus in places, with the views we expressed in our submission.

The submissions received also raised a number of additional points that we comment on in this cross-submission.

Generally, we are aligned with the position of consumer organisations and other RSPs.

2degrees' key concerns are:

- That Fibre Fixed Line Access Services (FFLAS) provided by suppliers with market power are at a price and quality that meets the needs of NZ telecommunications consumers.
- That implementation of the new Part 6 of the Telecommunications Act (the Act) does not distort competition and investment in telecommunications markets, including mobile and Fixed Wireless Access (FWA) markets.
- That regulated entities do not over-recover their efficient costs (allowing them a reasonable return on investment, but not excessive returns).

While 2degrees agrees with Chorus in some cases (for example, regarding use of Part 4 precedent and staggering of Input Methodology (IM) consultations) there are a number of important issues where Chorus' position is inconsistent with the Act, including the long-term interests of telecommunications end-users.

Unsurprisingly, in line with its commercial incentives, Chorus is asking the Commission to adopt approaches that increase its revenues and reduce potential competition to its services. It is important the Commission recognises this, as Chorus is the most well-resourced industry participant in this process. The Commission will need to ensure that the final decisions it adopts appropriately constrain Chorus so to achieve the Act's objectives.

Important areas where 2degrees, as well as consumer organisations and other RSPs, has a different view to Chorus include:

- The importance of the promotion of competition for all telecommunications users versus those of retail UFB.
- The scope of FFLAS, which was clarified at Select Committee to include Intra Candidate Area Backhaul Services (ICABS).
- The need for prescriptive IMs versus principles-based IMs to promote regulatory certainty in a market power environment.
- The importance of cost allocation in ensuring there is no double recovery and avoiding distortions in competition.
- The case for a mid-point WACC, given lower risks associated with the new fibre market.
- The timing and prioritisation of IM development which, while possible to stagger, must have final decisions made together as a package.
- Ensuring quality FFLAS for consumers, including appropriately set anchor products.

We summarise each of these issues in turn.[1]

## Promotion of Competition

One of the most important distinctions between Part 4 of the Commerce Act (Part 4) and Part 6 of the Telecommunications Act (Part 6) is the inclusion, in Part 6, of a statutory purpose regarding the promotion of competition (Spark, Vocus and Vodafone).

The Commission's decisions must be guided by, and give effect to, the purpose statements in Part 6. Promoting competition, where competition is possible, can be expected to deliver more significant benefits to consumers than can be achieved by trying to replicate the outcomes of competition (a second-best solution) (Axiom Economics, Spark, Trustpower, Vocus, and Vodafone).

Chorus' attempt to downplay the importance of promoting workable competition puts it at odds with RSPs, InternetNZ and TUANZ.

As InternetNZ points out "The benefits of fibre are real and important across different access modes...". For example, the ability for 2degrees and others to utilise Chorus' fibre network to provide 5G services in competition with fibre-based services will be critical to competition and the long-term interests of end-users.

Chorus is asking the Commission to focus only on *retail* and *UFB* competition. A narrow focus on retail UFB competition may be in Chorus' best interests. Implementation of Part 6 is about FFLAS, including FFLAS as a key input to other services, as well as the impact of decisions on competition for all telecommunications end-users. Other services that Chorus does not wish to focus on, because they are competitive or will compete against itself, cannot be conveniently relegated. This includes the unbundling of fibre (whose provision has been mandated from the time of the UFB deeds), and competition in mobile, that has been the subject of Schedule 3 (for example, MTAS).

As the later entrant in mobile we are especially concerned about the potential impact on wireless competition. Competition in mobile has been hard fought for. With our network build now reaching over 98% population coverage we seek to grow competitive markets (including business and wholesale). NZ now has three competitive national operators. Mobile now performs much better than fixed despite higher regulation in fixed (for example in OECD price benchmarking[2], in the timely adoption of new technologies as well as in the introduction of innovative products consumers want (Vodafone)). While choice is good and we support it, as long-recognised by the Commission in its considerations, competition, particularly infrastructure-based competition, better provides the incentives to deliver competitive price, innovation and investment for the benefit of consumers.

The Commission should not allow actual competition to go backwards, by resetting regulatory settings to favour a supplier with market power over fibre providers and FWA/mobile players that provide the benefits of actual competition. As Spark has pointed out, regulation of Chorus is being put in place precisely because they do not have competitive incentives.

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[1] We list examples of other submissions that agree with 2degrees' position in brackets.

[2] While Chorus reports fixed as being 9% below the OECD average, the Commission Annual Monitoring Report shows that fixed (broadband plus voice 100/20Mbps) was 9% below the OECD average, naked broadband was 2% below the OECD average and mobile prices ranged between 20 to 40% below the OECD average.

## Scope of the FFLAS

We are concerned at Chorus' attempts to reduce the scope of regulated services, including ICABS. Chorus incorrectly states that backhaul services such as ICABS "are not subject to Part 6 regulation".

This point was clarified at the Select Committee stage. MBIE explicitly advised the Select Committee[3] that:

> DFAS and ICABS are both fibre fixed line access services (FFLAS) and will be subject to regulatory oversight under the new Part 6. DFAS will be a regulated service, while the Commission can move to a price caps regime, which could cover ICABS.

and:

> We do not recommend a change to the definition of fibre fixed line access service (FFLAS). It is meant to cover telecommunications services that enable access to, and interconnection with, a regulated fibre service provider – including DFAS and backhaul services to mobile cell sites and fixed wireless sites. These services are intended to be regulated under the new Part 6 model rather than the old model under Schedule 3 of the Act…"

2degrees wanted to ensure there was no 'regulatory gap' for such services – whether in Part 6 or Schedule 3. We did not consider that Parliament intended to have a 'gap' in legislation that would allow a supplier with market power to provide services at excessive prices, particularly where that supplier (in many cases a monopoly) would have less regulatory oversight than competitive mobile services (subject to Schedule 3).[4]

MBIE advised the Select Committee that there was no need for any drafting change to the legislation because these services correctly fall under the Part 6 FFLAS definition. It follows that end-users of FFLAS include not just our UFB consumers but any FWA and mobile users, which rely on FFLAS services such as Direct Fibre Access Services (DFAS) and ICABS.[5,]

## Prescriptive IMs v principles-based IMs and regulatory certainty

Chorus' and the LFCs' advocacy for high-level, principles-based IMs is unsound.

Regulatory certainty will be best achieved by prescriptive IMs which minimise the scope for discretion or judgement (be it, by Chorus or the Commerce Commission). Both the Commission and the Courts have been clear; the more prescriptive the IMs are, the greater the level of regulatory certainty.

2degrees agrees with other submitters that the Commission should err towards a more prescriptive approach to the IMs (Axiom Economics, Frontier Economics, Spark, Vocus, and Vodafone) as opposed to the higher-level approach Chorus supports.

