

**Submission on
promoting
competition in
telecommunications
markets as part of
fibre ID and PQ
regulation**

25 February 2021

C H ● R U S

Introduction and Context

1. We welcome the Commerce Commission's consultation on competition risks, opportunities and the corresponding role of ID and PQ regulation (**Consultation Document**), published on 28 January 2020.
2. While ID and PQ regulation can support competitive outcomes in downstream markets, it is not the primary vehicle to address bottleneck competition issues in the telecommunications sector. The structural separation of Chorus together with our Deeds obligations to supply services on an open access and non-discriminatory basis, supported by Part 2 of the Commerce Act, are the key remedies in place to mitigate the risk of anti-competitive behaviour. In our view this means additional interventions are not required in the first regulatory period (**RP1**).
3. Chorus' fibre network is already supporting strong pro-competitive outcomes in New Zealand's telecommunications markets. The fibre network was intended to deliver a step-change in service quality and capacity, creating a platform to facilitate retail competition. This has been a great success. The network was built ahead of demand and we now have around 90 RSPs who offer products that far exceed what was envisaged when the fibre-to-the-home roll out began.
4. Through the build projects, Chorus has been innovating further, providing first 1 gigabit and now Hyperfibre products in addition to those we are contracted to provide. This is because our status as a wholesale only provider drives the right incentives to invest in the services consumers demand.
5. The unprecedented demand we saw during covid-19 lockdowns revealed just how essential fibre has become to New Zealand households and businesses. Our network was able to handle the 35% jump in broadband traffic while maintaining service quality. This experience shows the importance of continued investment in capacity and new products to keep ahead of fast-changing consumer demands. The pace of change will accelerate in the coming years as fast fibre services proliferate globally.
6. For us to continue to support retail competition across our fibre network and ensure New Zealanders can fully access the benefits of fibre, we need to be sufficiently funded to invest and innovate under the new regulatory regime. This is critical context for the Commission's review of how it can promote competition through Part 6 regulation.

Summary

7. Chorus has some concerns that the Consultation Document (survey and companion paper) overstates the risks to competition while overlooking the broader industry context and the tools already in place to promote competition:
 - 7.1 The adoption of an appropriate framework for assessing competition related risks is critical. While the Commission outlines a four-step process, it effectively bypasses the first two steps: market definition and competition assessment. A

robust analysis of relevant markets and the current state of competition in those markets is a necessary starting point for any risk assessment. For example, at the network level, mobile network operators have announced ambitious targets for fixed wireless access (**FWA**) connections.

- 7.2 The Telecommunications Act, Deeds and Commerce Act establish an integrated competition and regulation framework, of which Information Disclosure (**ID**) and price quality (**PQ**) regulation are only two parts. It is necessary to consider the framework in its entirety when assessing competition related risks; failure to do so risks regulatory error.
- 7.3 Many of the hypothetical risks identified by the Commission are already addressed by other elements of the regulatory framework (not ID or PQ tools) or are prohibited by the Commerce Act. Accordingly, the likelihood of these risks arising is minimal.

Risk identified	Primary mitigation
Inputs price and quality (A, B, C, E)	Deeds obligations Commerce Act
Inputs investment (D, F)	Deeds obligations Commerce Act Network design / industry contracts
Downstream competition (G, H, I)	Commerce Act Commission review of cost allocation outcomes through review of Chorus' asset base model Revenue cap and anchor services
Upstream competition (J)	Commerce Act Commission review of cost allocation outcomes through review of Chorus' asset base model
L1 + L2 bundles (K)	Commerce Act
Different L2 bundles (L)	Geographically Consistent Pricing (GCP) obligation Commerce Act
Incentive payments (M, N)	Deeds obligations Commerce Act
Below cost network expansion (O)	Commercial incentives Commerce Act
Geographically consistent pricing (P)	n/a

