Submission on Fibre Deregulation Review Transport, Point-to-point and Co-location & Interconnection Services Draft Recommendations Report

PUBLIC VERSION

17 September 2026

Executive Summary

1. Chorus welcomes the opportunity to comment on the Commerce Commission's Draft deregulation Report on Point-to-point, Transport, and Co-location and Interconnection Fibre Fixed Line Access Services (Draft Report). Our submission focuses on the draft recommendation in relation to Transport FFLAS.

2. This is the public version of the submission. Confidential information has been removed and marked **[ ] CCI**. We have provided public and confidential versions. The submission is supported by an expert report from NERA entitled *Review of the draft Transport deregulation decision* (NERA report).

3. The Commission's analysis understates the extent of competition constraining Transport FFLAS. The evidence demonstrates meaningful competitive discipline from alternative infrastructure, self-supply options and sophisticated customers with substantial bargaining power. However, Chorus acknowledges the Commission may remain unconvinced that competition has developed sufficiently in all areas to justify complete deregulation of Transport services.

4. In Chorus' view, the Commission's analysis nevertheless supports a more proportionate regulatory outcome than the draft recommendation. The evidence demonstrates that competition has increased to the point where **Transport FFLAS should no longer be subject to PQ regulation, while remaining subject to ID regulation**. This outcome best gives effect to the statutory purposes in ss 162 and 166(2)(b) as it preserves regulatory oversight and addresses distortions arising from the current framework.

5. There are several reasons for this conclusion:

   5.1 **The Draft Report materially understates the extent of competition –** Competitive constraints exist and, properly assessed, the evidence supports a reduction in regulatory intervention. In particular:

      5.1.1 The Commission's infrastructure-based assessment places excessive weight on the LFC+≥2 benchmark and insufficient weight on actual competitive dynamics, including buyer power, tender processes, commercial negotiations, self-supply and route-specific competition. As NERA explains, the economics of transport/backhaul services are characterised by high sunk costs, near-zero marginal costs, significant spare capacity, and inexpensive capacity expansion.[1] This supports support an LFC+≥1 threshold rather than LFC+≥2.

      5.1.2 The Commission's assessment implies that transport services are consumed solely to support bitstream access services. However, transport services are also supplied as stand-alone services that provide connectivity between aggregation points to meet the requirements of retail service providers' (RSP) and other fibre providers' networks. As such, the Commission's decision to exclude links that were nearby but had no specific handover point from the competition assessment[2] incorrectly excludes competing links. These links are competitive with Chorus where the counterparty is seeking connections between aggregation points but does not need to connect to the central office. We encourage the Commission to re-assess its infrastructure competition analysis with this broader definition of what constitutes a competing transport service.

      5.1.3 Both regulatory precedent and international practice support an LFC+≥1 benchmark. Previous Commission decisions have consistently recognised that a single connected or nearby competitor (ie LFC+≥1) is a significant competitive constraint. Internationally, LFC+≥2 style benchmarks have generally been

[1] NERA Economic Consulting. (2026). Review of the draft Transport deregulation decision. Report prepared for Chorus. Paragraph 3.B (i)

[2] Commerce Commission. (2026). Fibre Deregulation Review under section 210 of the Telecommunications Act – Draft recommendation to the Minister for Media and Communications on Point-to-point, Transport, and Co-location and interconnection Fibre Fixed Line Access Services, ("Draft Report"), paragraph D30.

applied only where the incumbent is vertically integrated. Since Chorus is structurally separated and lacks incentives to discriminate against downstream rivals, this indicates that an LFC+≥2 benchmark is neither appropriate nor necessary.[3]

5.2 **PQ regulation distorts competition via GCP –** market evidence demonstrates that customers can and do choose between multiple transport providers, including MNOs, other fibre network operators and regional providers such as Vector and Eon Fibre. Chorus is regularly unsuccessful in tenders and is often unable to match competitor offers because geographically consistent pricing (GCP) requirements constrain its ability to respond quickly and offer market-reflective, route-specific pricing. This reflects the reality that transport services are highly customised and location-dependent, with competitive outcomes determined on a route-by-route basis. Retaining PQ regulation therefore risks hindering, rather than promoting, competition by preventing efficient pricing responses. Removing PQ regulation while retaining ID would eliminate these distortions. We note the policy objective of GCP is principally directed at access services and this would not be affected by removing PQ regulation from Transport FFLAS.

5.3 **PQ regulation invites distortionary cross-subsidy** – retaining Transport services within Chorus' PQ revenue cap creates a risk that revenues derived from services facing more limited competitive pressure may subsidise activity in increasingly competitive Transport markets. Moving Transport services to ID-only would prevent cross-subsidy from services remaining subject to PQ and permit efficient pricing by removing GCP. This would better promote competition and efficient market outcomes.

5.4 **Removing PQ regulation would not risk price increases or quality deterioration** – the Commission's concerns that deregulation could lead to higher transport prices or the loss of quality protections are misplaced. Transport prices are not constrained by the revenue cap, since Chorus currently recovers FFLAS revenue below the cap and Transport FFLAS revenue represents only a small proportion of total FFLAS revenue. Nor would any relevant quality safeguards be removed: existing PQ quality standards are not directed at Transport services, and any downtime on PQ FFLAS caused by Transport failures under existing standards would continue count if the underlying Transport service is subject to ID only. Consideration of quality regulation has not identified any Transport-specific concerns that justify retaining PQ regulation. Accordingly, moving Transport services to an ID-only regime would not jeopardise service quality or expose customers to the adverse outcomes suggested in the Draft Report.

5.5 **ID regulation would preserve transparency** – monitoring and regulatory oversight would continue under ID-only. The Commission would continue to receive detailed information regarding revenues, pricing, contracts and performance, while retaining the ability to revisit regulatory settings in future if market conditions change.

5.6 **Removal of mobile access reduces risk** – the Commission has decided to remove Mobile Access Services (MAS) from the Transport category. The exclusion of MAS, as this is an access service, materially resolves any concern that reducing regulation of Transport services could adversely affect competition in downstream markets because of incentives fibre access providers may have regarding inputs to competing mobile services.

5.7 **Chorus and LFCs face similar competitive constraint** - on the Commission's analysis, the competitive conditions facing Chorus Transport services do not appear materially different from those faced by other LFCs. Enable, Northpower and Tuatahi Transport services are subject only to ID regulation. The Commission has not identified a principled basis for maintaining a materially more intensive regulatory regime for Chorus. Regulatory consistency supports alignment.