It should be recognised that "the contents of the IMs contribute to certainty by increasing the predictability of outcomes and constraining the Commission's evaluative judgements".[6] Every input methodology must, as far as is reasonably practicable, set out relevant matters in

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[3] Telecommunications (New Regulatory Framework) Amendment Bill, Departmental Report to the Economic Development, Science and Innovation Committee, 20 April 2018 (Items 93 and Item 5). 2degrees was also advised of this.
[4] We acknowledge that under Chorus' interpretation, FFLAS would be subject to Schedule 3 (section 211 would not apply).
[5] Section 162 captures existing mobile and fixed customers while section 166(2) clarifies that new competition, for example future/emerging 5G wireless technology must also be considered.
[6] Vector v Commerce Commission [2012] NZSC 99, [2013] 2 NZLR 445, at [56]-[61].

sufficient detail so that each affected regulated fibre service provider is reasonably able to estimate the material effects of the methodology on the provider.[7]

### The importance of cost allocation

The Cost Allocation IM is important and will, by its nature be more complex than its Part 4 precedent (Axiom Economics, Frontier Economics, Vocus, Vodafone, Spark and Trustpower).

The Commission needs to ensure the cost allocation rules result in competitively neutral outcomes that do not favour particular technologies or access services (Frontier Economics, Vodafone and Spark).

There is a risk of double-recovery which the Cost Allocation IM will need to address (Axiom Economics, Frontier Economics, Spark, and Vocus).

### Risk/Mid-point WACC precedent

We do not agree there are higher levels of risk associated with Chorus' fibre investment than with the copper network or other firms regulated under Part 4 of the Commerce Act.

We agree with other submissions that a mid-point WACC should be adopted (Axiom Economics, Spark, Trustpower, Vocus and Vodafone). Chorus has provided no sound basis for varying from copper pricing and Airport precedent for the WACC percentile. We reject Chorus' WACC arguments both in relation to risk and WACC percentile.

### Timing/Prioritisation of IM development

While we support staggering of IM consultations, 2degrees does not support Chorus and the LFCs' request to prioritise development, and/or determination of the RAB and WACC IMs.

We agree with Vocus that the criteria given to prioritisation should be on the basis of how complex, time-consuming and contentious the IMs will be.

Given the proposed overlap with the IMs development and price-quality setting, there may also be pragmatic benefit in prioritising elements of the IMs needed to estimate and forecast Chorus' future costs (and investment requirements).

While we appreciate Chorus' desire for certainty, this applies to all industry stakeholders. We therefore support a more robust, certain process. For example, as a short-cut we disagree that the Commission can simply accept the result of negotiations on prices between the Chorus/LFCs and Crown (per the Network Infrastructure Project Agreement (NIPA) with Crown Infrastructure Partners (CIP)) as representing "competitive market outcomes". While competitively tendered and negotiated *at the time*, this was with *the Crown.* The Wholesale Services Agreements (WSA) with RSPs are constrained by those negotiation outcomes, which we do not consider represent competitive market outcomes. The different LFC prices for services further reflects our view that this is not a competitive market outcome.

As noted by Vocus, while the Commission should adopt a staged approach to IM consultation, we recognise and support that it will need to make its final IM decisions together, as a package, given the important inter-relationships between different components of the IMs.

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[7] Section 176(2)(a), Telecommunications Act.

## Quality

We agree with Chorus that fibre networks have great potential to offer "gigabit capability and beyond" to consumers, and we want to ensure, along with InternetNZ, such services are available to consumers in a cost effective and timely way.

We agree with Spark, Vocus and Vodafone that the Quality Dimensions IM, and service quality standards set at price reset, need to be set to:

- Prevent or limit Chorus' ability to continue to cut or cap its costs and increase profitability by operating a low quality of service, and
- Ensure supply of FFLAS is of a quality that reflects end-user demands.

There are risks with **supplier proposals** if the supplier does not engage with the process in good-faith (Vocus).

We also support InternetNZ, Spark, TUANZ, Vocus and Vodafone arguments that the MBIE **Anchor Service** specification is inadequate and should be reviewed by the Commission. We agree with Vodafone that "To provide some further certainty the Commission should provide some transparency on the factors that it will take into consideration for the anchor services review".

## Additional elements of other parties' submissions we acknowledge and support

There are a number of points raised in other submissions that we did not cover in our own submission, but which we agree with and support, including:

- **Asset valuation will be complex and contentious:** We agree with Spark that, even with the direction provided in section 177, specification of the RAB IM will be complex and contentious. The Commission will need to be careful to ensure Chorus' fibre RAB/costs are not inflated (Axiom Economics and Spark).

- **Financial losses (if any) need to be calculated on an incremental cost basis:** We support the questions raised by Vodafone about whether Chorus has genuinely incurred any financial losses from the UFB build. We agree with Vodafone and Spark that any calculation of financial losses need to be on an incremental or avoidable cost basis and must exclude any shared and common costs.

- **Enduring elements of the price-quality setting should be prescribed in Input Methodologies:** We agree with Vocus that "A bright line test or principle for determining the extent to which the Input Methodologies should be prescriptive … or flexible, is to consider which elements of price-quality control will require change and the exercise of judgement at each regulatory reset, and which will not. Any element of the price-quality control that can be operated on a 'set and forget' basis should be incorporated into the Input Methodologies".

- **There may be value in additional Input Methodologies:** We agree with Axiom Economics, Vodafone and Spark that consideration should be given to development of a Pricing Input Methodology.

# 1 Introduction

2degrees welcomes the invitation to cross-submit in relation to the Commission's proposed approach to the New Regulatory Framework consultation.

2degrees is pleased to note the level of support and agreement, including from Chorus in places, with the views we expressed in our submission.

Generally, we are aligned with the position of consumer organisations and other RSPs.

The submissions received by the Commission also raised a number of additional points that we comment on in this cross-submission.

Our cross-submission is set out as follows:

- Common grounds we share with Chorus.
- Substantial agreement with the views of RSPs and consumer organisations.
- Chorus' attempts to downplay the importance of promoting workable competition.
- The scope of FFLAS includes ICABS.
- Setting of the RAB IM and the value of the RAB.
- The approach to determining financial losses (if any).
- The approach to determining WACC.
- Development of a pricing Input Methodology
- The impact of specifying a weak Anchor Service.
- The timing and phasing of Input Methodology development.