- 7.4 The interrelationship between possible risks and solutions requires careful consideration. Given the early stage we are at in fibre regulation (RP1 is only three years), the risk of premature additional regulatory intervention and unintended consequences is significant.
8. As the Commission is aware, Chorus is very different from regulated monopolies that have traditionally been the subject of PQ and ID regulation. Chorus' fibre access services are subject to some degree of competition from alternative technologies which creates challenges for the normal application of utility-style regulation, under the Part 6 regulatory framework:
- 8.1 ID: the transparent disclosure of information by Chorus can itself create risks to competition, by giving our competitors insights into our business operations. Importantly, as a listed company, Chorus has obligations to disclose information to the market immediately once it has ceased to be confidential, if we believe it to be material information. The level of investor scrutiny of and sensitivity to forecast information is and will remain high.
- 8.2 PQ: this was designed to regulate true monopolies in a way that incentivises them to achieve operating efficiencies, while delivering a good quality of service and to share those operating efficiencies with consumers over time. It was not designed for, and to our knowledge has never been used for, managing competition concerns.
9. PQ and ID regulation provide incentives for us to invest and innovate which supports competition by existing and entrant RSPs and has direct benefits for end-consumers. The new regulatory framework represents a step change in visibility and understanding of Chorus' business and planning processes which will enable better informed engagement by stakeholders in the future price and quality of our services.

Framework for applying the s 166(2)(b) purpose statement

10. We support the Commission's four-step process for assessing the relevance of competition in developing ID and PQ regulation set out at Figure 2.1 of the Consultation Document. Its approach is based on the framework for promoting competition provided by its expert advisory panel¹ and its 'competition screening' considerations.
11. The Commission's expert advisory panel recommended a sequence of four steps for both the promotion of competition and deregulation decisions: (i) market definition, (ii) assessment of the state and development of competition, (iii) evaluate the desirability of promoting competition and of deregulation and (iv) the decision stage (evaluating the tools for promoting competition concentrating on their potential side effects).²

¹ Ingo Vogelsang and Martin Cave, *Framework for promoting competition*, 19 November 2019.

² *Ibid.*

12. The Commission adopted 'competition screening' considerations in its final IMs Reasons Paper to help it assess whether its decisions are relevant to competition in telecommunications markets. The Commission asked itself whether each IM decision:³
 - 12.1 Has a role in mitigating risks to competition at any telecommunications market level; and/or
 - 12.2 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.
13. While we support the adoption of a competition screening test, as we have submitted previously, the Commission should clearly define the relevant market(s) in which it is seeking to promote competition, set out why it considers there is a real prospect of workable competition in those markets and consider how different forms of competition in different markets will be affected by its decision. This assessment must be evidence based.⁴
14. We have some concerns with the way that that the Commission has articulated and applied its framework for assessing competition related risks and the possible role of ID and PQ regulation:
 - 14.1 The Commission has omitted steps one and two (market definition and understanding the state of competition) in identifying the 'risks' set out in its paper. A robust analysis of the relevant markets and the current state of competition in those markets is a necessary starting point for any risk assessment; the Commission's expert advisors endorse this.
 - 14.2 The Commission has focused on four "market segments" listed at para 2.8 (Layer 2 PQ areas, Layer 2 ID-only areas, Layer 1 PQ areas, Layer 1 ID-only areas). These do not constitute markets for the purpose of competition analysis.
 - 14.3 The "market segments" focus exclusively on the wholesale market supplied by Chorus/other LFCs and don't consider the implications for: (a) network level competition, and (b) retail competition. The Commission has not recognised that wholesale competition is a means to an end (competitive outcomes for end customers) not an end in and of itself.
 - 14.4 The Commission's analysis of the possible role of ID and PQ regulation to mitigate the risks it has identified doesn't account for the flow-on impacts on competition from the interventions it proposes. For example, disclosure of Chorus' sensitive information to its competitors has the potential to adversely impact competition in various telecommunications markets.
 - 14.5 The Commission has not addressed how any additional tools introduced under ID and/or PQ regulation would be assessed with respect to the potential for Type II asymmetric risk that Chorus faces.