6. Accordingly, the Commission's choice is not binary. Even if it concludes that Transport markets are not yet sufficiently competitive to support complete deregulation, the evidence strongly supports removing Chorus Transport services from PQ regulation and retaining ID-only regulation. That outcome better promotes efficient pricing, reduces competitive distortions created by GCP, aligns Chorus with other LFCs, preserves transparency and

[3] NERA (2026). Paragraphs 23- 27

oversight, and better gives effect to the purposes of ss 162 and 166(2)(b) than the draft recommendation to retain PQ regulation.

Submission

Introduction

7. The purpose of a deregulation review under s 210 is to ensure that the regulatory framework for fibre services continues to reflect prevailing market conditions. Parliament has provided for periodic review so that the regulatory treatment of particular FFLAS can evolve where doing so would better promote the purposes set out in ss 162 and 166(2)(b) of the Act.

8. Chorus' submission focuses on Transport FFLAS. While Chorus considers the Draft Report understates the extent of competition and competitive constraint currently present in Transport markets, it accepts that the Commission may remain unconvinced that competition has developed sufficiently in all areas to support complete deregulation. However, as the Draft Report recognises, the available regulatory options are not limited to either full deregulation or retention of the status quo. The Commission has expressly sought submissions on the possibility of removing Chorus Transport FFLAS from PQ regulation while retaining ID regulation.[4] In our view, the evidence demonstrates that removing Transport FFLAS from PQ regulation while retaining ID regulation would materially better give effect to the purposes in ss 162 and 166(2)(b) than the draft recommendation to retain both forms of regulation.

9. The remainder of this submission explains why that conclusion follows from the Commission's own findings. Chorus does not, at this stage, express a position on the Commission's draft recommendations for Point-to-point FFLAS and Co-location and interconnection FFLAS in LFC areas.

The Commission's competition analysis demonstrates that a reduction in regulatory intensity is justified

10. The Commission's competition analysis understates the extent of competitive constraint affecting Transport FFLAS. We address the key analytical issues in detail in **Appendix A**, including the Commission's reliance on the LFC+≥2 benchmark as the primary indicator of workable competition, the limited weight given to evidence of buyer power and commercial procurement processes, and the treatment of route-specific competition and self-supply. Appendix A also includes a summary of existing competition Chorus faces in providing Transport FFLAS and an explanation of how the Commission has incorrectly excluded competing links due to a misunderstanding of the nature of transport services.

11. The central conclusion emerges from the Draft Report as it stands: The Commission identifies meaningful competitive constraints across a material number of routes and areas. The Commission expressly acknowledges the existence of LFC+≥1 outcomes in many provider-area combinations, identifies areas where Transport customers have access to usable alternatives, and accepts that some links are subject to competition from alternative providers and self-supply arrangements. The Draft Report also recognises that competitive conditions vary significantly by route and geography.

12. With that conclusion reached, the Commission must determine what form of regulation best gives effect to the purposes in ss 162 and 166(2)(b). Parliament expressly anticipated that deregulation reviews would consider a range of regulatory outcomes. Section 210(4)(c) makes clear that the Commission may consider not only whether services should cease to be regulated altogether, but also whether those purposes would be better met if services were no longer subject to PQ regulation.

[4] Draft Report, paragraph 3.96.

13. That assessment necessarily requires consideration of both the benefits and costs of PQ regulation. Competitive constraints remain highly relevant because they inform the extent of any expected harm from reducing regulation. However competition assessment is useful only to the extent it identifies the point at which the benefits of regulation exceed its costs. Where PQ regulation is removed but ID regulation is retained, the Commission continues to receive information on prices, revenues and service quality, and retains the ability to identify and respond to any future exercise of market power, including through recommending the reintroduction of PQ regulation if required. The expected harm from any residual market power is therefore lower, and the incremental benefits of retaining PQ regulation are correspondingly reduced.

14. In Chorus' view, the evidence demonstrates that competition has developed sufficiently that the purposes of Part 6 would be better met if Transport FFLAS were moved from PQ to ID-only regulation. That conclusion follows even on the Commission's current competition findings. The degree of competitive constraint required to justify that outcome is necessarily lower than would be required to justify the removal of both PQ and ID regulation. Chorus nevertheless considers that the Draft Report understates the extent of competitive constraint affecting Transport FFLAS, for the reasons explained in Appendix A. To the extent those issues are accepted, they further reinforce the appropriateness of an ID-only outcome. Below we explain why moving Transport FFLAS to ID-only regulation better promotes efficient pricing, supports developing competition, preserves appropriate oversight, and materially better gives effect to the purposes in ss 162 and 166(2)(b) than the draft recommendation.

PQ regulation distorts competition through geographically consistent pricing

The revenue cap is not constraining Transport FFLAS prices

15. The principal practical consequence of retaining PQ regulation for Transport FFLAS is not the continued application of the maximum allowable revenue (MAR) constraint. The evidence indicates that the MAR is not presently constraining Transport pricing, and that competition is the primary driver of market outcomes.

16. The purpose of the revenue cap is to constrain the ability of a provider with market power to earn revenues above the level consistent with a workably competitive market. Where the revenue cap is materially constraining behaviour, removal would be expected to result in higher prices and increased revenue recovery. The available evidence suggests this is highly unlikely in the case of Transport FFLAS:

    16.1 Chorus is currently recovering revenues below the level permitted by its MAR. Anchor service price caps do not affect Transport FFLAS pricing, and the existence of MAR headroom strongly suggests that market conditions, rather than the revenue cap, are determining prices for Transport FFLAS. Even if Chorus was to earn its MAR, the relatively small proportion of total FFLAS revenues that are earned from Transport services mean that the revenue cap would not provide a meaningful constraint on Transport FFLAS pricing.

    16.2 The Draft Report identifies meaningful competitive constraints, including route-specific competition, usable alternatives on a significant number of links, self-supply, and sophisticated customers with substantial purchasing power. Those constraints are the most plausible explanation for observed pricing outcomes. If pricing is already being disciplined by competition, retaining a revenue cap adds negligible protection for end-users.

17. The Draft report is therefore incorrect where it claims that a potential adverse outcome from deregulation includes "potential effects on competition in related telecommunications markets if Transport prices or terms materially increase access seekers costs."[5] Removal of PQ

[5] Draft Report paragraph 3.94.5.

regulation cannot plausibly have this effect as the revenue cap does not affect Transport FFLAS pricing today.

GCP is therefore the principal effect of retaining PQ regulation

18. As it is clear that the MAR is not materially constraining Transport pricing, the principal effect of continuing PQ regulation for Transport FFLAS is the continued application of GCP under s 201. GCP applies to services subject to PQ regulation and does not apply to services that are subject to ID-only. It is a surprise that this is not mentioned at all in the Commission's Draft Report.

19. GCP is a deliberate departure from cost-reflective pricing and constrains Chorus from implementing cost-based geographic differentiation. Its purpose is to ensure comparable pricing between urban and rural customers to avoid widening the digital divide.