# 2 We share some common ground with Chorus

We share the following views with Chorus:

- We agree with Chorus that **Part 4 of the Commerce Act provides precedent that** the Commission can leverage "… there is now a substantial body of existing knowledge and experience about the issues involved in implementing a BBM approach using IMs" and "The Commission will be able to leverage its existing experience to more quickly isolate and focus on key issues". (Axiom Economics, Spark, Transpower, and Vocus similarly recognised Part 4 precedent as a "starting point".)
- **The Commission should be transparent about the extent it relies on Part 4 precedent:** Related to the Part 4 precedent, we agree with Chorus that it would be helpful if the Commission "Provid[ed] an early indication of those aspects of the Part 4 IMs that the Commission considers can and should be quickly adapted to the telecommunications context with minimal changes".

  Our submission noted the Commission has provided limited views about the precedent value of the Part 4 IMs, beyond the WACC IM, some references to the Cost Allocation IM, and the high-level approach to the RAB IM, and that "We are interested in understanding the Commission's views on the extent to which other Part 4 IMs can either be transposed

or used as a starting point for determining the fibre IMs". (Transpower and Vocus made similar comments about transparency around use of Part 4 precedent.)

- Chorus also shared our view that development and **consultation on the IMs should be phased or staggered** and proposed the Commission "Prepar[e] and releas[e] emerging views and draft determinations in staggered tranches". (InternetNZ, the LFCs, Trustpower and Vocus also agreed with this point.)
- **Learning to walk before trying to run:** For practical/timing reasons, we also agree with Chorus that some elements of the price-quality setting (the 'bells and whistles') may need to wait until future resets, potentially including development of incentive mechanisms: "Development of incentive mechanisms should be deferred for further consideration in anticipation of RP2 because ... Design and implementation of incentive mechanisms will be a significant workstream"(Chorus).

  Part 4 provides precedent for this e.g. as Chorus pointed out, IRIS was initially only applied to Transpower and then subsequently for Electricity Distribution Businesses. (InternetNZ also agreed with this point.) Axiom Economics also noted: "When the Commission set its IMs for energy companies and airports under Part 4, it was cognisant of the fact that those regulatory arrangements might subsequently evolve to some degree. For example, when the Commission was setting its initial IMs, it consciously delayed introducing any 'rolling efficiency incentive regime' for energy companies. It opted instead to consider the matter at a later date, which it duly did."

# 3 Substantial agreement with the views we expressed

There is more common ground with the views we expressed from the RSPs, InternetNZ and TUANZ. Some illustrative submission quotes which support our views are provided below:

## 3.1 Competition

- **One of the most important distinctions between Part 4 of the Commerce Act (Part 4) and Part 6 of the Telecommunications Act (Part 6) is the inclusion, in Part 6, of a statutory purpose regarding the promotion of competition (Vodafone):** "Promotion of competition is critical to deliver the best outcomes for end-users".

  **Spark:** "The competitive landscape in telecommunications is much more dynamic than that of the Part 4 sectors, and the Act recognises this by directing the Commission to have regard to, and to promote, actual competition."

- **Promoting competition, where competition is possible, is expected to deliver better benefits to consumers than trying to replicate the outcomes of competition (the second-best solution) (Axiom Economics):** "Price regulation can seek to mimic some of the outcomes of competitive markets, but it is always an imperfect surrogate. For that reason, regulatory frameworks typically attempt to foster competition whenever possible, and seek to replicate its outcomes when it is not. That philosophy appears to be reflected in the legislative purpose statements."

**Vodafone:** “the fibre providers must also be exposed to competitive pressures wherever possible. Competitive pressures will always deliver a better outcome for end-users compared to artificial regulatory incentives.”

## 3.2 Level of Prescription

- **A prescriptive approach to the IMs should be adopted (where possible) (Vodafone):** “It recommends prescriptive rules in the Input Methodologies for allocations where fibre providers have conflicted incentives, such as costs in common between copper and fibre, layer 1 and layer 2 fibre, and for the anchor products.”

  **Axiom Economics:** “… the Commission should err towards more prescriptive (as opposed to ‘principle-based’) IMs – particularly for core methodologies such as asset valuation, cost allocation, the cost of capital, and for any pricing principles; since: … Chorus will understandably be motivated to engage in strategies to foreclose competition, which suggests it will often be preferable for the IMs to place a reasonably tight rein on its discretion to prevent it from acting on those commercial incentives (e.g., through the way in which it allocates common costs, determines prices for particular services, etc.) …”

## 3.3 The importance of Cost Allocation

- **The Cost Allocation IM is important and will, by its nature be more complex than its Part 4 precedent (Vodafone):** “Frontier’s report shows that cost allocation for fibre services will be far more complex and risky than for Part 4. As a consequence, the cost allocation rules must be far more sophisticated, and in some cases will required detailed prescription within the input methodologies.”

  **Vodafone:** “Cost allocation in the Part 6 regime also needs to cover a number of different cost categories. In the Part 4 regime cost allocation is purely concerned with the allocation between regulated and unregulated activities. This is not sufficient for Part 6.”

  **Spark:** “Compared to Part 4, section 166(2)(b) will likely require the Commission to pay closer attention to the rules that determine how services are priced, as relativities between FFLS service prices and non-regulated prices will be important to the promotion of competition for all end-users. In particular: i. cost allocation rules and disclosure should be at the service level (e.g. not at the aggregate FFLS level); and ii. pricing methodologies may be desirable.”

  **Trustpower:** “The allocation of shared costs will be a potentially challenging element of establishing the new fibre regulatory regime…”

- **There is a risk of double-recovery which the Cost Allocation IM will need to address (Axiom Economics):** “Unless a portion of the ‘fibre assets’ are allocated to other services when the initial fibre RABS are determined and the revenues cap is set (e.g. via the cost allocation IM), Chorus would almost certainly over-recover its costs (i.e., recoup its common costs twice or more)”.

  **Frontier Economics:** “…there is a strong case that the consequences of misallocation are likely to be material. This is accentuated by the potential for cost over-recovery as a

result of existing copper prices facilitating full recovery of relevant common costs; allowing for "double recovery" of costs would clearly not be in the interests of end users".

**Vocus:** "The cost allocation input methodology needs to preclude double-recovery". "It will be important to ensure no costs allocated to UBA and UCLL services are also allocated to fibre, at least to the extent UBA and UCLL services continue to be supplied."

Our concern about the risk of potential double-recovery was amplified by Chorus comments about the extent of shared and common costs (and assets) between copper and fibre e.g. "We operate one network that includes two technologies, copper and fibre, across the different areas in New Zealand. As a result of this, extensive sharing of network and non-network assets occurs between regulated and non-regulated services. We expect the extent of sharing with copper services will substantively increase in the near future".

- **The Commission will need to be careful to ensure Chorus' fibre RAB/costs are not inflated (Spark):** "The High Court observed that there is little or no impact to beneficial consumer outcomes from increasing the value of the initial RAB, but "what initial RAB values do have a direct impact on is the extent to which suppliers are limited in their ability to extract excessive profits." Accordingly, "an initial RAB value would, in our view therefore, be fundamentally flawed if it generated prices that were inconsistent with the achievement of the s 52A(1) purpose and outcomes, in particular if it failed to limit suppliers' ability to extract excessive profits over time.""

