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Draft regulations for the declaration of anchor services and DFAS

1. The New Zealand government Ultra-Fast Broadband (UFB) programme facilitated the subsidised roll-out of fibre-to-the-premises networks to reach up to 87% of New Zealand's population.
2. The UFB tender process was a contestable process requiring the successful tenderers to commit to rolling out wholesale-only gigabit passive optical fibre networks. Another key requirement of the tender process was for the providers to ensure their networks could provide unbundled services on a non-discrimination and equivalence basis (to be delivered later, i.e. from 1 January 2020).
3. The UFB programme has been successful when measured in terms of the displacement of legacy copper telecommunications infrastructure. Copper telecommunications circuits were designed for the carriage of analogue telephony services and suffered from quality issues when they were re-purposed for delivering broadband services. In this regard, the UFB programme has been successful. The displacement of copper pairs with optical fibres has reduced the signal attenuation challenges of copper for providing broadband quality services for customers.
4. The other key objective of the UFB tender was to ensure the gains to the competitive environment from the reforms to the Telecommunications Act 2001 were not lost as the industry transitioned to the UFB model. Accordingly, the key safeguards for limiting this effect was the inclusion of the requirement for the UFB networks to be designed to be capable of being unbundled at a later date and for the preferred tenderer to commit to providing their services on a non-discrimination and equivalence basis.

The Declaration of the Anchor Service(s)

5. The Declaration of the 100Mbps/20Mbps Anchor Service will provide some safeguard for the minimum level of quality for residential broadband. The inclusion of price terms will ensure there is some continuity in this market. In this regard, to the extent MBIE is relying on “grandfathered” terms for the Anchor Service, it is providing the same complete service (including optional requirements) needed by customers. We discourage any narrowing of the responsibility for declaration as this would undermine the safeguard that declaration is intended to provide to the market. Rather, declaration needs to provide a complete view of how access seekers provide their service to customers including ancillary services they may require to make their service suite operational.

The absence of declaration for a point-to-multi-point fibre access service

6. A significant omission from MBIE’s declared services is its restraint from declaring a point-to-multipoint unbundled layer 1 service (hereinafter referred to as PONFAS) from declaration. The PONFAS is a layer 1 mass-market service that Chorus and LFCs are required to provide to the market from 1 January 2020 as part of their UFB tender. This service is intended to replicate the unbundled copper local loop service to Telecom New Zealand’s fixed line copper network which proved very successful in fostering competition for fixed-line telephony and mass-market broadband
7. Part 6 of the Telecommunications Act entitles MBIE to declare a Point-to-Multi-Point Optical Network Fibre Access Service. However, the Act does envisage the New Zealand Commerce Commission undertaking a review during the Regulatory Period 1 between (1 January 2022 – 31 December 2024) to consider the declaration of the PONFAS. However, MBIE may wish to consider if there is any scope within section 229 of the Telecommunications Act to make declaration earlier. This is because the current market offers by Chorus and LFCs are materially defective which is stifling the take-up of the service.

Why is PONFAS important?

8. As envisaged at the outset of the UFB programme, the subsequent requirement to provide a PONFAS services was to ensure an effective alternative from layer 1 access seekers to Chorus’ layer 2 product suite. This would ensure continuous innovation over fibre-to-the-premises infrastructure. The inclusion of layer 1 unbundling was always intended to impose

a restraint against UFB providers to leveraging their power significant premium for higher grades such as providing a significant premium for better grades of service quality.

9. The importance of a PONFAS service was a key consideration for the UFB tender process with the government cognisant of not repeating the mistakes from the first iteration of deregulation for Telecom New Zealand. The regulatory framework for the initial deregulation of New Zealand's telecommunications sector was characterised by excessive pricing by Telecom New Zealand for wholesale inputs for its customer access network (CAN) and the absence of an unbundled copper local loop (UCLL) service for access seekers.
10. Accordingly, the ineffectiveness of New Zealand's telecommunications regulatory framework was a key contributor to New Zealand's broadband speeds ranking poorly among OECD countries and commensurately high costs for communications services.

The current safeguards for competition and innovation are non-discrimination and equivalence

11. Chorus and LFCs are required to provide the point-to-multi-point layer 1 product (PONFAS) from 1 January 2020. In the absence of service declaration under Part 6, the chief safeguards for access seekers wishing to acquire Chorus' or LFC layer 1 PONFAS are the requirements for the service to be provided on a non-discrimination and equivalence basis established by the Part 4AA framework in the Telecommunications Act. This framework is intended to enable layer 1 customers to be able to effectively supply on terms competitive with Chorus' Layer 2 business.
12. Vector Fibre has sought to acquire the product from Chorus but to date has been frustrated by the onerous terms and requirements of the service which are intended to create barriers for layer 1 customers to be able to make a reasonable business case for the product. We are concerned the current terms for the Chorus layer 1 product do in fact breach the requirements of Part 4AA. This includes the timeframes on which customers are provisioned circuits, the splitting of the service into multiple elements and the overly manual processes for onboarding. Each of these requirements creates pain points in terms of both managing the customer experience and the upfront costs for being able to consume the service.
13. The guardian of this framework is the New Zealand Commerce Commission (the Commission). The Commission has commenced a compliance assessment for Chorus'

PONFAS service to determine whether it is breaching the requirements for equivalence and non-discrimination. This process was paused for the Commission to develop guidelines on how it will enforce compliance with Part 4AA which was finalised in September 2020. The Guidelines also provided examples of the type of conduct of which the Commission expected to breach the safeguards of Part 4AA.

14. Vector Fibre has been participating in the compliance assessment process and has ambitions to consume the PONFAS product as part of our wholesale fibre service suite. We are concerned with the lack of progress with the Part 4AA process. The safeguards of this framework are being weakened by the delay in intervention and enforcement.
15. The importance of the PONFAS will become even more important as Chorus enters its first Individual Price Path for its Fixed Fibre Line Access Services. The Commission's recent Draft Decision for Chorus (if finalised on similar terms) structurally locks in significant price increases year-on-year for the next three years. Whilst the Anchor Products will provide some price limits for those services, the significant portion of the revenue requirement will be recovered across the rest of Chorus FFLAS service suite. This may result in significant premiums for innovative fibre services – be it in terms of speed, committed bandwidth or service support.
16. The absence of any meaningful PONFAS will mean there will be little restraint on Chorus to pass on the premium for layer 2 innovation over UFB networks. This could significantly unwind the economic gains from the technological upgrades from copper to fibre. We strongly encourage MBIE to consider how it could assist with ensuring the current safeguards are effectively enforced and whether there is scope for declaration to be made for the PONFAS earlier than at the expiration of the regulatory control period 1 given the importance it has for continuous service innovation.

Yours sincerely



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