20. That purpose has limited relevance to Transport FFLAS. Unlike mass-market broadband products, Transport services are route-specific, highly customised and frequently supplied in circumstances where competitive constraints vary materially between locations.

21. In these circumstances, cost-reflective pricing would ordinarily be expected but GCP prevents this outcome. This weakens efficient price signals and reduces incentives for investment and entry where competition is emerging.

22. As NERA concludes, GCP distorts the analysis. In low-cost areas the uniform price already sits above underlying cost, so the scope for post-deregulation price rises is bounded, and the inability to discount limits Chorus' ability to compete on price. Meanwhile, in high-cost areas the uniform price sits below cost, so entry is not privately profitable and the LFC + ≥2 criteria is effectively unsatisfiable, since a competing entrant would be competing against Chorus which is selling the service below cost and very likely has spare capacity.[6]

23. Removing GCP from Transport services would not undermine the policy objectives of s 201. The Commission's guidance on GCP makes clear that the primary focus of GCP is on residential end-users.[7] Core mass-market access products, such as Bitstream 2, already include transport to the POI and therefore do not rely on the separate purchase of Transport FFLAS. For most residential broadband users, Transport FFLAS is therefore not a direct input into the service being purchased. Any impact on retail broadband pricing for consumers would, at most, be indirect and likely to be very small.

24. Accordingly, the principal effect of retaining PQ regulation for Transport FFLAS is to preserve a pricing obligation that intentionally overrides cost-reflective and competitively responsive pricing. In a market where the Commission has identified meaningful competitive constraint, retaining that distortion is at odds with outcomes consistent with workably competitive markets under s 162, and impedes rather than promotes the development of workable competition in direct contradiction to s 166(2)(b). Retaining ID regulation while removing PQ regulation would preserve transparency and oversight while eliminating those distortions.

Retaining PQ invites distortionary cross-subsidy

25. PQ regulation is applied through an aggregate revenue cap. An aggregate revenue cap is sensible where all services within the regulated portfolio face broadly similar competitive conditions and there is little prospect of competition emerging. In those circumstances, limiting revenues to be recovered across a portfolio of services is a practical means of delivering outcomes consistent with workably competitive markets. However, the position is materially different where some services are subject to meaningful or emerging competitive constraint while others are not.

26. The Draft Report identifies evidence of competitive constraint affecting Transport FFLAS, including route-specific competition, usable alternatives on a material number of links, and

[6] NERA (2026). Paragraph 3.C
[7] Commerce Commission. (2021). Geographically consistent pricing: Guidance on our intended approach to section 201 of the Telecommunications Act 2001. https://comcom.govt.nz

competitive conditions that vary significantly across routes and geographic areas. At the same time, other PQ-regulated FFLAS continue to face more limited competitive pressure.

27. In those circumstances, retaining Transport services within the PQ framework creates a risk that revenues earned from FFLAS subject to more limited competition are used to support pricing and commercial responses in increasingly competitive Transport markets.

28. GCP not only invites cross-subsidy, it requires it. GCP's purpose is to prevent prices from reflecting differences in underlying costs and competitive conditions between locations in favour of uniform pricing outcomes. Instead, the PQ framework enables activity in Transport markets to be supported by revenues derived elsewhere within the regulated portfolio. This may be defensible where competition is absent and unlikely to emerge. However, once actual or potential competition exists, the PQ framework distorts market signals and risks discouraging investment and entry by alternative providers.

29. Moving Transport FFLAS to ID-only regulation would address this problem directly. It would remove Transport services from the revenue-cap framework meaning activity in increasingly competitive transport markets could not be cross-subsidised by revenue from FFLAS subject to more limited competition. At the same time, it would facilitate more efficient engagement with emerging competition by disapplying GCP as described above.

30. Accordingly, moving Transport FFLAS to ID-only regulation would better promote efficient pricing, reduce the scope for distortionary cross-subsidy, and improve the conditions for the development of workable competition. Those outcomes are more consistent with both the s 162 objective of promoting outcomes produced in workably competitive markets and the s 166(2)(b) objective of promoting workable competition in telecommunications markets over time.

Service quality would not be jeopardised by removing PQ

31. Potential impact on service quality does not provide a basis for retaining PQ regulation for Transport FFLAS. The Commission's existing PQ quality framework is not directed at Transport services and the Draft Report does not identify any Transport-specific quality concerns that justify continued PQ regulation.

32. The quality standards currently applying to Chorus cover service availability measured by unplanned downtime, and performance measured by port utilisation on the fibre aggregation network. There is no Transport-specific quality standard, nor any suggestion during the extensive discussion surrounding the setting of the current quality standards that Transport FFLAS have a quality problem requiring PQ regulation. In fact, the PQ framework expressly excludes failures associated with non-diverse transport services from the calculation of availability quality standards.

33. Importantly, moving Transport FFLAS to ID-only regulation would not impact existing PQ quality standards. Where a Transport-related issue falls within the current non-diverse transport exclusion, it is already disregarded for the purposes of the availability standards. Where a Transport issue falls outside that exclusion and causes an outage affecting PQ FFLAS, it contributes to the downtime measure. That would continue to be the case even if the underlying Transport service itself were subject only to ID regulation. Similarly, the current performance standard applies to defined ports on the fibre network and would not be affected Transport FFLAS being removed from PQ regulation.

34. The Draft Report effectively recognises this when the most it can say is that a potential adverse outcome from deregulation would be "removal of … any applicable quality constraints applying under PQ regulation".[8] There are no applicable quality constraints that would be removed by the removal of PQ regulation so this statement should not be repeated in the final deregulation report.

35. Nor is there any reason to expect service quality to deteriorate if Transport services move to ID-only regulation. Transport customers are sophisticated purchasers that closely monitor

[8] Draft Report, paragraph 3.94.4.

service performance and, in many cases, have alternative supply options. Poor service quality would directly affect Chorus' ability to retain customers and compete for future business.

36. Regulatory oversight would also remain. Transport services would continue to be subject to ID regulation, preserving disclosure of operational and service performance information and enabling ongoing scrutiny by the Commission and interested parties.

37. Accordingly, there is no basis for concluding that removing Transport FFLAS from PQ regulation would reduce incentives to improve efficiency or supply services at a quality that reflects customer demand. ID-only regulation would preserve transparency and monitoring while leaving the existing PQ quality framework unaffected. That outcome gives effect to the objective in s 162(b) of promoting incentives to improve efficiency and supply FFLAS of a quality that reflects customer demands at least as well as the draft recommendation.

