

Cross-Submission on Commerce Commission Regulatory Processes and Rules Input Methodology Topic Paper

September 2019





Introduction

2degrees welcomes the invitation to cross-submit on the Commerce Commission's (the **Commission**) fibre Input Methodologies (**IMs**) topic paper "Regulatory processes and rules", 19 August 2019.

Regulatory certainty

While Chorus' submission states it is concerned "There is considerable uncertainty about the implications for Chorus and other stakeholders of transitioning to a price-quality path (PQP) for fibre fixed line access services (FFLAS)", we reiterate regulatory certainty does not provide for absolute certainty and is something that will develop overtime i.e. over multiple regulatory periods.

Revenue smoothing

Chorus has stated in relation to revenue smoothing:

While revenue smoothing within regulatory periods is relevant to PQR, it's more important to include revenue smoothing between regulatory periods in scope of IMs. This is because it's important to balance:

- 15.1. Revenue smoothing to ease price shocks; and
- 15.2. The need for cost recovery.

We would expect consideration of revenue smoothing between and within regulatory periods would need to be considered jointly. We do not see any practicable basis for artificially separating out revenue smoothing within regulatory periods in the PQR and revenue smoothing between regulatory periods in the IMs.

Section 197 of the Telecommunications Act is clear that revenue smoothing is applied "if, in the Commission's opinion, it is necessary or desirable to do so to minimise any undue financial hardship to a regulated fibre service provider or to minimise price shocks to end-users".

Based on Part 4 Commerce Act precedent, the onus will be on Chorus to demonstrate undue financial hardship. We note that no regulated supplier under Part 4 Commerce Act has demonstrated undue financial hardship.

Re-openers (Q6)

Chorus' views on re-openers

2degrees is concerned about Chorus' attempt to seek provisions which would result in re-openers occurring on a periodic basis.

Chorus' proposal would create a de facto one-year regulatory period and would transfer its business risk onto end-users. We consider matters such as FFLAS take-up and copper-fibre transfer are very much matters that Chorus can influence and is better placed to manage than end-users.



It is unclear how Chorus' suggestions such as a re-opener to "Adjust allowances ex-post each year for actual connections" aligns with its suggestions the "reopeners ... would only be used in exceptional circumstances".

Chorus' suggestion that the Commission "include a reopener for material changes affecting the FFLAS market" is also extremely permissive and open-ended given, as Chorus has noted, "the dynamic nature of the telecommunications market".

We consider Chorus' advocacy of permissive re-opener provisions is inconsistent with the regulatory certainty it purports to be seeking. The Commission's ability to re-open a price-quality path during a regulatory control period is deliberately limited to promote certainty for regulated fibre service providers, access seekers, and end-users.

Spark and Vocus' views on re-openers

In our submission we detailed that we do not consider the proposed "false and misleading" re-opener provision to be broad enough. It should provide for circumstances where Chorus has overstated its capex and/or opex requirements in the supplier proposal, regardless of the reason for the false or incorrect information being supplied.

Our view is consistent with Spark and Vocus:

- Spark submitted that "the Commission shouldn't have to show that false or misleading information was knowingly provided in order to reopen a price path. If the false or misleading information had a material impact on the Commission determination, the determination should be corrected".
- Vocus submitted "A better threshold would simply be that the information is materially incorrect and the impact of the incorrect information on the price-quality determination adversely impacts or disadvantages end-users".

We agree with these positions.

Price cap versus revenue cap

In our submission, we noted support for the Commission's view that given it does not have a choice over whether a price cap or revenue cap is adopted for the first regulatory period, it is not necessary to cover this component of the form of control in the initial Regulatory Processes and Rules IM.

Enable and Ultrafast have submitted that the Commission should specify "the process and timing for determining whether the form of control and duration of regulatory period should change for subsequent regulatory periods ... and the criteria to be adopted for this purpose". We agree with this suggestion.

Where we differ in view with Enable and Ultrafast is that we do not see merit or value in the Regulatory Processes and Rules IM repeating the current legislative requirements for the first regulatory period, or a one-off provision for the transition between the first and second regulatory provisions. As Enable and Ultrafast noted, "The IMs are intended to apply across regulatory periods" and "are intended to endure for up to seven years".