## 3.4 Risk/WACC

- **A mid-point WACC should be adopted (Axiom Economics):** "The rationale for an uplift – or, at least, for an increment of similar magnitude – does not appear to be as compelling for FFLAS. First, ... the 'lion's share' of FFLAS assets are nearly brand new. That being the case ... there is less chance of it translating into major supply outages. To use a simple analogy, a car with 500,000km on its odometer is more likely to break down if its owner neglects to get it serviced than a vehicle that has travelled only 5,000km".

  **Trustpower:** "We are aware that the asymmetric risk of under vs over investment has been an important factor in past regulatory decisions in the electricity sector.

  "This reflects the significant consequences of under investment (the lights will go out) and the nature of investments required (as there are often considerable efficiencies in oversizing network upgrades).

  "We do not see these factors present to the same degree in the telecommunications sector, so absent other factors, do not expect that applying the investment consequences principle would result in the use of WACC percentile above the mid-point."

  **Vodafone:** "... there is no need for any WACC uplift; competitive pressures will provide a stronger incentive to maintain quality".

  **Vodafone:** "In regulations set under Part 4 the Commission typically sets an uplift to the WACC. The Commission has provided the following rationale for the uplift.

  > *We consider that the main reason to set a WACC percentile above the mid-point is to mitigate against the risk of under-investment relating to service quality generally, and contributing to major supply outages in particular.*

This same logic does not apply to fibre services, either for uncompetitive Layer 1 assets, or for competitive assets."

## 3.5 Process/timing

- **Development and consultation on the IMs should be phased or staggered (LFC joint submission):** "The Commission should consider staggering its IM draft decision and determination consultations. The IM consultation under Part 4 of the Commerce Act involved substantial volumes of material for interested parties to consider and respond to. This process was made manageable by the submission deadlines being staggered across the key consultation periods."

  **InternetNZ:** "We recommend that … The Commerce Commission seek targeted input throughout this process, to ensure meaningful input including from less well-resourced parties".

- **The Commission will need to make its final IM decisions together, as a package, given the important inter-relationships between different components of the IMs (Vocus):** "While we support development of the Input Methodologies on a staggered or phased basis, we don't necessarily expect the same for the final determinations. ... The Commerce Commission will need to consider how each of the Input Methodologies interact and the implications of one Input Methodology for other Input Methodologies."

## 3.6 Quality Dimensions IM

- **The Quality Dimensions IM, and service quality standards set at price reset, need to be set to prevent or limit Chorus' ability to continue to cut or cap its costs and increase profitability by operating a low quality of service, and for ensuring supply of FFLAS is of a quality that reflects end-user demands (Vodafone):** "As near monopolies, the fibre providers may not have strong enough incentives to focus on quality where there is a cost associated with meeting a particular service standard."

  **Spark:** "Quality is a key component of incentive regulation and is increasingly seen as means to drive beneficial regulatory outcomes. Sections 194(3) and (4) reinforce that the Commission may apply quality incentives to maintain or improve quality of supply and this suggests greater reliance can be put on quality incentives driving outcomes (relative to implementations that rely on the price path alone achieving this outcome)." [footnote removed]

- **The MBIE Anchor Service specification is inadequate (TUANZ):** "We remain concerned that the proposed Anchor Product definition will not meet the future needs of end-users and we will work to provide the Government and the Commission with as much feedback from our members as possible around the use of services and their requirements as they develop in the future."

  **InternetNZ:** "We recommend that … The role of anchor products as a potential driver of quality, price, and efficiency improvements is considered at an early stage of this process."

# 4 Chorus' attempts to downplay the importance of promoting workable competition are a concern

2degrees is concerned at Chorus attempts to narrow the scope of the new framework to **retail, fixed fibre** competition. The new Part 6 considers both retail and wholesale, in both fixed and wireless access markets. This includes existing and emerging markets such as 5G.

Whilst it may be in the interests of Chorus to focus on retail UFB, the Commission must not prioritise the retail market for UFB over other telecommunications markets (including unbundled fibre, FWA and mobile). As Spark points out, the new Part 6 regulation exists because LFCs have market power in the provision of FFLAS. They have the ability and incentive to distort competition in downstream FFLAS markets as well as in other emerging telecommunications markets.

2degrees agrees with Spark that "The competitive landscape in telecommunications is much more dynamic than that of the Part 4 sectors, and the Act recognises this by directing the Commission to have regard to, and to promote, actual competition. … The decisions the Commission makes in implementing the Part 6 regulatory framework will affect real competition as opposed to hypothetical competition, and in our view this must be at the centre of the Commission's decision-making process throughout the Part 6 process".

Similarly, Axiom Economics notes "while there is potential for some infrastructure-based competition to emerge from new technologies in, say, the electricity sector, the prospect is even greater in telecommunications markets" [footnote removed].

The LFCs, in their joint submission noted: "LFCs face infrastructure-based competition in the broadband access market from fixed wireless (which has already captured more than 10% market share, and which will be upgraded to 5G by 2020), enhanced copper VDSL2 vectored services which Chorus offers only in LFC areas, and in the case of Enable, Vodafone's HFC network. In addition, LFCs face access-based competition from 2020 as a result of their Part 4AA obligation to provide unbundled layer 1 access to their fibre-to-the-premises network on an equivalence basis".

These should not be contentious points.

Chorus' submission attempts to narrow the scope of the section 166 purpose to promote workable competition in UFB markets only, and to narrow the focus of competition to just "retail competition".

Chorus' position on competition matters may well reflect, as Axiom Economics suggest, that "Chorus will have a natural commercial incentive to take advantage of its substantial market power to foreclose all these sources of potential competition if it can. Its ability to do so will depend crucially on the IMs and price-quality paths the Commission determines. … It is therefore unsurprising that s.166(2)(b) directs the Commission explicitly to promote actual workable competition in telecommunications markets – a vital legislative difference".

The Commission has similarly warned "It is important that a regulatory regime designed to protect end-users does not end up being used to protect regulated suppliers from competition, or from the effects of competition".

Chorus attempts to downplay the role of section 166, and promotion of workable competition, with three questionable assertions about how section 166 should be interpreted:

- *Despite section 166(2)(b) referring to "promotion of workable competition in telecommunications markets", Chorus attempts to limit this to a focus on competition in retail markets only:*

  > Part 6, together with the provisions of Part 4AA, supports … choice by promoting ***retail*** competition through a regulated open-access fibre network across which large and small RSPs can compete on equal terms. Accordingly, in considering section 166(2)(b), the Commission should give significant weight to the benefits of ***retail*** competition for the long-term benefit of end-users of all telecommunications services. [emphasis added]

  Chorus' position seems to reflect its self-interest which, as noted by Spark, "is [as] both a wholesaler of an essential input and competitor of its wholesale customers". InternetNZ similarly recommend "This process considers the potential of fixed-line fibre services to benefit end-users both as an access mode and as an input to other access modes".

