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COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

Final framework for fibre deregulation reviews

Under section 210 of the Telecommunications Act 2001

The Commission

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Chapter 1 Introduction

Purpose of this paper

1.1 This paper sets out the Commerce Commission's (**Commission**) final legal and economic framework for carrying out fibre deregulation reviews under section 210 of the Telecommunications Act 2001 (**Act**). Deregulation reviews are carried out in respect of fibre services where we have concluded there are reasonable grounds to carry out a review.

1.2 This paper contains two chapters and an appendix:

1.2.1 Chapter 1 is this introduction.

1.2.2 Chapter 2 provides the legal and economic framework.

1.2.3 Appendix A provides our response to submissions received on the draft framework.

Fibre deregulation review framework

Legal framework

1.3 Since 1 January 2022, providers of regulated fibre fixed line access services (**FFLAS**)[1] (**regulated providers**) have been subject to regulation under Part 6 of the Act. Section 210 (in subpart 7 of Part 6) of the Act provides for the Commission to carry out reviews into the potential deregulation of one or more FFLAS (**fibre deregulation reviews**). Section 210 provides:

> **210 Deregulation review**
>
> (1) The Commission may, at any time after the implementation date, review how 1 or more fibre fixed line access services are regulated under this Part if the Commission has reasonable grounds to consider that those services—
>
> (a) should no longer be regulated under this Part; or
> (b) should no longer be subject to price-quality regulation under this Part.
>
> (2) For the purposes of subsection (1), the Commission may, without limitation, describe a service under review with reference to any 1 or more of the following:
>
> (a) the geographic area in which the service is supplied:
> (b) the service's end-users:
> (c) the service providers who seek access to the service:
> (d) the technical specifications of the service:
> (e) any other circumstances in which the service is supplied.
>
> (3) The Commission must, before the start of each regulatory period (except the first regulatory period), consider whether there are reasonable grounds to start a review.
>
> (4) A review may consider the following:
>
> (a) whether competition to 1 or more fibre fixed line access services has increased or decreased in a relevant market:
> (b) the impact of any increase or decrease on the ability of regulated fibre service providers to exercise substantial market power:
> (c) whether the purpose of this Part would be better met if 1 or more fibre fixed line access services—
> (i) were no longer regulated under this Part; or

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[1] The Act, s 5 definition of "fibre fixed line access service":
(a) means a telecommunications service that enables access to, and interconnection with, a regulated fibre service provider's fibre network; but
(b) does not include the following:
(i) a telecommunications service provided by a regulated fibre service provider (F) if the ultimate recipient of the service is F or a related party of F (as if the test for related parties were the same as the test in section 69U, applied with any necessary modifications):
(ii) a telecommunications service provided, in any part other than a part located within an end-user's premises or building, over a copper line:
(iii) a telecommunications service used exclusively in connection with a service described in paragraph (ii).

(ii) were no longer subject to price-quality regulation under this Part.

(5) The Commission must give interested persons a reasonable opportunity to give their views on the matters subject to review and the Commission must have regard to any views received.

(6) The Commission must make a recommendation to the Minister after a review.

1.4 We carry out fibre deregulation reviews when we have concluded (in a prior process) there are reasonable grounds to start a deregulation review.

1.5 Section 210 of the Act empowers us to carry out reviews and make recommendations to the Minister on whether one or more FFLAS:

1.5.1 should no longer be regulated under Part 6; or

1.5.2 should no longer be subject to price-quality regulation under Part 6.

1.6 In making our recommendation under section 210, our assessment is based on the evidence before us and reflects the forward-looking evaluative judgment required under sections 166 and 210 if the Act. If a service is no longer subject to price-quality regulation, it will likely remain subject to information disclosure regulation. This means that a regulated supplier will no longer be subject to a price quality path which sets the maximum prices or revenues a supplier can recover and quality standards. Information disclosure alone can be sufficient to promote the section 162 purpose by promoting transparency, which can encourage suppliers to improve their performance.

1.7 Under section 166, we must make the recommendation that we consider best gives, or is likely to best give, effect:

1.7.1 to the purpose in section 162 of the Act (purpose of Part 6); and

1.7.2 to the extent that we consider it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

1.8 The purpose in section 162 of the Act is as follows:

> The purpose of this Part is to promote the long-term benefit of end-users in markets for fibre fixed line access services by promoting outcomes that are consistent with outcomes produced in workably competitive markets so that regulated fibre service providers—
>
> (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
>
> (b) have incentives to improve efficiency and supply fibre fixed line access services of a quality that reflects end-user demands; and

(c) allow end-users to share the benefits of efficiency gains in the supply of fibre fixed line access services, including through lower prices; and

(d) are limited in their ability to extract excessive profits.