³ Commerce Commission, [Fibre Input Methodologies: Main final decisions – reasons paper, 13 October 2020](#), para 2.384.

⁴ Chorus submission on Fibre input methodologies: Draft decision – reasons paper dated 19 November 2019, 28 January 2020, para 76.

15. The risks identified by the Commission largely focus on the potential for predation or foreclosure. However, the Commission's expert panel advised that:⁵
 - 15.1 A principle requiring no foreclosure was unlikely to constrain Chorus' pricing given layer 1 is subject to unbundling obligations, equivalence and non-discrimination apply, and Chorus does not offer other downstream services; and
 - 15.2 A principle requiring no predation was likely unnecessary given the constraints to which Chorus is subject and that predatory prices would be difficult to distinguish in practice from low prices due to competition.
16. We agree with the expert panel's advice and can't see any basis for the additional interventions canvassed in the Consultation Document.

Relevant elements of the regulatory framework

17. The Telecommunications Act, Deeds and Commerce Act establish an integrated competition and regulation framework, of which ID and PQ regulation are only two parts. It's important that the Commission considers the wider regulatory framework when considering whether any additional regulatory mechanisms are needed where there is evidence of a competition risk.
18. The Commission's analysis must explicitly consider the roles of other elements of the regulatory framework including:
 - 18.1 Sections 36 and 27 of the Commerce Act;
 - 18.2 Equivalence Of Inputs (**EOI**) and non-discrimination (**ND**) obligations in the Deeds;
 - 18.3 The role of anchor services/direct fibre access service (**DFAS**) and the Minister's power to specify the terms of those fibre services;
 - 18.4 The quality IM;
 - 18.5 The revenue cap;
 - 18.6 Business line restrictions;
 - 18.7 GCP.
19. If the Commission has any competition concerns relating to telecommunications markets it should first utilise the existing regulatory tools, rather than seeking to introduce extra requirements in ID or PQ regulation, which are not designed to address competition problems and may have unintended consequences.
20. In particular, we understand that ID has constraints when it comes to gathering data about competition concerns. Firstly, it is a tool that can only be used to reveal

⁵ Commerce Commission, *Promoting competition in telecommunications markets as part of fibre information disclosure (ID) and price-quality (PQ) regulation* (28 January 2021) at paragraph 1.19.

information about regulated firms - it would not reveal any insights about the state of other adjacent, upstream or downstream markets. Secondly, it is generally very difficult for the Commission or other interested parties to unpick the reasons behind outcomes shown within ID.

21. In the **Appendix**, we have indicated where other elements of the regulatory framework would more appropriately address the issue the Commission has identified or would in fact prohibit the conduct the Commission is concerned about.

Risk of premature intervention

22. The Commission is exploring hypothetical competition-focused risks and possible additional interventions in RP1, which is only three years. Given how early we are in the fibre regulatory framework, this exercise is premature. No intervention would be warranted unless a credible risk to competition can be demonstrated.
23. ID and PQ regulation were designed to ensure natural monopolies act in consumers' interests. They were not designed to manage the types of risk to competition identified in the Consultation Document. We agree that the Commission should be considered about the risk of regulatory failure or unintended consequences of regulation when thinking about intervening in markets, particularly when using regulatory tools in a novel way.
24. In general, we agree intervention should be limited to ID. However, the Commission should also consider the potential risks to competition from ID where it:
 - 24.1 Results in Chorus' or other regulated fibre service providers' competitors having inappropriate insights into their confidential strategy or future plans; or
 - 24.2 Encourages Chorus' or other regulated fibre service providers' competitors to engage in conscious parallelism or tacit coordination.
25. The Commission should be mindful of the cost and compliance burden of ID requirements as an annual reporting obligation. In many cases the same transparency may be achieved at a lower cost through targeted information requests.
26. Finally, the Commission has not addressed how any of the proposed interventions could expose Chorus to increased asset stranding risk, and to what extent the outcome of this consultation will affect the Commission's Final IMs Reasons Paper with respect to compensation for Type II asymmetric risk.
27. The Commission has decided to apply a modest ex ante allowance to compensate regulated fibre service providers who are subject to PQ regulation for Type II asymmetric risks. The Commission considered the extent and probability of asset stranding risk, and it noted that the appropriate range of an ex ante allowance could be between 5 and 30 basis points.
28. The Commission reached the final decision that providing a lower point in this range (10 basis points) as an ex ante allowance was likely to best give effect to the purpose