ID regulation provides the primary regulatory benefit

38. The Draft Report recognises that, for Transport FFLAS, the principal benefit of regulation is transparency, monitoring and regulatory oversight.

39. That transparency is extensive. Schedule 24 of the Fibre Information Disclosure regime provides detailed service-level pricing information for FFLAS, including Transport services. For Transport services, Chorus is required to disclose service descriptions, pricing structures, connection and monthly charges, revenues, connection volumes, incentive arrangements, and the level of product aggregation prescribed by the Commerce Commission. Transport services are reported by service type (for example, ICABS and Unified Transport) and bandwidth category, enabling the Commission to observe how those services are priced and supplied in practice.

40. Combined with the Commission's broader information disclosure, cost allocation, and financial reporting requirements, this disclosure framework provides the Commission with sufficient granularity to monitor market outcomes, assess whether providers are earning excessive profits, and determine whether regulatory intervention remains warranted.

41. The Commission would, of course, retain the ability to revisit its regulatory assessment of Transport FFLAS in the future. With the extensive information described above, the Commission would be well-placed to observe any adverse developments in market conditions and reconsider the appropriate regulatory treatment of Transport FFLAS.

42. Therefore, for Transport FFLAS, almost all of the practical benefits associated with regulation are achieved through ID regulation. Retaining ID preserves transparency, monitoring and regulatory oversight. Retaining PQ regulation only adds the distortions identified above.

43. Accordingly, moving Transport FFLAS to ID-only regulation preserves the core regulatory benefits that promote the purposes of Part 6, while removing features of PQ regulation that risk impeding actual and emerging competition and delivering outcomes that are not consistent with workably competitive markets. It follows that ID-only regulation would better give effect to the purposes in ss 162 and 166(2)(b) than the Commission's draft recommendation.

Removal of MAS lowers risk of reducing Transport regulation

44. In the Draft Report the Commission has decided to assess Mobile Access Services (MAS) as part of Point-to-point FFLAS rather than Transport FFLAS. The Commission's view is that MAS operates more closely as an access service connecting mobile cell sites and other non-building access points than as a traditional Transport service between network nodes.

45. The practical significance of the Commission's decision is that it further narrows the scope of the remaining Transport FFLAS category and removes a service closely connected to downstream telecommunications competition. MAS is an input into mobile networks supporting Fixed Wireless Access (FWA) services. Because FWA competes with fibre broadband services in downstream markets, the competitive incentives associated with MAS

may differ from those applying to more traditional route-specific backhaul and transport services. The exclusion of MAS reduces any concern that moving Transport FFLAS from PQ to ID-only regulation could adversely affect competition in downstream telecommunications markets.

46. Accordingly, the exclusion of MAS strengthens the case for moving the remaining Transport FFLAS to ID-only regulation. It leaves the Transport category focused on route-specific backhaul and transport services where the Commission has identified meaningful competitive constraint, while separating out the service for which downstream competitive considerations may be different. This further supports the conclusion that moving Transport FFLAS from PQ to ID-only regulation would better give effect to the purposes in ss 162 and 166(2)(b) than retaining the current PQ framework.

Chorus and LFCs face similar constraints in Transport markets

47. The Commission's analysis does not identify a material difference in the competitive conditions facing Chorus Transport services compared with those facing other LFCs. Both Chorus and non-Chorus LFCs operate in environments characterised by a mixture of LFC-only links, links with one usable alternative, and a number of links meeting the Commission's LFC+≥2 benchmark.

48. Despite these similarities, the regulatory treatment under the draft recommendation differs materially. Enable, Northpower and Tuatahi are subject only to ID regulation, while Chorus remains subject to both ID and PQ regulation for its Transport services. The Draft Report does not identify a principled basis for this difference beyond the historical application of the PQ framework. Nor does it demonstrate that Chorus faces materially weaker competitive constraints than those faced by the other LFCs.

49. If the Commission's evidence is insufficient to justify a different competitive assessment between Chorus and other LFCs, regulatory consistency points towards alignment of regulatory treatment. The most logical and proportionate outcome is therefore to place Chorus Transport services on the same regulatory footing as other LFC Transport services by removing PQ regulation while retaining ID regulation.

Move to ID only regulation would be practical to implement

50. At paragraph 3.99 of the Draft Report, the Commission invites submissions on the practical implications of removing PQ regulation while retaining ID regulation, including the effects on revenues, quality, cost allocation, compliance costs and commercial flexibility. As discussed in the preceding sections, removing Transport FFLAS from PQ regulation would not adversely affect quality, would preserve the principal benefits of regulation through ID, and would better promote efficient competition. It would also be straightforward to implement.

Effect on Chorus' regulated revenue

51. The removal of PQ regulation is unlikely to have a material impact on Chorus Transport's regulated revenue. As discussed above, the evidence indicates that pricing outcomes are primarily constrained by competitive conditions and customer demand rather than the MAR. The Commission itself recognises that Chorus may be unable to recover its full allowable revenue because of competitive and market constraints and, in any case, Transport FFLAS revenue is a small percentage of Chorus' total regulated revenue so is not materially affected by the revenue cap. Continued ID regulation would ensure ongoing visibility of Transport revenues, pricing and profitability.

Effect on cost and asset allocation

52. Removing PQ regulation is not expected to materially change Chorus' approach to cost allocation or asset management. Chorus already applies established accounting, cost

allocation, and asset management processes that support financial reporting, regulatory disclosure, and internal decision-making.

53. The continued application of ID requirements would ensure transparency regarding expenditure, asset utilisation, and financial performance. Consequently, Chorus would remain accountable for its investment and operating expenditure decisions, limiting any practical change in how costs and assets are allocated.

Effect on compliance costs

54. Removing PQ regulation would reduce compliance costs, although the overall savings would be modest because ID obligations would remain. The principal benefits would arise from an incrementally reduced scope for PQ-specific forecasting, compliance reporting, regulatory engagement and participation in future PQ reviews and resets.

55. Transport services are managed separately from fibre access services within Chorus so there is potential for removal of Transport FFLAS from PQ to reduce the number of Chorus personnel required to be engaged in PQ related activity. Any recovered personnel time and resources could instead be directed towards operational improvements, customer outcomes and network investment.

Increase in commercial flexibility

56. The most significant practical benefit of moving Transport FFLAS to ID-only regulation is increased commercial flexibility. As discussed above, this would principally arise through removal of the geographically consistent pricing obligation in s 201. More broadly, however, it would reduce the practical complexity created by the interaction of multiple overlapping regulatory obligations, including Part 6 regulation, open access obligations, line of business restrictions and other sector-specific restrictions. While each of those obligations has a specific purpose, their cumulative effect can constrain Chorus' ability to respond efficiently to customer requirements and competitive developments. In increasingly competitive Transport markets, these constraints can increase transaction costs, slow negotiations, limit the development of bespoke commercial arrangements and reduce Chorus' ability to respond promptly to competitive offers from unregulated providers.