1.9 Our reviews may also consider the factors in section 210(4) of the Act, namely:

1.9.1 whether competition to one or more FFLAS has increased or decreased in a relevant market:

1.9.2 the impact of any increase or decrease on the ability of regulated providers to exercise substantial market power:

1.9.3 whether the purpose of Part 6 (in section 162 of the Act) would be better met if one or more FFLAS:

1.9.3.1 were no longer regulated under Part 6; or

1.9.3.2 were no longer subject to price-quality regulation under Part 6.

1.10 Our reviews will be forward-looking, taking account of present and expected market conditions, with and without regulation. In the "with regulation" scenario, we assume that the regulation – that is, information disclosure and/or price-quality regulation – remains in place. Where it will inform our assessment, we may compare these market conditions to those that prevailed in 2018/19 when Parliament decided that FFLAS should be subject to Part 6 regulation.

1.11 We may also take into consideration the costs and benefits of deregulation, as increased costs or benefits may be passed on to consumers which is relevant to promoting the long-term benefits of consumers under the s 162 purpose statement. Such costs or benefits may include an increase or decrease in regulatory compliance costs.

Economic framework

1.12 This section sets out the economic framework we will apply to our fibre deregulation reviews.

1.13 The economic analysis is split into four key steps, which are as follows:

1.13.1 describing the service (step 1);

1.13.2 identifying alternatives (step 2);

1.13.3 considering the effectiveness of competition in the relevant markets including the effect of competition on substantial market power (step 3); and

1.13.4 applying the legal framework, including testing alignment with the purpose statement in section 162 (step 4).

1.14 While these steps guide how we carry out our fibre deregulation reviews, we note that:

1.14.1 where it is impractical and/or unnecessary to undertake analysis at a step, we may modify how we approach that step, or elect not to apply that step.[2] For example:

1.14.1.1 where a regulated service facilitates competition (such as by reducing barriers to switching), we may focus our assessment on the competition that the regulated service facilitates; or

1.14.1.2 where no alternatives exist, we may not assess competition; and

1.14.2 there might be other relevant considerations that should apply to each review

Describing the service (step 1)

1.15 Our first step is to describe the regulated service and the purpose the service serves. Doing this involves considering three key elements:

1.15.1 First, we consider how the service is described, including any descriptions or definitions in the Act and any regulatory decisions (if applicable), as this directs and informs the role the service is intended to play in the market.[3]

1.15.2 Second, we consider what the service is used for (the product dimension).[4] There may be multiple uses at different levels of the value chain (ie, wholesale and retail) that are influenced by the service (the functional dimension). Recognising that the service was initially regulated due to potential or actual end-user harm, we may also consider how service is supplied to end-users of the regulated service.

1.15.3 Third, we assess any geographic constraints to providing the service (the geographic dimension), which, alongside step 2 below, informs whether our competition analysis should be undertaken at a national level, or if a more granular approach is more appropriate.[5] The approach that is taken to identifying the geographic boundaries of the relevant market may be informed by any geographic differences in competitive conditions, including where competitors are actually present or in sufficiently close proximity to exercise a competitive constraint on the regulated service.

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2 This is subject to various considerations, including the nature and type of specific regulated service in question.

3 See the Act, s 210(2)(e).

4 See the Act, s 210(2)(d).

5 See s 210(2)(a).

1.16 In certain instances, we may identify dependencies between services, such as where one service is unlikely to be used without another, or where the deregulation of one service is impractical without the deregulation of others (due to actual or potential consumer harm). Such dependencies may guide how we undertake our analysis.

Identifying alternative services (step 2)

1.17 We will consider any alternatives that could provide direct and indirect competitive constraints to the service, including in downstream retail markets.[6]

1.18 Direct competitive constraints may exist where there are alternatives available at the same functional level as the regulated service. For example, in the case of FFLAS transport services, where alternative wholesale transport services exist, they may provide a direct competitive constraint on the FFLAS transport services. There may also or instead be competitive constraints that operate indirectly through downstream markets. For example, the wholesale FFLAS voice service may be constrained by the availability of retail mobile voice services offered by mobile operators. The way in which consumers purchase retail services may inform the product dimension in which competition takes place.

