



Point-to-point, Transport, and Co-location and
interconnection Fibre Fixed Line Access Services

Cross submission | Commerce Commission
9 October 2026

Introduction

1. Thank you for the opportunity to provide feedback on submissions on the Commission's draft Point-to-point, Transport, and Co-location and interconnection deregulation review recommendation.
2. We support the Commission draft recommendation that these fibre services remain regulated. The draft recommendation appropriately recognises that while some competitive constraints exist in certain areas and on certain routes, the evidence does not demonstrate competition of a breadth, durability or effectiveness sufficient to support deregulation.
3. This cross-submission focuses primarily on the Chorus and supporting NERA submission. We agree with the Commission that the evidence supports continued regulation and that neither Chorus nor NERA has demonstrated a basis for departing from the draft recommendation. Their submissions do not appear to materially dispute the Commission's underlying factual assessment of market conditions; rather, they challenge how the Commission has interpreted and weighted the available evidence. In reaching its draft position, the Commission considered a broad range of information, including infrastructure availability, pricing, commercial conduct, switching, capacity, investment and prospective network expansion. We consider that the draft recommendations reaches the right conclusion in light of the evidence.

Comment

The Commission's LFC+≥2 framework remains the most appropriate benchmark

4. A central theme of both Chorus' and NERA's submissions is that the Commission places excessive weight on the presence of at least two competitors in addition to the incumbent LFC and should instead adopt an LFC+≥1 benchmark.
5. In our view, the Commission has correctly identified the issue. The question is not whether a single competing network provides some competitive constraint. It clearly can. The relevant question is whether the existence of one competing provider, without anything further, is sufficient to support deregulation and ensure outcomes consistent with workable competition. The Commission correctly concludes that it is not.
6. The evidence developed during the review demonstrates precisely why. For example, the Commission identified a number of areas where LFC+≥1 conditions are present across a significant proportion of links, including Wellington, Nelson and Auckland. However, those same areas generally have much lower levels of LFC+≥2 competition. Wellington, for example, recorded LFC+≥1 outcomes on 87.5% of assessed links but LFC+≥2 outcomes on only 25% of links. Nelson recorded 60% LFC+≥1 but no LFC+≥2 findings.
7. These results support, rather than undermine, the Commission's framework. They demonstrate that competition often assumes the existence of a single alternative provider and that the availability of multiple independent alternatives remains relatively limited. Moreover, an alternative network may be confined to a particular route or a limited geographic area that does not reflect the broader area over which competition occurs in practice. Customers commonly require links across a region—for example, to connect multiple mobile cell sites or business locations—and the availability of an alternative on a single route would not necessarily constrain the incumbent's pricing or terms for those wider requirements. The Commission reasonably

concludes that such conditions do not provide a sufficiently durable and resilient basis for deregulation.

8. NERA's submission effectively treats the existence of one alternative network as sufficient proof that regulation is no longer required. It also overlooks the wider geographic nature of demand for these services. The Commission has correctly distinguished the characteristics of UCLL backhaul, which concerns links between exchange sites, from the broader reach of UFB fibre networks and the regional nature of the demand they serve. NERA's approach also overlooks the Commission's concern that markets relying on a single competitor are inherently dependent on the behaviour, strategy and continued presence of that competitor. The Commission is entitled to place weight on the durability and resilience of competition rather than merely its existence.

Buyer power cannot substitute for broad-based competition

9. NERA and Chorus both place considerable emphasis on the sophistication and bargaining power of major customers, particularly Spark, One NZ and 2degrees. They argue that these customers possess sufficient countervailing buyer power to constrain prices and terms even where infrastructure competition is limited.
10. The Commission correctly recognised these factors but also correctly concluded that they are insufficient to support deregulation in this case. The Commission expressly notes that under LFC+≥1 conditions competitive benefits are likely to be strongest for large and sophisticated customers and weaker for smaller customers that lack comparable bargaining power.
11. This highlights an important weakness in the Chorus and NERA position. Customer outcomes can differ even in a monopoly market, depending on factors such as a customer's scale, technical expertise and procurement capability. More favourable outcomes for particular customers therefore do not, by themselves, demonstrate the existence of a workably competitive market. The relevant assessment is whether competition is sufficiently broad-based and, where countervailing buyer power is relied on, the extent and effectiveness of that power across the market.
12. The Commission therefore correctly places limited weight on buyer power as a substitute for more widespread infrastructure-based competition.