57. These effects are not merely administrative. Transport customers are typically sophisticated commercial organisations that expect tailored solutions, responsive negotiations and pricing structures that reflect their specific requirements. Where regulatory obligations limit Chorus' ability to meet those expectations, competition may be distorted rather than promoted, particularly when alternative providers are not subject to equivalent constraints.

58. Removing PQ regulation while retaining ID would enable Chorus to compete on more equal terms, respond more effectively to customer needs and market developments, and deliver the benefits of greater commercial flexibility without any material reduction in oversight or accountability.

59. Accordingly, implementation issues do not provide a reason to retain PQ regulation. The practical consequences of moving Transport FFLAS to ID-only regulation are limited, manageable and largely beneficial, while the transparency and monitoring benefits that the Commission identifies as most important would be preserved.

Appendix A: Competition Analysis for Transport FFLAS

Commission's competition framework is excessively conservative - reliance on LFC+≥2

60. The Commission has adopted the presence of the incumbent LFC plus at least two additional effective infrastructure competitors (LFC+≥2) as its primary indicator of workable competition. Chorus does not agree that this benchmark should be treated as the primary determinant of whether regulation remains necessary. While competitor-count metrics may provide a useful screening tool, they should not substitute for analysis of actual market outcomes.

61. We agree with NERA that the LFC+≥2 threshold is overly conservative for Transport FFLAS deregulation. As NERA conclude: "The economics of Transport suggest that competition will be aggressive with only two networks: deployment costs are largely sunk, the marginal cost of carrying traffic over lit fibre is near zero, networks typically carry spare capacity, and capacity on an existing route is expanded cheaply and quickly by lighting additional wavelengths. An LFC + ≥1 screen of "at least two providers with usable spare capacity or an economic upgrade path" is a more reliable indicator of constraint than a raw count of three networks."[9]

62. The Commission's approach places considerable weight on a structural benchmark while giving comparatively less weight to evidence of how competition operates in practice. This is inconsistent with established competition analysis, which recognises that market power cannot be inferred solely from market structure or market shares and must also consider entry conditions, expansion opportunities, customer behaviour, and other competitive constraints.[10]

63. Transport services are fundamentally different from mass-market residential services. They are route-specific, frequently bespoke, purchased through commercial tender processes, supplied to sophisticated buyers, and heavily influenced by buyer bargaining power. In these markets, competition can be effective even where only one alternative supplier exists.

64. Competition need not be ubiquitous to constrain behaviour. A competitor does not need to serve every route or customer to exert meaningful competitive pressure. The presence of credible alternatives for a material subset of customers can influence pricing, procurement outcomes, and commercial strategy more broadly.

65. The Commission itself acknowledges that LFC+≥1 conditions exist across a material proportion of Transport routes, that buyers may self-supply, that large customers may negotiate bespoke outcomes, and that competition is highly route-specific. In fact the Commission historically treated one competing provider as sufficient to constrain behaviour in backhaul markets[11]

66. As the NERA report explains, the Commission's international precedents are of limited relevance to the New Zealand context, as they are largely based on vertically integrated incumbents with incentives to foreclose downstream competition. Chorus is structurally separated and faces no such incentives. In addition, the ACCC's most recent regulatory framework has moved away from a strict "incumbent + 2" approach and now more closely reflects an LFC+≥1 threshold.[12]

67. The LFC+≥2 threshold risks overstating the degree of competition required to constrain prices and service quality.

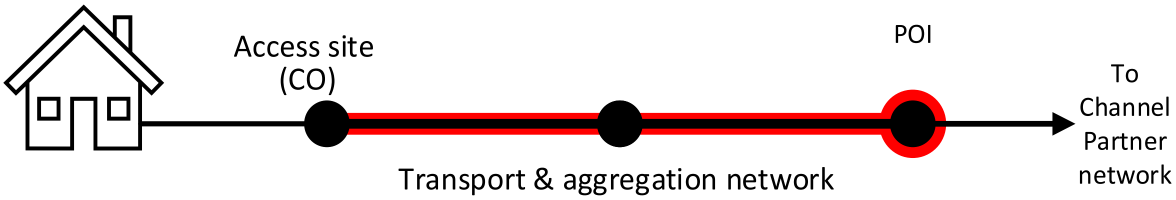
[9] NERA (2026). Section 2.2
[10] As recognised in the Commission's Misuse of Market Power Guidelines 2023, paragraphs 46 and 47.
[11] NERA (2026). Section 2.3.
[12] NERA. (2026). Section 2.4

Commission's analysis incorrectly excludes links that are competitive with Transport FFLAS

68. The Commission's analysis has misunderstood the different types of transport FFLAS, which has led it to exclude links that compete with Chorus' transport services. It is important to understand there are two broad categories of Transport services:

    68.1 "Access Transport": Transport that forms an integral part of a bitstream access service, providing connectivity between an end user and a Point of Interconnect (POI).

Diagram showing "Access Transport"



    68.2 "Standalone Transport": Transport services that are supplied independently of bitstream access services and provide connectivity between aggregation points, such as exchanges, data centres, and submarine cable landing stations.