1.19 We view steps 1 and 2 as defining the relevant market(s) for the purposes of assessing competition in the fibre deregulation reviews.[7]

Considering the effectiveness of competition (step 3)

1.20 We will consider how much competition the service faces, and could be expected to face in the foreseeable future, with and without regulation. This may include analysis of factors such as:

1.20.1 whether the alternatives identified in step 2 rely on the regulated service;

1.20.2 market structure and trends;

1.20.3 the extent to which identified alternatives represent (sufficiently) close substitutes to the service including their availability and performance (the same applies for alternatives in downstream markets constraining services using the service being reviewed);

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6 A downstream market is one further down the supply chain. In the case of telecommunications, the retail broadband market (where the end-user buys a broadband service) is downstream from the wholesale broadband market (where a wholesaler sells a broadband service to an RSP who then on sells it to the end-user).

7 Defining markets, as opposed to defining services, is a distinct step in several review frameworks. However, we deem it most appropriate to combine this into steps 1 and 2 for ease of understanding. For further information on market definition, see Commerce Commission, "Mergers and acquisitions Guidelines" (May 2022), see Chapter 3.

1.20.4 actual demand and switching behaviour by access seekers (retail service providers) and end-users; and

1.20.5 any other factors that may constrain the regulated providers from raising prices. This may include the threat of entry. For example, a competing provider of transport services may not be directly located in a central office, but may nevertheless be in close enough proximity to represent a competitive constraint on the FFLAS transport services at that central office. The threat that nearby transport providers may extend their network to connect into the central office could competitively constrain the decisions of the FFLAS transport provider at that central office.

Applying the legal framework, including testing alignment with the purpose of Part 6 (step 4)

1.21 We will consider whether, for the service described in step 1, the service should no longer be regulated under Part 6 or should no longer be subject to price-quality regulation under Part 6.

1.22 This will include an assessment of whether or not the s 162 purpose is likely to be best given effect to, or will be likely to best given effect to, by continuing to regulate the service, relative to a counterfactual of no longer regulating the service (a with/without assessment). We will also assess, where relevant, whether or not continuing to regulate will best give effect to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

1.23 We will consider this in the round, taking account of any alternatives identified in step 2 and the consideration of the effectiveness of competition faced by the service in step 3.

Impact of deregulation on anchor services obligation

1.24 Under s 198, a regulated fibre service provider who is subject to price-quality regulation must provide an anchor service if an anchor service has been declared. Voice and broadband anchor services have been declared in regulations under s 227.

1.25 On a literal reading, s 198 is capable of being interpreted as requiring a regulated fibre service provider to provide all anchor services if it is subject to PQ regulation, even if the provider is not subject to PQ regulation in respect of the anchor service. This would have the effect, for example, of requiring a provider to provide the voice anchor service even if the provider was not subject to PQ with respect to voice FFLAS, so long as the provider was subject to PQ in respect of other services.

1.26 We do not consider that Parliament can have intended this outcome. Rather, we think the intention was, and the preferred reading is, that a regulated fibre service provider must provide a declared anchor service if it is subject to PQ regulation with respect to that service. This means, for example, that if voice FFLAS were to be deregulated, a provider would not be obligated under s 198 to provide the voice anchor service, as it would not be subject to PQ in respect of voice FFLAS.

Appendix A: Response to submissions

Submissions on legal and economic framework

1.27 We received submissions from OneNZ and Spark on the draft legal and economic framework, and cross-submissions from Chorus, Enable and Tuatahi.

1.28 One NZ's submission[8] supported the draft framework for the fibre deregulation reviews. However, One NZ submitted that when considering whether to deregulate a service, each fibre fixed line access service should not be considered in isolation. One NZ noted that fibre networks are multi-product platforms, where services are delivered over shared infrastructure. As a result:

1.28.1 "a narrow, service-by-service approach risks producing misleading conclusions about the strength of competitive constraints and the potential impacts of deregulation"[9]

1.28.2 "Only where competitive pressure are clearly observable across a meaningful range of FFLAS, and where the wider system effects of deregulation are well understood, should deregulation be contemplated."[10]

1.29 Spark also agreed with part of the proposed framework, noting that "understanding how the service is used, and competitive constraints, is a useful starting point for a deregulation review".[11]