- *Chorus attempts to argue that the purpose of section 166(2)(b) to promote the long-term benefit of end-users is subordinate to the section 162 purpose (referenced in section 166(2)(a)) to promote the long-term benefit of end-users.*

  According to Chorus' reasoning the "promotion of workable competition" should not be pursued in any circumstances where there would be a trade-off between the section 162 and 166(2)(b) purposes.

  Chorus' position would mean if there was an opportunity for a *potential* or *actual* Pareto Improvement, where end-users could be made better off by trading off the section 162 purpose for the 166(2)(b) purpose, the Commission should reject the more competitive outcome.

- *Chorus go on to argue the Commission cannot favour competitive outcomes where they exist:*

  > [s]ection 166(2) is framed conjunctively, not disjunctively. … It's not for the Commission to choose between these objectives. There's no objective criterion to enable that assessment either, other than the Part 6 purpose statement.

  We agree with Vocus that just as the Commission needs to weigh up the subparts (a) to (d) to determine how to best achieve the section 162 purpose, the Commission will need to weigh up the section 162 (section 166(2)(a)) focus on replicating competitive market outcomes and the section 166(2)(b) focus on promoting workable competition to best promote the long-term benefit of end-users. That is, section 166(1) does not have primacy over section 166(2) where 166(2) is relevant. Both must be considered.

  There is nothing particularly new or unique about these requirements. The Commission has to make decisions where there are potential trade-offs in relation to many of its responsibilities.

We agree with Spark that the addition of section 166 has the following three implications:

- "Unlike Part 4, where the focus is on controlling the regulated service for the benefits of consumers of that service, under Part 6 there is a clear legislative direction for the Commission to also consider how its control of the regulated service will impact on competition for the benefit of end users of other (non-FFLS) services."

- "It follows that limiting prices to recover the efficient costs of providing FFLS may not be sufficient to comply with section 166(2). The Commission must also consider whether further steps are required to promote competition in other markets (or prevent distortion of competition) …"
- "That is, while Part 6 (like Part 4) regulation is predicated on the regulated service being a natural monopoly, section 166(2) necessarily involves consideration of whether the regulated supplier in fact competes (or could compete in the future) at the wholesale level to some degree. Any increase in competition at the wholesale level will benefit end users of FFLAS-services and of non-FFLAS services."

### Chorus is happy to rely on section 166 when it suits

Chorus is downplaying the significance of section 166 but implicitly relying on it to argue for accelerated depreciation:

> [T]he risks associated with the potential for greater competition are risks we face today and so we would expect compensation for them.
>
> The Commission has addressed the treatment of physical or economic stranding of assets as a consequence of service substitution (e.g. through emerging technologies) in the context of Part 4. In short, maintenance of the real FCM principle means that assets do not drop out of the RAB when they are physically stranded, and the risk of economic stranding is addressed by bringing forward asset lives/depreciation. …

The section 166 and accelerated depreciation interlinkage is summed up well by former Commissioner Pat Duignan:

> In a longer term perspective, competition from FWAS or possibly currently unanticipated technologies could result in economic stranding of some assets that form part of the FFLAS asset base. …
>
> Under a BBM regulatory approach an increase in the probability of economic stranding of some of the assets of a regulated supplier requires the Commission to consider allowing that supplier to accelerate the depreciation of their assets. The Commission has agreed to do exactly this in the case of electricity distribution businesses. The input methodologies for EDBs have been amended to allow the Commission on application to agree to shorten the remaining lives of EDB assets by up to 15%, with a consequent increase in the depreciation charge for such assets of 17.7%.

2degrees considers that while accelerated depreciation may be appropriate in mature regulated markets, it would make no sense in a market, like fibre broadband, where uptake is relatively low, and efficiency will be enhanced by encouraging greater take-up and asset utilisation. Accelerated depreciation in a nascent market would also be inconsistent with outcomes of a workably competitive market. We do not believe that early or accelerated cost recovery in an emerging or developing market, such as the markets for fibre services, is consistent with replicating outcomes in a workably competitive market. This would seem to be a clear and obvious difference between the electricity and fibre markets.

# 5 Chorus seeking to reduce the scope of FFLAS

It is in Chorus' interests to exclude services from the FFLAS definition/the new Part 6.

We are concerned at Chorus' attempts to reduce the scope of the regulated services, including important services such as Intra Candidate Area Backhaul Services (ICABS).

ICABS and DFAS are used to connect our cell towers to our network and are key inputs to wireless services. As Vodafone's submission states: ""The pricing of certain services within the scope of the regime can have a huge impact on competition, such as the anchor products, DFAS, ICABS and the Layer 1 service."

Chorus incorrectly states that backhaul services such as ICABS "are not subject to Part 6 regulation". Chorus further states that DFAS is included in Part 6 because it is concerned with "connecting large commercial users to the network from non-premise sites".

It was clarified at Select Committee stage that ICABS do fall within the scope of Part 6, recognising that FFLAS are key inputs to other downstream telecommunications services, including FWA and mobile. For example, the Departmental Report (2018)[8], advising Select Committee, states very explicitly:

> DFAS and ICABS are both fibre fixed line access services (FFLAS) and will be subject to regulatory oversight under the new Part 6. DFAS will be a regulated service, while the Commission can move to a price caps regime, which could cover ICABS.

Further it states (in response to concerns from 2degrees as to whether there was a 'regulatory gap') that the Select Committee did not need to make any amendments to the draft legislation to address 2degrees' concern because these services are correctly captured under Part 6:

> We do not recommend a change to the definition of fibre fixed line access service (FFLAS). It is meant to cover telecommunications services that enable access to, and interconnection with, a regulated fibre service provider – including DFAS and backhaul services to mobile cell sites and fixed wireless sites. These services are intended to be regulated under the new Part 6 model rather than the old model under Schedule 3 of the Act…
>
> …The policy intent is to include services, which extend past the point of aggregation within the FFLAS definition. There is a safeguard because the Commission can move to a price caps regime, which could cover ICABS.

2degrees had been concerned to ensure regulatory oversight – whether in Part 6 or Schedule 3 – of these services was maintained. We did not want an unintended gap, where a supplier with market power (in many cases a monopoly), had less regulatory oversight than other competitive services such as mobile.

We note Chorus is asking for the Commission to take a particular 'interpretation' of the FFLAS, when both ICABS and DFAS meet the Part 6 Act definition. Part 6 defines a FFLAS as "a telecommunications service that enables access to, and interconnection with, a regulated fibre service provider's fibre network...". The Commission's interpretation, which Chorus opposes, is consistent with the clarification provided at Select Committee stage.