Self-supply and bespoke builds should not be treated as generally available competitive alternatives

13. Chorus and NERA also argue that the ability of large users to self-build or sponsor alternative infrastructure materially constrains regulated providers.
14. We consider the Commission was correct not to place significant weight on such arguments.
15. The existence of a theoretical self-build option does not establish the existence of effective market-wide competition. Self-build is only a realistic option where customers possess sufficient scale, demand concentration, financial capability and strategic incentive to justify significant capital investment.

16. Furthermore, the evidence gathered during the review does not suggest that widespread network expansion or overbuild is likely to occur. The Commission found little evidence of material forthcoming expansion that would alter competitive conditions in assessed areas.
17. We also note the submission from One NZ which cautions against treating self-supply infrastructure or bespoke builds as generally available wholesale alternatives. One NZ correctly observes that infrastructure used to meet internal demand should not automatically be treated as an alternative available to all access seekers and that any reliance on bespoke build arguments should be supported by robust evidence of actual procurement outcomes and build feasibility.
18. The Commission's focus on practical and currently available alternatives is therefore the appropriate approach.

Geographically consistent pricing does not justify deregulation

19. Both Chorus and NERA argue that geographically consistent pricing (GCP) distorts competition and prevents Chorus from responding effectively to competitive pressures, particularly in lower-cost areas.
20. In practice, GCP has only a limited bearing on whether these services are supplied at a single national price. An end-to-end service typically comprises multiple components, including ICABS steps within a region and DFAS access and connection charges. Connection charges can be significant for individual links, and the resulting end-to-end prices can differ materially. Prices are therefore highly differentiated in practice. Where a component price is common across locations, this generally applies within areas exhibiting a relatively limited range of costs. Chorus also routinely differentiates pricing through connection incentive payments and by bundling fibre components into services with different pricing structures. Chorus' reliance on a single national price should accordingly be given limited weight.
21. Nonetheless, this argument should be treated with caution.
22. The purpose of this review is to determine whether competition has developed sufficiently to justify deregulation. It is not to determine whether deregulation would increase the intensity of competition.
23. The Chorus and NERA submissions effectively argue that competition would be stronger if regulatory constraints were removed. Even if that proposition were accepted, it does not answer the statutory question before the Commission.
24. The relevant question remains whether current competitive constraints are already sufficient to support the removal of regulation. The fact that a regulated provider would prefer more pricing flexibility does not demonstrate that competition is sufficiently effective to replace regulation. Nor does it rebut the Commission's finding that effective competition remains limited across many provider-area combinations.
25. More fundamentally, the Chorus and NERA submissions do not establish any clear connection between GCP and the prevalence of LFC+≥2 conditions. The Commission's core finding is that sufficient competitive alternatives are not present across assessed areas. That conclusion is unaffected by claims that Chorus might wish to adopt more geographically differentiated pricing in the future.

The submissions do not materially undermine the Commission's assessment of competition

26. A recurring theme in the Chorus and NERA submissions is that competition should be assessed through tender outcomes, route-specific competition and actual commercial behaviour rather than infrastructure metrics alone.
27. However, the Commission did not rely solely on network counts. The draft report explicitly considered pricing, commercial conduct, switching, capacity, investment and expansion evidence. The Commission's conclusion was that the available evidence did not establish that the identified competitive constraints were broader, more durable or more effective than indicated by the infrastructure assessment.
28. Importantly, many of the Chorus and NERA arguments rely on assertions regarding tender outcomes, commercial negotiations and competitive responses that were not supported by sufficiently comprehensive evidence. The Commission reasonably concluded that the evidence base was insufficient to justify departing from the infrastructure findings.
29. In those circumstances, we consider the Commission was correct to place primary weight on the availability and prevalence of practical alternatives and to conclude that the evidence falls short of demonstrating the level of competition required to support deregulation.

Conclusion

30. The submissions from Chorus and NERA do not identify any error in the Commission's analytical framework or in its assessment of the evidence.
31. The draft report appropriately recognises that some competitive constraint exists in parts of the market. However, the evidence does not demonstrate that such constraints are sufficiently widespread, durable or effective to support deregulation.
32. In particular:
 - a. the LFC+ ≥ 2 framework remains the most appropriate benchmark for assessing workable competition;
 - b. buyer power cannot substitute for broad-based competition;
 - c. self-supply and bespoke builds are not generally available alternatives for the market as a whole;
 - d. concerns regarding geographically consistent pricing do not establish that deregulation would promote the long-term benefit of end-users; and
 - e. the wider evidence does not materially qualify the Commission's infrastructure-based findings.

[End]