1.30 However, Spark submitted that the focus on individual services "is unlikely to expose the competition and regulatory complexities associated with the multi-product Chorus and LFC fibre network that sits at the centre of the telecommunications sector. Competition analysis would typically start with a robust determination of the relevant market rather that a product service description. [12]

1.31 According to Spark. The Commission should:[13]

[8] One NZ "Submission on draft framework paper for fibre deregulation reviews and draft recommendation on fibre voice services: (27 November 2025), para 2
[9] One NZ "Submission on draft framework paper for fibre deregulation reviews and draft recommendation on fibre voice services: (27 November 2025), para 5
[10] One NZ "Submission on draft framework paper for fibre deregulation reviews and draft recommendation on fibre voice services: (27 November 2025), para 7
[11] Spark "Submission on draft framework paper for fibre deregulation reviews and draft recommendation on fibre voice services: (27 November 2025), para 3
[12] Spark "Submission on draft framework paper for fibre deregulation reviews and draft recommendation on fibre voice services: (27 November 2025), para 4
[13] Spark "Submission on draft framework paper for fibre deregulation reviews and draft recommendation on fibre voice services: (27 November 2025), para 7

1.31.1 "Consider the nature of competition across several relates services and the totality of the effects in the market of deregulating a subset of services in considering whether deregulation is warranted;

1.31.2 "Consider whether deregulation of a service or variant will – across the RAB or the relevant network or platform (rather than for that specific service) – better promote section 162 outcomes than the counterfactual. In other words, whether deregulation of a specific service better promotes s 162 / 168 [sic] in the context of the overall fibre network and regulatory framework".

Cross-submissions

1.32 In its cross-submission, Chorus responded by stating that "[b]oth Spark and One NZ claim a single service review risks missing portfolio effects. The presence of common and shared costs is a supply-side fact, not evidence of market power on the demand side. Competition analysis focuses on the extent to which buyers can switch to alternatives in response to price/quality changes for the service in question." [14]

1.33 Similarly, Enable disagreed with Spark and One NZ's position and supported the Commission's approach. It noted that "Part 6 specifically envisages a deregulation review of one or more fibre services, and the Commission has described in previous paper how it's approach is appropriate and consistent with the Telecommunications Act." [15]

1.34 Finally, Tuatahi noted that Spark and One NZ's submissions "are inconsistent with the deregulation process in Part 6, which contemplates a review of one or more fibre services. The Commissions draft framework paper already recognises that, in certain instance, the Commission may identify dependencies between services and situations where deregulation of one service is impractical without the deregulation of others – and that there is a relevant factor which the Commission will take into account where it identifies such dependencies." [16]

Response to submitters

1.35 As noted above , the parties provided submissions and cross-submissions on the draft framework generally agree with the proposed framework. The main point of difference relates to whether the framework should be applied to individual services or to a range of services to reflect the multi-product nature of the fibre networks.

[14] Chorus "Cross-submission on draft framework paper for fibre deregulation reviews (27 November 2025), para 7

[15] Enable "Cross-submission on draft framework paper for fibre deregulation reviews (15 December 2025), para 7

[16] Tuatahi "Cross-submission on draft framework paper for fibre deregulation reviews (17 December 2025), para 7

1.36 When assessing whether a regulated service should remain regulated or should be deregulated, a key consideration is whether that ervices faces sufficient competition from independent services, such that regulation is no longer necessary. As set out in the draft framework, this involves starting with regulated service and considering how it is used, and then identify substitutes that exist at the wholesale or retail level and whether they constrain in the regulated service. One NZ itself submits later than in respect of FFLAS voice, "the Commission has correctly identified that the overall retail voice market now includes a wide range of substitutes". As Chrous agreed in its cross-submission, an analysis of competition should focus on the demand-side and the extent to which buyers can switch to alternatives in response to a price (or quality) change for the regulated service, as both One NZ and Spark do in relation to voice services.

1.37 Having said that, there may be circumstances in which it may be appropriate to consider multiple services, as if consumers typically purchase such services in a bundle. In that case, it may be appropriate to approach competition as taking place for the bundle of services, as opposed to for individual services. However, as discussed in the voice draft decision, it appears that many consumers of FFLAS based broadband services acquire their voice services in other ways, such as mobile voice services, VoIP over fibre or other broadband services, or over-the-top applications. FFLAS voice appears to face competition from a wide range of alternatives, as acknowledged by One NZ, Spark, as well as the LFCs. This suggests that voice and broadband services are typically purchased as separate services and may face different competitive conditions, in which case assessing each as individual services will assist in revealing whether regulation remains appropriate.