Given this FFLAS definition, it follows that end-users of FFLAS include not just our UFB consumers but also FWA and mobile users, which rely on FFLAS services such as DFAS and ICABS for these networks. For the avoidance of doubt, we consider that the reference to "markets for fibre fixed line access services", in the section 162 purpose, refers to any telecommunications market services provided to end-users where FFLAS is used as an input.

[8] Telecommunications (New Regulatory Framework) Amendment Bill, Departmental Report to the Economic Development, Science and Innovation Committee, 20 April 2018.

While Chorus is correct ICABS is not part of the CIP agreement or subject to a UFB reference offer, we note FFLAS is about fibre users and not just UFB, and the UFB agreement was developed prior to the new Part 6 and these concerns about ICABS (as a key input to FWA and mobile services) being raised.

# 6 Setting the RAB IM and the value of the RAB

2degrees considers Chorus' comment that "[u]nlike Part 4, the basis for setting the initial RAB is set down in the Act" downplays the materiality and complexity of the issues the Commission will face in setting the RAB IM and the initial value of the RAB.

The Spark submission, along with the Axiom Economics and Frontier Economics' consultant reports, raise several issues and complexities which will need to be addressed in developing the RAB IM, some of which we touch on below.

We agree with Spark's observation that while "[t]he statutory provisions relating to the starting RAB are also more prescriptive than they are under Part 4 … it does not follow that the Commission has little or no discretion to set rules to determine what assets can be included in the RAB, or whether further rules need to be applied to determine value of assets in the RAB. For example:

a. Specific rules may be required to determine whether an asset is in fact employed in the provision of FFLAS; and

b. Cost allocation methodologies will need to be applied to determine the value of assets that are also employed in the provision of other services."

Similarly, Axiom Economics notes "Allowing Chorus to assign 100% of its 'fibre assets' (as defined by s.176) to the initial RAB value and to its FFLAS revenue cap (and prices) would not be consistent with the purpose statements. For example, it would be inefficient - and counterintuitive – for the many assets and costs that are common to both FFLAS and copper services to be allocated solely to the former".

While section 177 places restrictions on how the Commission can set the initial RAB value, which takes some elements of the Part 4 asset valuation debate 'off the table', section 177 creates its own complexities and difficulties, which the Commission did not face with Part 4.

The Commission will need to grapple with how to determine the value of any "financial losses … incurred by the provider in providing fibre fixed line access services under the UFB initiative for the period starting on 1 December 2011 and ending on the close of the day immediately before the implementation date".

We agree with Spark that "[t]his is likely to be a highly contended issue in the IMs process".

The gulf between Chorus' predecessor, Telecom, and the Commission's estimate of the losses Telecom incurred from supplying "commercially non-viable customers" with TSO services highlights some of the methodological and accounting challenges and judgements that will have to be made.

In addition to section 174, section 166(2)(b) may also have implications for the setting of the RAB IM. We agree with Spark that "[t]o give effect to section 166(2)(b) it may be relevant to take a more prescriptive approach to the asset valuation methodology than its Part 4 counterpart in determining what assets can be included in the RAB. That is because in order to promote actual competition in telecommunications services more broadly is likely to require greater to ensure that assets used to provide services in competition with other providers are not unduly allocated to the RAB in a way that could distort competition".

# 7 Approach to determining financial losses (if any)

2degrees notes Vodafone's submission that "Chorus' financial performance since the start of the UFB build suggests that it has not suffered any loss. In fact, since its separation from Telecom, Chorus has earned an excessive profit, resulting in an average return on equity of 24.4%". Vodafone noted this allowed Chorus "to recover over $300m more than would have been possible using a return on equity determined by the Commission for regulated utilities".

Spark and Vodafone also stated that "[b]oosting the RAB through the identification of past losses which are, by their nature and in this instance sunk, has little or no impact on beneficial end user outcomes" and "Awarding any losses would be a huge mistake, potentially burdening end-users with significant unwarranted costs for years to come".

We share concerns that any financial losses taken into account must be appropriate. We do not support unjustified "windfall gains" through a loss calculation to Chorus.

The orthodox approach to assessing whether a service is being provided below cost is to assess costs on an avoidable or incremental cost approach, which excludes all shared and common costs (and assets). We note this is the approach the Commission takes when it investigates allegations of below cost or predatory pricing under Part 2 of the Commerce Act.

We agree with Vodafone that "Common costs should not contribute to any losses".

Spark's observation about "the relationship between Fibre Network and FFLAS … for example: … Fibre Network assets are more likely to straddle regulated FFLAS and non-FFLAS services than seen in other sectors" highlights that there are substantial shared and common costs (and assets) which need to be excluded.

Chorus' comments also highlight that there is a large amount of shared and common costs (and assets) between copper and fibre e.g. "We operate one network that includes two technologies, copper and fibre, across the different areas in New Zealand. As a result of this, extensive sharing of network and non-network assets occurs between regulated and nonregulated services. We expect the extent of sharing with copper services will substantively increase in the near future".

Frontier Economics noted "the size of common fibre-copper capex … may … form a non-trivial portion of assets; common capex has been approximately 10% of directly attributable fibre capex through the rollout, consisting primarily of information technology and building and engineering services".

# 8 Approach to determining WACC

## Risk

Predictably, Chorus is trying to increase its price/revenue cap by increasing its WACC. Chorus makes the statement that it "… expect[s] the Commission to recognise the higher levels of risk associated with Chorus' fibre investment than that associated with existing firms regulated under Part 4 of the Commerce Act and our copper network".

We have no such expectation. It has not been established that Chorus' fibre investment is riskier.

Chorus claims "FFLAS have some key characteristics which differ from Part 4 utilities and UCLL/UBA. These include the higher levels of systematic risk associated with fibre networks and greenfield deployments, the higher level of financial leverage associated with the UFB initiative, the higher risk of network assets stranding and the exposure to a combination of price-cap and revenue-cap regulation". Chorus also noted "Our network is constructed ahead of demand, and we are currently in a 'build' phase" and that "The transitional challenge is significant".

Much of these arguments are recycled from its copper pricing submissions.

The Commission has already noted "The Government is providing a substantial subsidy for the UFB, which may address the risks facing LFCs in the delay between the capital investment in the UFB and the build-up of end-users and revenue" and indicated "the subsidy addresses these risks".[9]

It is also notable that the Commission has previously considered the implications of a price cap versus revenue cap in relation to risk, with suggestions a revenue cap reduces risk (because it reduces demand risk) but was not able to establish clear evidence of a difference in risk that would warrant a change in WACC. If Chorus considers that the revenue cap would expose it to higher risk it is not clear why it supported a revenue cap (rather than a price cap) in the legislation.

