



Public Version

DETERMINING SPECIFIED FIBRE AREAS

Cross Submission

Commerce Commission

6 March 2019

Introduction

1. Spark welcomes the opportunity to provide comments on the submissions provided to the Commerce Commission on the Determining Specified Fibre Areas (SFA) issues paper.
2. With regards to comments on the level of deregulation/grandfathering that applies when an area is declared by the Commission to be an SFA, we support the submissions made by the TCF, Trustpower, Vocus and Vodafone.
3. The approach proposed by InternetNZ sets too high a threshold for determining an SFA as Chorus would only be able to remove copper from homes which have an existing fibre connection (including those with inactive connections). In our view this is too restrictive and does not create the right signals for Chorus to work towards the efficient removal of copper.
4. We disagree with Chorus' argument in favour of the full deregulation of copper in an SFA. We consider Chorus' approach is flawed and the weight it is asking the Commission to place on policy statements would be inappropriate when the wording in the Act is clear.

Deregulation and SFAs

5. We disagree with Chorus' view that the legislation requires that the Commission remove the price caps on UBA, UCLL and UCLF in Specified Fibre Areas ("**SFAs**").
6. We consider that the words and the structure of the Act are sufficiently clear, and the Commission's proposed approach is consistent with the purpose. Chorus' reliance on policy discussions do not provide sufficient justification to depart from the clear and ordinary meaning of the legislation.
7. We recognise that the purpose of Part 2AA is 3-fold. (1) to provide for deregulation where fibre is available; (2) to provide protections for end-users of copper services and other services in deregulated areas; and (3) to provide for the Commission to consider further alteration to the regulatory framework in future.
8. In as much as Spark's emphasis has been on point 2 – the protections for end-users and Chorus' emphasis has been on part 1 – being the provision for deregulation, it is our view that no one part of the section 69AA purpose statement is entirely stand-alone, nor does any part dictate the approach required of the Commission.
9. Deregulation by the Commission is by definition a process in which the Commission is required to exercise its discretion, constrained by the clear provisions of the Act.
10. It is not inconsistent with the purpose for staged or tiered deregulation to be implemented by the Commission, as it does in this case. The tiers of deregulation include:
 - a. Regulations to provide for the removal of the obligation to supply new instances of designated access services and other copper services in SFAs in certain circumstances;¹
 - b. Regulations to provide for the withdrawal by Chorus of UCLL and UCLL backhaul in certain circumstances;²

¹ Section 69AC

² Section 69AD

- c. Removal of TSO obligations in SFAs³; and
 - d. The continued application or grandfathering of some aspects of the existing standard terms determinations in SFAs and other areas.⁴
11. Section 69AG makes it clear that, *despite anything in the Act*, the determinations, including the year 5 prices set in those determinations, continue to apply where UBA and UCLFS for example continue to be supplied.⁵ This position applies until the copper review date for the relevant service.
 12. The clear meaning of clause 69AG and the words “despite anything” is that even if an SFA is declared and Chorus has no obligation to supply, where it does supply a service that was an STD service, the prices it may charge (and other terms) are to be those set out in the STD.
 13. On our reading of the Act it is clear that partial deregulation starts to occur as soon as an SFA is declared but full copper deregulation does not occur until at least the copper review date. The structure and wording of the Act is sufficiently clear on this point that it does not require the Commission to draw on strained policy arguments to remove the STD price caps. Nor is that an option available to the Commission.
 14. There is no justification for the purpose statement to do the kind of heavy lifting Chorus is asking it to do where the words clearly state that the STD prices continue to apply, despite anything else in the Act which provides for partial deregulation.

³ Section 69AE

⁴ Section 69AG

⁵ Section 69AG (4), (5), and (6) read with