in s 162 of the Telecommunications Act.⁶ We therefore expect the Commission to consider to what extent the proposed interventions would further increase the asset stranding risk, and what adjustment would need to be made to the existing ex ante allowance.

Risks identified

29. The Commission says it has focused on risks that are 'material', however, there is nothing in Chorus' conduct to date to suggest that the risks identified are real or imminent. The Commission should be cautious about intervening based on hypotheticals or using PQ and ID as a compliance mechanism for other regulatory obligations.
30. Several risks identified by the Commission are already addressed by other elements of the regulatory framework or outright prohibited. We comment on each risk in detail in the **Appendix**.
31. We agree with the Commission that GCP is problematic because it can lead to inefficient outcomes. But the proposal to develop an evidence base to understand the impact of GCP on competition isn't a workable solution because:
 - 31.1 There are potential anticompetitive effects in giving Chorus' competitors insights into Chorus' costs in different geographies; and
 - 31.2 GCP is a legislative requirement with which Chorus is required to comply – if there is value in gathering information for a review of GCP, such exercise should be conducted in a confidential manner and independent from determining ID requirements and a PQ path for Chorus.
32. Any concerns that the Commission has about the potential for GCP to undermine competition is a policy decision best directed to MBIE.
33. In relation to several other 'risks' identified by the Commission, it has not:
 - 33.1 Clearly articulated the nature of the risk to competition. For example, in relation to risks 'G', 'H' and 'I' the Commission has not indicated what it believes an "anticompetitive price" would be in the context of layer 2 services;
 - 33.2 Defined the market or markets in which these anticompetitive effects would allegedly accrue;
 - 33.3 Assessed the magnitude of the risk or the likelihood of it eventuating, which is a critical component in assessing the costs and benefits of any possible intervention;
 - 33.4 Explored the implications for competition in other markets or levels of the supply chain. For example, the implication of risks "G", "H" and "I" is that low layer 2

⁶ Commerce Commission, Final Decision IMs Reasons Paper, 13 October 2020 [6.1212]

prices would reduce network level competition. However, lower layer 2 prices would facilitate greater retail competition;

33.5 Considered the effectiveness of the interventions it proposes including the impact of the intervention on competition. For example:

33.5a currently Chorus sets prices for layer 1 services consistent with ECPR which means that Chorus is indifferent as to whether it provides the layer 2 service or whether the layer 2 service is provided by an access seeker. If the Commission's proposed solution to risk "A" was implemented (a cost-based layer 1 price) then Chorus may no longer be indifferent as to who serves customers at layer 2;

33.5b the Commission's proposed solution to risk "P" to disclose competitively sensitive information to Chorus' network competitors would have the effect of highlighting low cost areas that competitors should cherry pick from Chorus, thereby worsening the issue the Commission has identified with respect to GCP;

33.5c the Commission's proposed solution to risk "G" being predatory pricing, includes an option to change the form of control to a price cap. A price cap is a solution for excessive prices not below cost pricing.