## 8.1 Firm-specific WACC is inappropriate

2degrees does not support the LFCs' position that "the concept of a sector-specific risk beta must be abandoned".

The LFCs may well be correct that "[t]he risks faced by LFC investors in the UFB Initiative are … substantially greater than those faced by Chorus".

The LFCs make valid points about the difference between the three LFCs and Chorus, arguing they "have a significantly greater risk profile than the other regulated supplier Chorus, as a consequence of Chorus' competing with the LFCs' fibre network with its copper network".

[9] Commerce Commission "Unbundled Bitstream Access Service Price Review - Update on matters relevant to the UBA price review" 13 August 2013, paragraphs [123-125].

These points, however, ignore the distinction the High Court made in the Part 4 IMs Merit Appeal between specific (firm) risk and systematic (or market) risk:[10]

> The CAPM is based on a distinction between specific risk and systematic (or market) risk and theories of portfolio diversification. The CAPM recognises that an investment has two types of risks. First, risks that are specific to the project or firm involved, called specific, unique, or unsystematic risks. Secondly, risks associated with the overall market, called systematic, or market risks. An investor can “diversify away” specific risk by holding a diversified portfolio of investments. Diversification works because the nature of the risk of investments within a portfolio varies; the returns do not move in lockstep but depend on a wider variety of unique factors. That is, the risks are not perfectly correlated.
>
> The CAPM assumes that investors hold fully diversified portfolios and have diversified away specific risk. Thus the CAPM only uses a measure of systematic risk and excludes specific risk from the model. Systematic risk measures the extent to which the returns on a company fluctuate relative to the equity returns in the stock market as a whole.

In the CAPM formula, only the equity beta can be the firm-specific input, with $r_f$ and $r_m$ being generic parameters applicable to all firms in the market. The Commission’s adoption of the Simplified Brennan-Lally CAPM (the SB-L CAPM) does not alter these conclusions.[11]

| Classical (tax-free) version of the CAPM formula | SB-L CAPM |
|---|---|
| Cost of equity = $r_f + (r_m - r_f)\ \beta_e$<br>Where:<br>• $r_f$ is the risk-free rate;<br>• $r_m$ is the expected return on the market portfolio (an unobservable portfolio comprising all available assets in the market, so $r_m - r_f$ is the market risk premium (MRP)); and<br>• $\beta_e$ is the equity beta. | Cost of equity = $r_f\ (1 - t_i) + \beta_e \ x\ TAMRP$<br>Where:<br>• $r_f$ is the risk-free rate;<br>• $t_i$ is the investor tax rate;<br>• $\beta_e$ is the equity beta; and<br>• $TAMRP$ is the tax adjusted MRP (the premium an investor may expect to earn over the risk-free rate for bearing systematic market risk adjusted to take account of the tax faced by investors on equity returns). |

Chorus’ position similarly deviates from the High Court and Commerce Commission positions, referring to supposed firm-specific risks it considers it faces, as a basis for claiming it “face[s] risks that Part 4 suppliers are not exposed to in the same way”, such as that its “status as a privately-owned, publicly-listed, vertically separated FFLAS supplier” and “The contractual commitment to investment in FFLAS assets limits our ability to adjust our investment to reflect changes in demand and increases the risk”.

[10] Wellington International Airport Ltd & ORs v Commerce Commission [2013] NZHC [11 December 2013], at [1083] and [1084].
[11] The SB-L CAPM adapts the classical (tax free) CAPM to take account of New Zealand’s taxation system. It recognises the presence of imputation credits, assumes that they are fully utilised and also assumes that capital gains are tax-free.

## 8.2 Chorus' 10 versus 5-year risk-free rate arguments relitigate the High Court Merit Appeal decision

2degrees does not support Chorus' position that "[t[he risk free rate should be set on the basis of a 10 year regulatory period (i.e. 10 year term rates should be used rather than a five year term)".

We have not identified any element of Chorus' position which is new or novel compared to the debate over duration of the risk-free rate in the Part 4 WACC IM determination, and the subsequent Merit Appeal decision.

Without revisiting the debate at length, we note the High Court conclusion, supporting a 5-year risk-free rate:[12]

> We are not persuaded that it would be materially better for the term of the risk-free rate/debt premium to be fixed at 10 years … We reach that conclusion essentially because of our assessment of the strength of the principle that the term of the risk free rate should be aligned to the regulatory term to avoid over and under compensation.

## 8.3 WACC percentile should be set at mid-point

Chorus has similarly also reprised arguments about WACC percentile uplift from the copper pricing debate.

We reject Chorus' assertion that "Although this signal was determined to be too weak for copper services under the TSLRIC regulatory model, the Commission's test is more likely to be met for fibre under a BBM framework" [footnote removed].

The question of whether there should be a WACC uplift has already been well canvassed in the copper pricing determination. While some of the arguments for uplift in the copper pricing determination process were specific to copper and application of TSLRIC, many of the reasons the Commission relied on were not.

For example, Vogelsang's observation "… irrespective of what the Commission decides on the uplift question, the UFB is committed and hence the benefits from UFB will emerge anyway"[13] holds equally, if not more so, for fibre compared to copper.

While the Commission may want to undertake quantitative analysis on this matter, as it has done in electricity and for copper, we consider there is strong evidence from the copper pricing determinations, and current submissions, for the Commission to conclude no WACC uplift is warranted.

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[12] Wellington International Airport Ltd & ORs v Commerce Commission [2013] NZHC[11 December 2013], at [1287].

[13] Ingo Vogelsang "Reply to Comments on my November 25, 2014, paper "Current academic thinking about how best to implement TSLRIC in pricing telecommunications network services and the implications for pricing UCLL in New Zealand" 23 June 2015, paragraph [3].

# 9 Development of a 'Pricing' Input Methodology

2degrees supports Spark and Vodafone's position that the Commission should consider development of an additional 'Pricing' IM. We see this as consistent with our initial submission's support for a 'competition' principle. As an alternative, it may be that pricing matters can be addressed within the Cost Allocation IM (which was an implicit assumption in our submission).

We agree with the commentary that:

- **Axiom Economics:** "Chorus will understandably be motivated to engage in strategies to foreclose competition, which suggests it will often be preferable for the IMs to place a reasonably tight rein on its discretion to prevent it from acting on those commercial incentives (e.g., through the way in which it allocates common costs, determines prices for particular services, etc.)"

- **Axiom Economics:** "if the IMs provide Chorus with flexibility to act in ways that compromises competition in the wireless market (e.g., through the way it allocates common costs, sets prices, etc.), end-users could be deprived of the substantial benefits those services might otherwise deliver."