1.38 We also note the cross-submissions from Tuatahi and Enable, that s 210 of the Act refers to one or more FFLAS, which indicates that deregulation reviews on individual FFLAS is open to us. For example, s 210(4) refers to whether competition to one or more FFLAS has increased or decreased in a relevant market, and the impact of that increase or decrease in competition on the ability to exercise substantial market power.

1.39 We acknowledge that the multi-service nature of fibre networks, and the presence of costs that are common across different services, will mean that any decision to remove regulation from one service may haver implications for the allocation of costs to the remaining regulated services that are supplied over the same network. We will address cost allocation issues in the context of specific reviews of regulated services. As notes in the above framework, we can take into account the costs and benefits of deregulation.

1.40 Having had regard to the submission and cross-submission received on the draft framework, we continue to be of the view that the approach outlined in the draft framework remains appropriate for the purposes of undertaking deregulation reviews.

Submissions on impact of deregulation on anchor services obligation

Submissions and cross-submissions

1.41 We received one submission from Chorus on the impact of deregulation on the anchor services obligation, and one cross-submission from Spark.

1.42 Chorus disagreed with our draft view that, even if voice FFLAS were deregulated under section 210, the voice anchor service would remain in force unless changed through the separate anchor services review process in section 208.

1.43 Chorus noted that:[17]

> The Commission's argument appears to be that section 198 of the Act requires Chorus to continue supplying the voice anchor service, even after the deregulation of voice FFLAS, because Chorus remains "a regulated fibre service provider who is subject to price-quality regulation". The Commission interprets this to mean Chorus remains subject to all declared anchor services regardless of the scope of PQ regulation, provided Chorus is subject to PQ regulation in relation to at least one or more FFLAS.

1.44 Chorus submitted that "[t]he stronger interpretation, consistent with the scheme of Part 6, is that a regulated fibre service provider must provide a declared anchor service if it is subject to PQ regulation with respect to that service." In other words, the scope of PQ regulation determines the application of anchor services". [18]

1.45 Chorus noted that this is the interpretation the Commission previously took in relation to s 201 of the Act, in relation to geographically consistent pricing, and referred to the following text from our Fibre IM final reasons paper:

> 1.45.1 On a literal reading, s 201 is capable of being interpreted as applying to all services (ie on the basis that Chorus is a "regulated fibre service provider who is subject to price-quality regulation" and it must offer geographically consistent pricing whenever it supplies FFLAS, regardless of whether those particular services are subject to PQ regulation. However, we consider that Parliament intended s 201 to apply only to those services subject to PQ regulation, and not services that are subject to ID regulation only, for the following reasons:
>
> 1.45.2 Section 201 is within subpart 6 (concerned with PQ regulation); and

[17] Chorus "Submission on draft framework paper for fibre deregulation reviews (27 November 2025), para 24

[18] Chorus "Submission on draft framework paper for fibre deregulation reviews (27 November 2025), para 25

1.45.3 There are other instances in the Act where regulation is described by reference to the regulated provider providing services, when it is clear the intention is only to capture that regulated provider to the extent that they provide services regulated under s 226.

1.45.4 See for example s 193 which provides "A regulated service provider who is subject to price-quality regulation in respect of [FFLAS] must apply the price-quality paths set by the Commission". It is clear that the provider is only required to apply PQ paths to those services that are subject to PQ regulation.

1.46 In response, Spark submitted that "it's an open question as to whether an anchor service is required, and could exist, if FFLAS voice is deregulated". It went on to say that "[o]n balance we think that anchor service remains relevant to a material group of customers with particular demand features and – accordingly – the Commission should ensure that it can continue to provide for FFLAS voice as an anchor service".

Response to submissions

1.47 We agree with Chorus that, taking a purposive approach, the correct interpretation is that, under s 198, a regulated fibre service provider must provide a declared anchor service if it is subject to PQ regulation with respect to that service. This means, for example, that if a regulated fibre service provider is not subject to PQ regulation with respect to voice FFLAS, it is not obligated under s 198 to provide the voice anchor service.

1.48 We consider this interpretation better reflects the structure and intent of Part 6. It would not make sense for a service to be deregulated, yet remain subject to an anchor service obligation, including a price cap.

1.49 This position is also consistent with our position on geographically consistent pricing under s 201, as set out in our Fibre Ims final reasons paper.