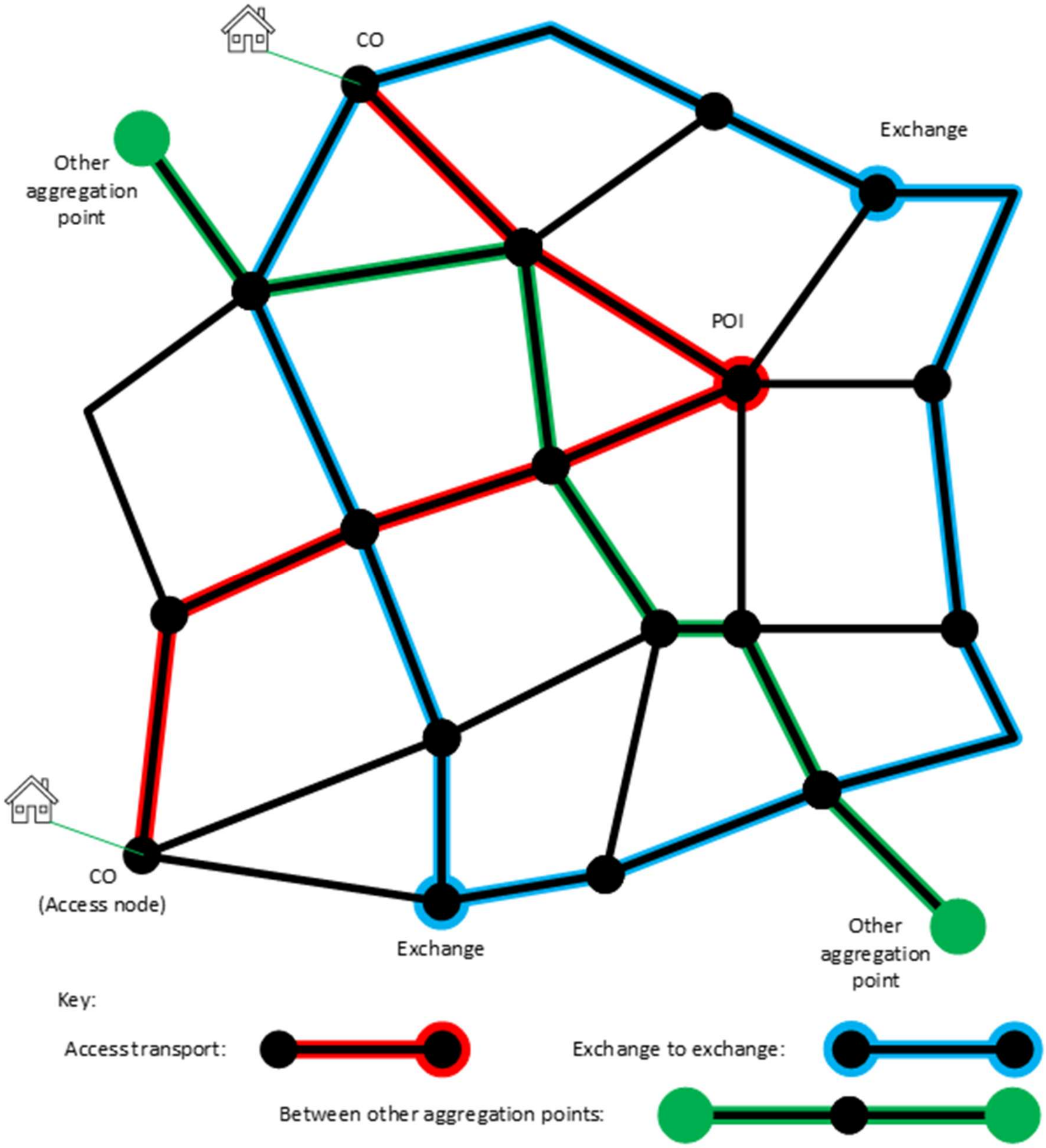
69. In urban areas, the fibre network can be viewed as a mesh of fibre routes (see figure below) over which a range of services are delivered. Bitstream access services provide connectivity between end users and POIs. Multiple paths may be used between the serving exchange and the POI to provide resilience and/or additional capacity. Whether deployed directly over fibre or using DWDM technology, these paths between the exchange and the POI constitute access transport, as they support the delivery of bitstream access services.

70. However, Transport FFLAS are also offered as stand-alone services that are distinct from bitstream access services. These services provide connectivity between aggregation points to meet the requirements of RSPs' and other fibre providers' networks.

71. The "incumbent interconnectable" part of the Commission's assessment methodology incorrectly excludes standalone transport links because the Commission seeks "evidence of existing or credibly formable interconnection" and if that is not present it excludes the competing link.[13] However, this misunderstands the nature of competition for transport services. For standalone Transport, customers do not necessarily care if or where the service interconnects with Chorus' network. They are interested in a service between points A and B. In addition, customers often go with competitors because they have alternative routes that are preferable (i.e. they don't have to go via an exchange). As such, a competing link that also provides services to those points can compete with Chorus irrespective of the interconnection. We assume that if the Commission applied this lens to its analysis, it would find more links that meet the LFC + ≥1 or 2 standard and gain further comfort about removing PQ regulation from Transport FFLAS.

[13] Commerce Commission (2026), *Transport services – assessment methodology*, page 2.

Diagram showing the types of transport Services



Commission places too much weight on infrastructure and too little weight on outcomes

72. The Draft Report relies heavily on infrastructure assessments and route-level overlap between providers. While these indicators are relevant, competition analysis should ultimately focus on market outcomes rather than infrastructure counts alone.

73. Competition assessments should also recognise that competitive conditions are dynamic rather than static. Regulatory reviews occur infrequently and must therefore consider not only current market conditions but also how competitive constraints are likely to evolve during the regulatory period.

74. The Commission acknowledges that it lacks sufficient evidence to undertake comprehensive analysis of pricing, switching, tender outcomes, customer substitution behaviour, and

negotiated commercial outcomes.[14] This creates an important evidential gap, because infrastructure presence is only one component of competitive constraint.

75. Equally important are the commercial dynamics that determine how competition operates in practice, including tender outcomes, customer leverage, pricing discipline, switching threats, and commercial negotiations.

Competition is stronger than the Draft Report recognises

76. The Commission's own analysis identifies substantial levels of route-level competition. For example:

  76.1 Chorus Wellington recorded LFC+≥1 on 87.5% of assessed links;

  76.2 Chorus Nelson recorded LFC+≥1 on 60% of assessed links;

  76.3 Chorus Auckland recorded LFC+≥1 on 40% of assessed links; and

  76.4 Chorus New Plymouth recorded LFC+≥1 on 50% of assessed links.

77. These results demonstrate that competition is neither isolated nor confined to a small number of exceptional routes. Rather, they indicate the widespread presence of alternative infrastructure providers across significant portions of Chorus' transport network. In Wellington, competition is present on the vast majority of assessed links, while in Nelson, Auckland, and New Plymouth a substantial proportion of routes are also served by at least one competing provider.

78. The existence of these competing networks is an important indicator of market conditions. It suggests that a significant number of customers have access to credible alternatives to Chorus' services, creating competitive constraints. The Commission's analysis acknowledges the presence of route-level competition but does not appear to give sufficient weight to the extent and significance of these competitive conditions. As NERA concludes, competition will be aggressive on links with two competitors because deployment costs are largely sunk, the marginal cost of carrying traffic over lit fibre is near zero, networks typically carry spare capacity, and capacity on an existing route is expanded cheaply and quickly by lighting additional wavelengths.[15]

79. By treating competition as limited or exceptional, the analysis risks understating the degree to which alternative providers already exert competitive pressure in transport markets. The evidence instead points to competition being an established and material feature of many parts of Chorus' transport footprint, particularly in higher-demand areas where customers are most likely to have a choice of infrastructure provider.

80. The Commission should also recognise that competition may extend beyond the direct presence of alternative infrastructure. Commercial relationships, bundled service procurement, multi-service contractual arrangements, and broader commercial negotiations can create indirect competitive constraints that are not fully captured by route-level infrastructure measures alone. The existence of these wider commercial dynamics further strengthens competitive discipline in the market.

