

The top portion of the cover features a composite image. On the left, a dark silhouette of a map of New Zealand is overlaid with a complex network of glowing blue lines, representing a fiber optic network. On the right, a city skyline is visible under a dramatic, cloudy sky at dusk or dawn, with a prominent tower (the CN Tower) on the right side.

Vector Communications Submission

Fibre input methodologies regulatory
processes and rules topic paper

09 September 2019

Public Version

This is Vector Communication's submission on the Commerce Commission's (Commission) *fibre input methodologies regulatory processes and rules topic paper*.

As discussed in our submission and cross-submission to the Commission's *emerging views* paper, Vector Communications has ambitious plans to innovate and invest in fibre which will deliver much needed wholesale competition to the fibre telecommunications market, along with the benefits to end-users produced by competition.

The input methodologies (IM) are a critical part of ensuring the regulatory framework is able to achieve its purpose of promoting the long-term benefit of end-users.

This submission comments on the decision-making framework that must be applied by the Commission in making its IM determinations under the *Telecommunications Act 2001* (the Act). Our answers to specific consultation questions are provided in the table in appendix one.

Decision making framework

As noted in the topic paper, the Commission must apply the decision-making framework set out in section 166(2) of the *Telecommunications Act 2001* (the Act) in making the IM determination.

S166(2) of the Act requires the Commission to make the determination it considers best gives, or is likely to best give, effect to -

(a) the purpose in section 162, being to promote the long-term benefit of end-users by promoting outcomes that are consistent with outcomes produced in workably competitive markets; and

(b) where relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

s166(2) requires that, where workable competition can be promoted, the Commission must make the determination it considers best promotes that competition. Furthermore, as the Commission noted in its *emerging views: technical paper*, this applies to competition at all levels of the value chain.¹

We are concerned Chorus has attempted to downplay the effect of s166(2) in favour of the promotion of outcomes consistent with workable competition (rather than the promotion of actual workable competition). It is unlikely the interests of end users would ever be better served by promoting outcomes consistent with workable competition in situations where actual workable competition could instead be promoted.

¹ Commerce Commission, *Fibre Regulation Emerging Views: Technical Paper* (21 May 2019) para 51

Appendix one: question for stakeholders

Question No.	Vector Communication's comments
1	<p>What are your views on what we propose to include in the regulatory processes and rules IM? Are there any other issues we should consider within the scope of regulatory processes and rules IM?</p> <p>We agree with the topics included.</p> <p>We consider an input methodology relating to unbundled fibre is also needed, given the price and non-price terms for unbundled fibre released by Chorus make the product effectively uneconomic to consume and have the effect of foreclosing competition for layer 1 services. This is contrary to the intent of the regulatory regime.</p> <p>Accordingly, if unbundled fibre is not within the scope of the process and rules IM it should be included as a separate IM.</p>
2	<p>What are your views on how we have applied the legislative framework of Part 6 in considering the scope of this IM?</p> <p>We agree with the Commission the legislative framework allows it to determine any IMs where doing so would fit within the purpose in s174, including IMs to support matters in subparts 7 to 10 of Part 6 (i.e. the scope is not limited to PQR and ID regulation).</p> <p>In making IM determinations, s166 requires the Commission to make the IM Determination that best promotes workable competition in situations where the potential for workable competition exists. Workable competition includes competition in upstream markets, not only in downstream markets.</p>
3	<p>What are your views on how the regulatory processes and rules IM should apply price-quality and information disclosure regulation?</p> <p>The IM, PQR and ID regulation should be consistent wherever possible to minimise complexity for stakeholders and other interested parties.</p>
4 & 5	<p>What are your views on how pass-through costs and recoverable costs should be defined in the IMs? Does adopting the approach set out in paragraph 26 work for fibre regulations?</p> <p>Are there any other costs that you think should be included in either pass-through costs or recoverable costs? Are there any other categories of costs that should be included in the regulatory processes and rules IM?</p> <p>We agree with the approach adopted by the Commission. We are not aware of any other costs appropriate to be treated as pass-through or recoverable costs.</p>

6 & 7	<p>What are your views on which events should trigger the reconsideration of a price-quality path?</p> <p>What are your views on whether there are any specific factors of the fibre market, or the telecommunications industry, which could disrupt the fibre regime during the first regulatory period? Please provide examples of potentially disruptive events in your response</p> <p>We agree with the Commission’s proposed re-opener provisions.</p> <p>The Commission should also provide guidance on how it interprets each event so stakeholders have sufficient certainty around when the Commission would consider re-opening the price-quality path.</p>
8 & 9	<p>What particular approach do you think should be taken to balance dates and why? How would that approach best promote the purpose of Part 6 of the Act?</p> <p>What are your views on whether any of the approaches used in Part 4 could be applied to fibre regulation? Are there any other approaches we should consider?</p> <p>We consider the purpose of Part 6 of the Act would be best promoted by providing the same disclosure year for all regulated suppliers so interested parties can assess performance more easily.</p>