



Office of Hon Amy Adams

Member of Parliament for Selwyn
Minister for the Environment
Minister for Communications and Information Technology
Associate Minister for Canterbury Earthquake Recovery

Dear David

CROWN FIBRE HOLDINGS ROLE CLARITY OUTCOMES AND PRICE SETTING ON THE ULTRA FAST BROADBAND NETWORK

We are writing in response to the industry's request that further clarification be given to the role of Crown Fibre Holdings Limited (CFH) over the build period (to 31 December 2019), and around the setting of prices on the Ultra-fast Broadband (UFB) network. These issues are discussed in more detail below.

Setting of Prices on the UFB

We are seeking to confirm the Government's previously signalled position in relation to the setting of prices for wholesale services offered by Chorus Limited (Chorus) and Local Fibre Companies (LFCs) over the Ultra-fast Broadband Network during the period to 2020.

We understand that industry stakeholders have expressed concern that there may be scope for the price caps for these services agreed between CFH and Chorus to increase before 2020.

There appears to be less concern by industry stakeholders that LFCs will seek to vary prices, as their Reference Offers provide that any potential price cap increases will be taken to a Product Forum and would require 75% approval. For this reason we believe it is unlikely that there will be any request to Government from LFCs to vary price caps during the build period.

The Chorus price caps are set out in its contract with CFH. CFH has advised me that there is no specific process within the contract between CFH and Chorus for Chorus to seek an increase to the agreed price caps. However, Chorus is free to seek a variation to the contract which would, if agreed with CFH, have the effect of increasing price caps. We understand that the current Chorus Reference Offer provides that no such variation will take effect before 1 January 2015.

If Chorus were to seek a variation increasing price caps, the Government has made it clear that it would expect CFH to seek the views of the Minister for Communications and Information Technology and shareholding Ministers on any such variation proposal, given this was one of the key foundations on which the commercial deal with the Government was based.

The Government's position is that the current price caps are vital to achieving the Government's UFB objectives, and as stated above, are a key foundation of the UFB contracts. As a consequence, the Government is most unlikely to support any increase in UFB price caps up to 2020.

The only situation where an increase may be considered would be in an extreme circumstance where Chorus faced severe financial consequences from failure to adjust the price caps, and where, as a consequence, the UFB initiative and the objectives it is seeking to achieve would be significantly damaged. In such a circumstance there would need to be demonstrable benefits, not just to Chorus, but for the broader sector and the public, in accepting the variation.

This would be an extremely high threshold, and the Government would expect a range of other measures to be taken before the any variation to price caps would be considered.

Should Chorus seek a variation of this kind, we will expect CFH and Government officials to consult with industry about the impact of any changes to price caps on their businesses and the UFB initiative, and take their views into account, before any decision is made. Any consultation would need to take into account Chorus' legitimate interest in avoiding disclosure of market-sensitive information.

CFH role in relation to the monitoring and deployment of the UFB Network

The Government investment in the UFB is not a grant. Rather, the Government is investing a significant amount of money in this infrastructure and has clear policy outcomes it wants to achieve. Many of CFH's functions go directly to achieving these outcomes through ensuring appropriate investment of Crown Revenue and efficient, timely and high quality network build.

For this reason, the Government believes the CFH functions in relation to monitoring and deployment of the network are appropriate, especially early in the deployment cycle. Without them there could be serious consequences for delivery and quality of build, especially as partners have commercial interests around the build, which while often aligned with Government, may also at times conflict with Government policy objectives.

However, the Government believes that as partners demonstrate compliance with contracts around timeliness and quality of deployment of the UFB, the CFH role should move from close supervision, to periodic audit, and then to allowing self-certification. This would allow a gradual down-sizing of the CFH role over the build period and a hand over of some activities to partners and Government where appropriate. The pace of the down-sizing would be dependent on the performance of the partners. Another review of CFH's functions will be undertaken in 2014.

Changes to the CFH product approval role

The Government has proposed that CFH's approval function in Chorus and LFC contracts be recast as a more narrowly focused right of veto. The intention is that any veto role could only be exercised where a replacement product resulted in lower performance and service level characteristics and/or is inconsistent with Government policy as reflected in the

contracts (i.e. fibre to the curb rather than fibre to the premise). This role would be tightly prescribed.

CFH would only be able to veto new products if new products undermined the product set negotiated through the commercial deal or Government outcomes that were reflected in the contracts (for example if new products were introduced with lower speeds than the product set). However, so long as core product set and outcomes negotiated are maintained, the sector should have the freedom to develop and offer any new products.

Any use of the CFH veto role would also involve consultation with the sector.

The Government believes there should only be one area where the broader CFH approval role should be retained - Radio Frequency (RF) Overlay for broadcast video. The Government is not making judgments over whether RF Overlay should be the main service to deliver content over UFB. That is up to the sector to decide. However, the Government would like to leave all video service options open to Retail Service Providers (RSPs) (given content will be a key factor in uptake) and would like them to be reasonably priced as soon as they are on offer.

We note that these changes to contracts require contractual agreement between CFH and the LFCs and Chorus. However, given these changes should mean that CFH/Government would be removed for the most part from product development matters better left to the sector, and will result in greater clarity around roles, we hope this will be a positive move for all parties.

Other changes to the Network Infrastructure Project Agreement (NIPA)

The Government would expect that Chorus would lead consultation with the sector on any changes to the NIPA proposed by Chorus which are material and affect RSPs, before proposing such changes to CFH. We will also expect CFH to engage with the sector on any material changes suggested by CFH, or Chorus, to the NIPA that affect RSPs. The Government does not anticipate that there will be a large number of changes that fit this description.

Roles in relation to uptake of the UFB Network

The Government sees the key role in relation to uptake of the UFB being played by RSPs, Chorus and the LFCs.

Central Government is playing a role in uptake where it has a comparative advantage - either as a major investor or through other levers. These are the types of initiatives contained in the Government 5 Point Plan (E-Education, E-Health, E-Development, E-Government, E-Business). Central government is also leading a project looking at possible impediments to uptake, such as potentially inefficient peering arrangements.

The CFH role in uptake should be focussed around deployment of UFB i.e:

- Helping identify priority users;
- Encouraging interaction with local Government (i.e. digital leadership forums);
- Encouraging discussions with other utility providers to achieve efficiencies; and

- General promotion (i.e. talking to business/industry groups and RSPs - this does not include leading initiatives).

Product offerings

The key role in design and offering of products is the sector. CFH has a role in encouraging discussion/awareness of products but does not have a role in relation to product development.

We trust this letter and the discussions held with the sector by the Ministry of Economic Development and CFH provides the clarity the industry was seeking. Thanks to all of your members that have provided feedback and support to officials in relation to this work.

Please distribute this letter to your members. We will also ask the Ministry of Economic Development to publish this on its website.

Yours sincerely



**Hon Amy Adams
Minister for Communications
and Information Technology**



**Hon Bill English
Minister of Finance**