Competition is well-established in Transport markets and would be stronger without GCP

81. Since Part 6 of the Telecommunications Act was enacted, competition in Transport services has become well established, with customers able to choose between a range of providers including mobile network operators (MNOs), other fibre network operators, and regional fibre providers such as Vector and Eon Fibre.

82. Although overall demand for Transport services continues to grow, Chorus is not capturing this growth, as competing fibre providers are successfully winning business. Competition is particularly evident in relation to:

[14] Draft report, paragraphs 3.69-3.74.
[15] NERA (2026). Paragraph 9.

82.1 New Transport service requests – customers assess the relative merits of competing providers based on factors such as existing fibre footprint, network capability, and the willingness of providers to undertake new builds to meet customer requirements.

82.2 Switching between providers – at the end of a contract term, customers test the market and seek competitive pricing from alternative providers. Switching is particularly feasible for dark fibre services, where migration can generally occur with minimal disruption to end-users, making it easier for customers to change providers than for an access service.

83. Despite this competitive environment, GCP limits Chorus's ability to tailor pricing to local market conditions and respond quickly to competitive offers, as summarised in Table 1.

Table 1: summary of Transport competition

Transport service	Key competitors	How we see competition
Between exchanges (e.g. ICABS or CXC)	• Other LFCs • MNOs that have their own networks • Eon fibre with an extensive fibre network (11,000km+ of total fibre) • Vector (in Auckland).	• Lost bids: **[ ] CCI** in FY2026. • **[ ] CCI**
To/from aggregation nodes such as datacentres (e.g. CDCC or Express Connect)	• MNOs that have their own networks • Eon Fibre (fibre to all major NZ data centres) • Vector (in Auckland).	• Lost bids: **[ ] CCI** in FY2026 • Channel to market is MNOs who prefer to sell their own lit services.

84. Chorus is often unable to match competitor offers despite facing strong competitive pressure. We regularly lose bids because regulatory requirements make it difficult to respond quickly and offer market-reflective pricing. **[ ] CCI** Chorus' concern here is not competition. We would welcome the ability to lower our prices to win more business, but GCP requires that any such reduction would need to be applied in areas where in doing so may result in Chorus failing to earn a regulated rate of return on high-cost routes.

85. Further examples where Chorus is losing bids to alternative fibre providers because we are unable to offer sufficient flexibility in routing and pricing include:

85.1 Connectivity for LEO satellite ground stations, where fibre services are required to connect base stations to data centres or internet providers.

85.2 Cable landing stations, where submarine cables are connected to wider fibre networks through Transport services.

85.3 Mobile network sites, particularly in remote areas, and connectivity between mobile sites.

86. In addition Electricity Distribution Businesses (EDBs) are incentivised to over-build the Chorus network by deploying their own fibre infrastructure between substations and central control

centres for network monitoring and operational purposes. For example, in Orion's Customised Price-Quality Proposal submitted to the Commission June 2026.[16]

87. If approved, the costs of overbuilding existing fibre networks would be recoverable through regulatory allowances, reducing incentives to utilise existing fibre infrastructure where it may otherwise be a more efficient solution.

Commission understates buyer power

88. Transport customers differ fundamentally from residential broadband consumers. Transport services are typically purchased by large and sophisticated organisations, including:

    88.1 Major telecommunications providers;

    88.2 Mobile network operators;

    88.3 Data centres;

    88.4 Hyperscalers;

    88.5 Government agencies; and

    88.6 Large enterprise customers.

89. These customers are experienced purchasers of telecommunications infrastructure services and possess significant commercial sophistication. They commonly:

    89.1 Undertake competitive procurement processes;

    89.2 Benchmark pricing across multiple suppliers (where major RSPs test the market every few years to confirm they are getting the best deal);

    89.3 Negotiate bespoke commercial arrangements;

    89.4 Utilise multi-sourcing strategies to reduce dependency on any single provider; and

    89.5 Assess self-supply or alternative network build options where economically viable.

90. As a result, Transport customers are not passive price takers. They have both the capability and incentive to actively test the market when faced with unfavourable pricing or service terms. In many cases, they are repeat purchasers with extensive experience negotiating complex telecommunications contracts and a detailed understanding of network economics.

91. The Commission acknowledges the existence of these dynamics but assigns them relatively limited weight in its final recommendation. In Chorus' view, this understates the practical constraints that sophisticated customers impose on suppliers of Transport services. The ability of major customers to negotiate, switch, sponsor alternative investment, or self-supply materially reduces the risk that a provider could exercise market power without facing a commercial response.

92. Countervailing buyer power is particularly important in Transport markets because demand is concentrated among a relatively small number of large customers that account for a significant proportion of total expenditure. As NERA finds, the demand side of the Transport market is dominated by Spark, OneNZ and 2degrees who account for **[ ] CCI** of the purchased link volume.[17] These customers possess considerable negotiating leverage due to the scale of their purchases and the strategic importance of their business. Their procurement decisions can materially influence investment outcomes and competitive dynamics within the market. In particular, on those routes (noted by NERA to by **[ ] CCI**) where the three MNOs are the only customers.

93. The significance of buyer power should not be underestimated. Typical Transport customers routinely undertake sophisticated procurement processes and possess the scale, expertise and

[16] Orion "*Customised Price-Quality Path Main Proposal*" (9 June 2026)
[17] NERA (2026). Paragraph 37

commercial incentives necessary to discipline supplier behaviour. In transport markets, these demand-side constraints may be as important as the number of infrastructure providers present.

94. The Commission's assessment appears to focus predominantly on the availability of supply-side alternatives while giving insufficient consideration to the significant discipline imposed by sophisticated buyers. However, the existence of informed and commercially powerful customers is itself an important competitive constraint. Even where the number of infrastructure providers is limited, strong buyer power can and does constrain pricing and commercial behaviour.

95. Chorus therefore submits that countervailing buyer power represents one of the strongest competitive constraints operating in Transport markets and should be afforded greater weight in the Commission's overall assessment of competitive conditions. When considered alongside the evidence of route-level competition and alternative network infrastructure, buyer power further supports the conclusion that Transport markets today are subject to meaningful and effective competitive pressures.

Counterfactual analysis is weak

96. The Commission's counterfactual analysis is largely built around the perceived loss of transparency and regulatory oversight that would follow deregulation. In particular, the analysis appears to place significant weight on the proposition that the removal of PQ regulation could increase the risk of adverse market outcomes by reducing the Commission's visibility of market performance and limiting its ability to intervene should concerns arise.