- **Spark:** "Given the likelihood of Chorus offering multiple substitutive services, whether layer 2 access products of differing speeds, or layer 1 access products that support competitive layer 2 services, there is a need for more prescription (compared to Part 4) of the pricing methodologies and principles Chorus will be expected to comply with when pricing services that use its RAB."

  "A more prescriptive pricing principles IM will be important to help guard against the incentive to price in a way that undermines the competitive outcomes the regime strives to emulate."

- **Trustpower:** "The allocation of shared costs will be a potentially challenging element of establishing the new fibre regulatory regime and we support the Commission in considering this important matter."

- **Vocus:** "We anticipate the Cost Allocation Input Methodology will be substantially more complex to develop than the corresponding Part 4 Cost Allocation Input Methodologies. There will be additional complexity due to the existence of multiple regulated fibre services, copper and fibre being regulated under different parts of the Telecommunications Act, and the need for the Commerce Commission to promote competition."

  "The promotion of competition purpose is directly relevant to the Cost Allocation Input Methodology, as was evident from the statutory review of the Part 4 Input Methodologies. There was substantial debate about the impact Electricity Distribution Business involvement in emerging technology could have on competition, particularly if loose cost allocation rules were exploited to artificially raise the regulated business's costs, and to enable the regulated business to subsidise other activities."

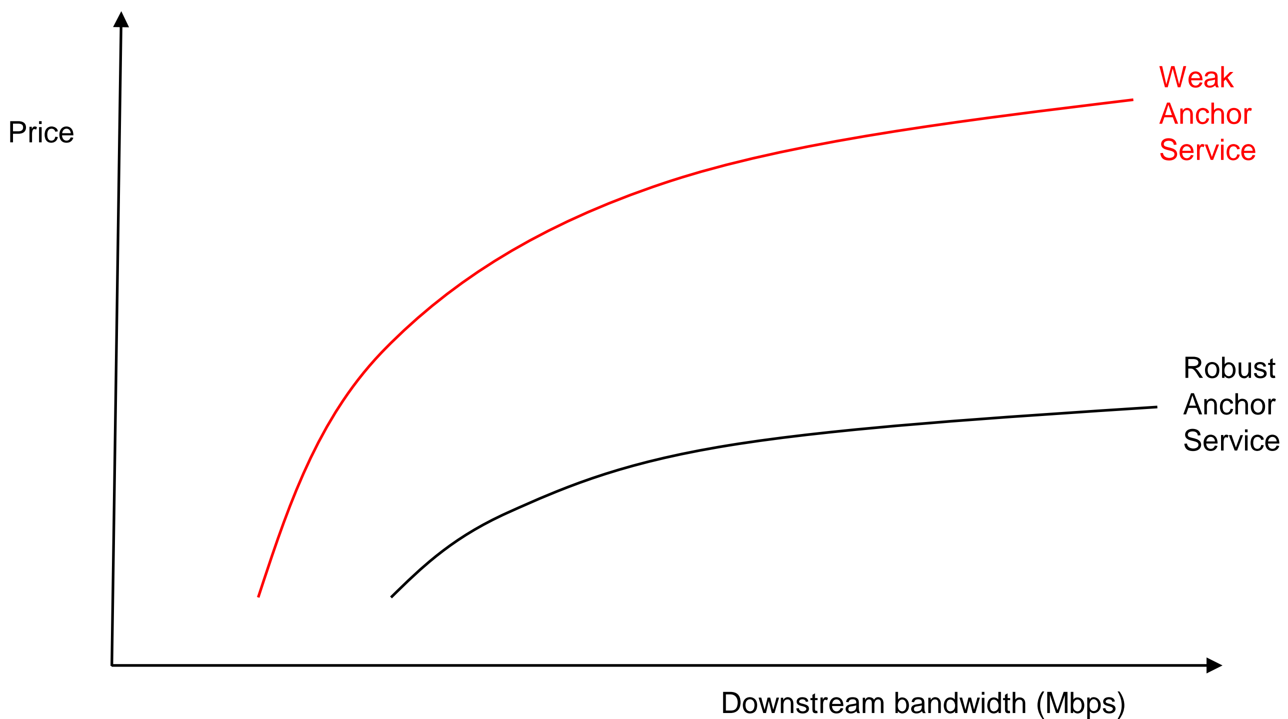
- **Vodafone:** "… existing competition must be protected and enhanced through robust cost allocation rules."

# 10 Impact of specifying a weak Anchor Service

Other RSPs, InternetNZ and TUANZ' submissions all raised concerns that the Commission must ensure that anchor services are fit for purpose in 2022. 2degrees has the same concerns.

We agree with Vodafone that the 100/200 Mbps product has "no prospect" of filling the Act's requirement that the Anchor Services "act as an appropriate constraint on the price and quality of other fibre fixed line access services" for 2022 or beyond.

The following stylised diagram illustrates that if a poorly specified, out-of-date, Anchor Service is specified it will substantially weaken the extent to which the Anchor Service will act as an anchor. A weak Anchor Service would allow Chorus to constrain service quality to keep prices high (monopoly price).




2degrees supports Vodafone's recommendation that the Commission set the Anchor Service(s) to ensure:

- "that the speeds on the anchor product(s) is sufficient to be a reasonable substitute for other products, so it can effectively constrain price of other fibre fixed line access services"
- "that forecast volumes on the anchor product(s) are high enough to demonstrate the product(s) are relevant in the market, and"
- "that the quality of the anchor product(s) is aspirational to help ensure standards of quality are lifted across the board. Non-anchor products must be well priced."

# 11 Timing and phasing of IM development

Faster determinations are likely to favour Chorus. While we agree with Chorus the policy process has been very extended, this does not warrant the important implementation of the regime being further fast-tracked (and done less robustly) than the Commission is already proposing in the limited time it has available.

2degrees agrees with Vocus that the drivers for how long each IM will take to develop (and, therefore, the timing and phasing that should occur) depends on:

- how complex the IM will need to be;
- the extent to which there is existing precedent which can be utilised in developing the IM; and
- whether the IM will be contentious.

A variation we would add to this, in terms of the timing and phasing, is that we acknowledge Chorus' point regarding price-quality path requirements that "early visibility of, or an agreed way forward to accommodate, the Commission's anticipated requirements for price-quality path proposals, so we can incorporate those expectations into our planning".

Something like determining WACC for price-setting purposes will be relatively perfunctory i.e. it will simply be a case on inputting current 5-year bond rates into the methodology once it is set.

There will be other aspects of the price-setting where the cost inputs are not so straight forward to determine, such as forecasts of opex and capex.

These considerations do not support Chorus' advocacy that the WACC and RAB Input Methodology (for the backward-looking initial RAB) should be fast-tracked or prioritised.

We agree with Chorus that parts of the IM can be staggered but consider final decisions must be made as a package.