Appendix: Discussion of each risk identified by the Commission

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
<p>Inputs price – Risks A&B</p>	<p>Chorus / other LFCs lessen competition by charging anti-competitive prices for L1 services raising costs for L2 rivals making them less competitive</p>	<p>ID: disclose prices and pricing methodologies for products that are an input to services provided by RSPs in relevant market segments. In addition, CC 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 CC may be able to recommend altering/imposing price constraints on some input services. CC 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>	<p><i>This risk is already mitigated by:</i></p> <ul style="list-style-type: none"> <i>Our equivalence obligations in the Fibre Deed; and</i> <i>Section 36 of the Commerce Act.</i> <p><u>Equivalence obligations</u> <i>Our equivalence obligations prevent us from distorting competition in downstream markets by requiring our L2 business to compete with third party access seekers on an equal footing in terms of upstream inputs.</i></p> <p><i>We must provide access seekers with the same L1 services on the same terms and at the same (notional) price that we provide the L1 input to ourselves.</i></p> <p><i>Currently we set prices for L1 services consistent with ECPR. A fundamental principle of ECPR based pricing is that that the network operator is indifferent as to whether it sells upstream or downstream; it has no incentive to charge anti-competitive prices for L1 services. However, the Commission’s proposed solution of a cost-based L1 price</i></p>

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
		<p>Prospect of additional regulation /deregulation</p>	<p>would mean that we would no longer be indifferent as to who serves customers at L2, undermining the purpose behind the equivalence obligation.</p> <p>We are comfortable that we comply with our equivalence obligations and have kept the Commission informed of the approach we have taken to calculating our PONFAS pricing and compliance with our obligations under the Fibre Deed. Given we have already disclosed this information on a confidential basis (and will continue to do so), introducing a separate disclosure requirement is unnecessary.</p> <p>The obligation for LFC's to provide unbundled L1 access services commenced on 1 January 2020. It would be very premature to consider new ID/PQ tools to mitigate risks relating to L1 prices or service quality when the Commission hasn't had the opportunity to utilise the tools currently available to it.</p> <p><u>Commerce Act</u> Section 36 of the Commerce Act prohibits anti-competitive pricing practices (margin squeeze and predatory pricing) by firms with substantial market power.</p>

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
			<p><i>ID is not a workable solution:</i></p> <ul style="list-style-type: none"> • <i>Standard ID occurs 5-6 months after the period to which the information relates; and</i> • <i>Implementing an ID requirement would involve unnecessary cost.</i> <p><i>Periodic information requests are more effective than an annual disclosure requirement.</i></p> <p><i>The introduction of any new product-specific price controls in future periods would create unnecessary complexity and risk distorting outcomes within Chorus' maximum allowable revenue.</i></p>
Inputs quality – Risks C&E	Chorus / other LFCs lessen competition through non-price terms for L1 services that are an input for L2 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</p>	<p><i>As above for Risks A & B, this risk is already mitigated by our equivalence obligations (which apply to non-price terms as well as price terms) and the Commerce Act.</i></p> <p><i>L1 services are an essential input for our wholesale services, just as they are an input for L2 rivals. We therefore cannot use non-price terms to foreclose competitors without compromising the quality of our own services.</i></p>

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
		<p>price-quality requirement; assess sufficiency of proposed expenditure</p> <p>Possibility of increasing ID-only regulation to PQ</p>	
Inputs investment – Risks D&F	Chorus / other LFCs lessen competition through insufficient investment in L1 services that are an input for L2 competitors making them less competitive	<p>ID: disclose non-price terms of input services; performance against relevant quality metrics; and enforcement against any disclosure obligations</p> <p>PQ: set and enforce minimum quality standards; assess sufficiency of proposed expenditure</p>	<p><i>Our network design means Chorus is not incentivised to underinvest in L1 services; they are not only an input for any L2 competitors but for our own L2 services. An underinvestment strategy would have negative implications for our L2 business and would not be rational.</i></p> <p><i>Because Chorus sets L1 prices in a way that makes us indifferent to whether we serve customers at L1 or L2, we have no incentive to underinvest in the ancillary services required to provide L1 access.</i></p> <p><i>Quality standards consistent with our existing NIPA obligations are more than sufficient to ensure a L1 service that supports RSPs’ requirements.</i></p>
Downstream competition – Risks G&H	Chorus / other LFCs charge anti-competitive prices for specific L2 services where they face	ID: disclose prices and pricing methodologies of the various layer 2 services	<i>The risk identified here is described very broadly – the Commission has not defined what it means by “anticompetitive”. We assume the Commission is referring to the</i>