97. However, the Commission does not identify persuasive evidence that the removal of PQ regulation would be likely to result in:

    97.1 Excessive pricing;

    97.2 Degraded service quality;

    97.3 Excessive profits;

    97.4 Reduced investment; or

    97.5 Reduced competition in downstream markets.

98. This is a significant omission. The purpose of a counterfactual assessment is not merely to identify theoretical risks, but to evaluate the likelihood of those risks occurring in practice. While the Commission raises concerns about the potential consequences of deregulation, it provides limited evidence demonstrating that such outcomes are probable given the competitive conditions that already exist in Transport markets.

99. Indeed, the Commission's own analysis identifies the presence of route-level competition, alternative infrastructure providers, and sophisticated customers with significant countervailing buyer power. These factors are all relevant constraints on market behaviour and should form a central part of any assessment of likely outcomes in the absence of regulation. Yet the counterfactual analysis does not appear to fully consider the extent to which these existing competitive pressures would continue to constrain Chorus following deregulation.

100. The Commission's analysis therefore places considerable emphasis on the possibility that adverse outcomes could occur, while providing little evidence that they are likely to occur. The distinction is important. Regulatory intervention should be based on a credible risk of harm supported by evidence, rather than on speculative concerns that cannot be substantiated by observed market conditions or commercial incentives.

101. Moreover, the Commission's assessment gives insufficient consideration to the asymmetry between the identified risks and the available evidence. While uncertainty may justify careful monitoring of market developments, uncertainty alone does not establish that regulation remains necessary. Where the evidence demonstrates the presence of competition, buyer

power, and alternative supply options, the burden should be on demonstrating why these constraints would not be effective in disciplining market conduct in the absence of regulation.

102. Chorus submits that the counterfactual analysis is therefore overly precautionary and insufficiently evidence-based. Rather than demonstrating that deregulation is likely to result in materially worse outcomes for customers, the analysis largely identifies hypothetical risks whose probability and magnitude remain uncertain. As a result, the Commission's conclusions appear to place greater weight on speculative harms than on the observable evidence of competitive constraints currently operating in Transport markets.

103. A more balanced assessment would recognise that the existence of uncertainty does not, in itself, justify continued regulation. The relevant question is whether there is sufficient evidence to conclude that deregulation would likely lead to a material deterioration in market outcomes. The Commission has not established such a case. Even if it did, ID-only regulation would be sufficient to address the concerns. Consequently, the counterfactual analysis provides a weak foundation for retaining PQ regulatory oversight (versus ID oversight) of Transport services.

The Commission's information request in paragraphs 3.75.1 to 3.75.8

104. The Commission has sought evidence on whether the availability of alternative Transport providers materially constrains the conduct of regulated providers. To assist the Commission, Table 2 summarises the key questions raised in paragraphs 3.75.1 to 3.75.8, our response, and evidence available.

Table 2: Response to key questions raised paragraph 3.75 of the draft determination

Commission Question	Chorus Response	Evidence
1. Whether regulated providers offer different Transport prices, discounts, products or non-price terms where usable alternatives are present.	Wholesale prices are set on a standard basis applied to the individual route, depending on factors such as distance or speed, and are not subject to individual negotiation due to regulatory constraints (ie GCP)	Refer to: • Chorus Response to section 98 Notice dated 18 August 2025, Q9.1 and 9.2 • CY2025 Information Disclosure – Schedule 24 – Information.
2. Whether an LFC's Transport offerings or negotiated terms differ between its own regulated area and areas in which another LFC is the regulated provider.	A consistent pricing methodology is applied to the same services in all locations (and does not vary geographically). Transport routes can often traverse LFC and Chorus networks so there is no easy way to differentiate pricing within the LFC component even though GCP does not apply there. It also would not make sense to set different prices for LFC areas because transport competition is route-specific rather than area-specific.	Refer to: • Chorus Response to section 98 Notice dated 18 August 2025, Q11 • CY2025 Information Disclosure – Schedule 24 – Information.
3. Whether any observed differences are attributable to competitive conditions rather than differences in route, cost, capacity, service specification, regulation or customer requirements.	Chorus has no visibility of price and non-price terms in bids from competing fibre providers, or what the key differences are. GCP requires Chorus' prices to be consistent.	Refer to: • Chorus Response to section 98 Notice dated 18 August 2025, Q12.
4. Actual switching, multi-sourcing, tender outcomes or credible threats to switch between Transport providers.	Chorus faces a range of competition for Transport services, which includes requests for new services, as well as switching customers from Chorus onto an alternative Transport provider.	Refer to: • Chorus Response to section 98 Notice dated 18 August 2025, Q12.

Commission Question	Chorus Response	Evidence
5. Whether capacity, service quality, timing or contracting constraints affect the practical effectiveness of the alternatives identified.	Contracting and regulatory obligations are the key constraint – Chorus cannot effectively respond to competition with price, due to consultation and notice period requirements for a price reduction (i.e. industry consultation, followed by 3 months' notice period).	Refer to: • 2025-26 Annual Telecommunications Industry Questionnaire – Sheet G – Backhaul Network Operators.
6. Whether the LFC +≥1 findings identified in our assessment materially constrain price, service quality, terms or innovation.	The current levels of competition would materially constrain price, service quality, terms and innovation if Chorus was able to compete. If PQ regulation (GCP) was removed, Chorus would be constrained on our market offers by our competitors. There would be more competition on price and non-price terms, for the long-term benefit of end-users.	Refer to: Chorus Response to section 98 Notice dated 18 August 2025, Q12
7. Planned investment, expansion, interconnection or commercial arrangements likely to materially change the availability of usable alternatives.	Chorus invests in projects that directly augment our ability to provide transport related services. This includes: • Access fibre capacity growth – these network projects build cables into areas that have had capacity consumed by new address creation. These cables can provide either access or transport-based services. • Transport robustness – these network projects build cables to close large fibre rings so that diversity (which is also a transport offering) can be achieved.	Refer to: • Chorus Response to section 98 Notice dated 18 August 2025, Q13 • 2025-26 Annual Telecommunications Industry Questionnaire – Sheet G – Backhaul Network Operators • CY2025 Information Disclosure – Schedule 24 – Information.

Commission Question	Chorus Response	Evidence
8. Whether the usable alternatives identified in any assessed provider-area effectively constrain prices, terms, service quality or investment, supported by evidence such as price comparisons, tender outcomes, switching, capacity and connection timeframes.	As mentioned above, Chorus has no visibility of price and non-price terms in bids from competing fibre providers, or what the key differences are. However, Chorus' limited success in competitive tenders and quoting opportunities, together with increasing service churn (which we have no reason to believe is not being captured by alternative providers), indicates that Chorus is constrained and unable to compete effectively.	Refer to: Chorus Response to section 98 Notice dated 18 August 2025, Q12.