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
	<p>competition (e.g. lower speed broadband)</p>	<p>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</p>	<p><i>potential for predatory pricing to drive competing access technologies out of the market.</i></p> <p><i>Existing legal and regulatory tools are available to mitigate the risk of predatory pricing by network operators:</i></p> <ul style="list-style-type: none"> • <i>Section 36 of the Commerce Act prohibits a firm with substantial market power from pricing below cost for an anti-competitive purpose.</i> • <i>Chorus will be subject to a revenue cap and anchor services regulation which will prevent us from increasing the price of non-competitive services to subsidise competitive services; there would be no possibility of recoupment if we adopted a predatory pricing strategy for certain L2 services making such a strategy irrational (in addition to being illegal under the Commerce Act).</i> <p><i>No ID/PQ solutions are required to further mitigate this risk. The Commission’s reference to price cap regulation is misplaced; price cap regulation is designed to solve excessive</i></p>

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
			<p><i>pricing so is not relevant to the risk identified here – below cost pricing.</i></p> <p><i>We note that there is no competition law concern where a network operator lowers its prices to compete with alternative access technologies; that is competition at work. In most cases, lowering prices to respond to competition will enhance consumer welfare.</i></p> <p><i>The Commission has not explored the implications of lower layer 2 prices for retail competition or the benefits for consumers more generally.</i></p>
Downstream competition – Risk I	Chorus lessens competition by charging anti-competitive prices for L2 services in ID only areas enabled by inappropriate cost-allocation between ID-only and PQ areas	<p>ID: disclose prices and pricing methodologies of the various layer 2 services</p> <p>ID: report on cost allocation outcomes (to assess compliance with cost allocation IM) and pricing in ID-only and PQ areas</p>	<p><i>The Commission’s oversight of cost allocation ensures allocations are consistent with workably competitive outcomes. Importantly, cost allocation should be applied ex ante and then not revised after the fact to produce a particular pricing/competitive outcome in a market.</i></p> <p><i>The Commission has not explored the implications of lower layer 2 prices for retail</i></p>

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
			<i>competition or the benefits for consumers more generally.</i>
Upstream competition – Risk J	Chorus lessens competition by charging anti-competitive prices for L1 services in ID only areas enabled by inappropriate cost-allocation between ID-only and PQ areas	ID: disclose prices, pricing methodologies and costs allocated to the various input services in relevant market segments	<i>Same as Risk I above. Additionally, any information disclosure requirements need to be manageable. Too many individual segment disclosures would risk creating a highly complex and costly set of annual reporting requirements. The Commission should focus on the segment reporting that can deliver the most value.</i>
L1+L2 bundles – Risk K	Chorus bundles L2 products with L1 backhaul products (e.g. ICABS) making entry into the backhaul market uneconomic.	ID: disclose contract terms	<p><i>Section 36 of the Commerce Act prevents us from pursuing an anti-competitive foreclosure strategy by bundling.</i></p> <p><i>In addition, BLR3 prevents us from providing an end to end service and requiring RSPs to take both non-competitive access links and competitive backhaul services from us.</i></p> <p><i>No additional disclosure requirement is necessary. Contract terms will in many cases be competitively sensitive and disclosure would increase the risk of coordination by Chorus’ competitors.</i></p>

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
Different L2 bundles – Risk L	Chorus bundles L2 products between PQ and ID-only areas having an exclusionary effect on LFCs in ID-only areas (PQ prices are lower if you also purchase you ID area requirements from Chorus)	ID: Monitor the prices of any bundles offered (any conditions associated with the bundle price)	<p><i>Our GCP obligation means that this risk could not materialise (i.e. we can't have differential pricing for our L2 services within PQ areas where we are subject to GCP).</i></p> <p><i>Further, even if this risk could materialise, section 36 of the Commerce Act prevents us from pursuing an anti-competitive foreclosure strategy by bundling.</i></p>
Incentive payments – Risks M & N	Chorus lessens competition by making anti-competitive incentive payments to attract/ retain end-users or imposes anti-competitive conditions to incentive payments.	<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 potentially adjust expenditure allowance accordingly; potentially assessing this</p>	<p><i>As the Commission is aware, we invest in incentives to attract customers to our network and to using FFLAS.</i></p> <p><i>The Commission does not articulate how our incentive payments, or the conditions attached to those payments could be anti-competitive. In general, incentive payments are consumer welfare enhancing and increase competition.</i></p> <p><i>If the hypothetical concern is that incentive payments could foreclose FWA competitors, this risk is unlikely to arise because:</i></p> <ul style="list-style-type: none"> <i>- The MAR will constrain our ability and incentive to adopt an anti-competitive pricing strategy;</i>

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
		<p>expenditure as part of an individual capex proposal</p>	<ul style="list-style-type: none"> - <i>Non-discrim prevents us from offering incentives only to RSPs that have FWA offers - our offers must be available to all RSPs on the same terms (subject to the exception which wouldn't be available in the Commission's hypothetical scenario);</i> - <i>Assuming we had the ability and/or incentive to offer "anti-competitive" incentive payments this risk is mitigated by section 36 of the Commerce Act.</i> <p><i>The proposed ID solution is unnecessary and unworkable – it would involve the disclosure of commercially sensitive information to our network competitors.</i></p> <p><i>A PQ solution is unnecessary at this stage of the development of Part 6. Part 2 of the Commerce Act is the appropriate tool to address any concerns about anti-competitive incentive payments.</i></p>
<p>Below cost network expansion – Risk O</p>	<p>Chorus prevents other LFCs from expanding their network by undercharging for laying new network / connections (cross-</p>	<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</p>	<p><i>We have no incentive to undercharge for network build because we wouldn't be able to recover the value of our investment.</i></p>

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
	<p>subsidising network expansion and recovering those costs elsewhere)</p>	<p>recover from than individual LFCs (eg, Chorus 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><i>The hypothetical example could never eventuate – if we were to target Christchurch and undercharge for network build to prevent Enable expanding their network, we would be unable to recover the costs from Northpower’s LFC area where they are the incumbent (i.e. we wouldn’t win the business off Northpower if we overcharged in Northpower’s LFC area)</i></p> <p><i>Even if we were incentivised to undercharge for our network build, section 36 prevents us engaging in predatory pricing (i.e. pricing below cost for an anti-competitive purpose).</i></p>
<p>GCP – Risk P</p>	<p>Low prices in rural areas which are high cost to serve does not encourage potential competitors to enter and may result in outcomes that are not for the long-term benefit of end-users in telco markets.</p> <p>In urban areas high prices relative to costs encourages entry and</p>	<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.</p>	<p><i>While we agree that the GCP obligation gives rise to a number of issues, the disclosure of competitively sensitive information to our network competitors (highlighting low cost areas and therefore giving our competitors the opportunity to cherry pick low cost to serve customers) is not a workable solution.</i></p> <p><i>GCP is a legislative requirement – any review of GCP would need to take place separately to the Commission’s determination of ID and PQ requirements. It would not be efficient to require Chorus to annually disclose information on the impact of GCP, when this information can be gathered in a targeted way</i></p>

Risk	Theory of competitive harm	Possible role of ID/PQ	Chorus response
	<p>more choice/better prices in the short term but threatens the sustainability of GCP and competition in urban areas if deregulated.</p>		<p><i>when (if) the GCP legislative requirement is reviewed.</i></p>