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Vanessa Howell
Head of Fibre Regulation
Commerce Commission
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By email: TelcoFibre@comcom.govt.nz

Dear Vanessa

New Fibre Regulation: development and funding

We welcome the opportunity to submit to the Commerce Commission's request for feedback on implementing a new regulatory framework for fibre services. The introductory stakeholder workshop held on May 2 was a valuable start to what will be a very intensive development period as soon as enabling legislation is passed by Parliament.

Cross-sector precedent for input methodologies and price-quality regulation

We have monitored the Commission's price regulation in telecommunications for potential precedent value of decisions in one sector applying to other sectors. For example, the proposed fibre regulation for Chorus (under new Part 6 of the Telecommunications Act) mimics the regulatory arrangements which apply to Transpower under Part 4 of the Commerce Act.

We are interested in the Commission's views on regulatory certainty and how the Commission reflects that in setting the input methodologies (IMs) IMs and prices for telecommunications activities, compared with regulatory certainty and predictability under Part 4. We note the Commission's emphasis on Chorus' desire for regulatory certainty as a reason for expediting the IMs, and new regulated prices.

As the Commission develops the fibre IMs we think it would be helpful if the Commission can identify whether differences in approach to the Part 4 reflect industry-specific and legislative differences, or alternatively reflect that the Commission's thinking has evolved or changed. Such understanding will assist stakeholders to see how fibre IMs might impact on future review or changes to the Part 4 IMs.

Development timeline and funding

The development of the new fibre price regulation will be a substantial additional undertaking for the Commission. The Commission faced similar changes with the establishment of the Part 4A 'thresholds' regime and then the replacement Part 4 regime. For example, when the Commission developed the Part 4 IMs, pre-existing methodologies were in place for each of the building blocks for price determination (cost allocation, asset valuation, depreciation, WACC, tax treatment etc).

We caution that compressed timetables can affect the extent to which stakeholders, particularly consumers and smaller service providers, can meaningfully engage with the process (a point made at

the Commission workshop). In our view, the 18 months proposed by the Commission to develop the fibre IMs appears highly challenging.

The original IMs for the electricity sector (excluding the Capex IM for Transpower) were determined 25 months after the new Part 4 legislation was enacted, with amendments required in the following two years. The new price regulation was finished over 3 and a half years later after the legislation.

The 18 months timetable also appears ambitious when compared to the Commission's statutory review of the IMs, which took longer. The review of the Capex IM alone has taken 13 months.

To ensure quality regulatory development and stakeholder engagement, and to ensure better certainty for all affected parties, we consider the Commission should apply to the Minister for the (up to two years) extension provided under clause 7 of new Part 2 of the Telecommunications Act.¹

We consider additional funding for the step change in Commission outputs is necessary but defer to the affected parties to comment on amount. We do agree with the views expressed at the workshop that the Commission could improve information disclosure about allocation of appropriations, to understand the trade-offs between Commission outputs that may need to be made.

Role of consumers in development of regulation

The Commission has floated the idea of potentially funding consumers to participate in a Consumer Panel or similar. While we support the idea, we would not support such an initiative being introduced in an ad hoc manner. We consider more research is needed to understand the evidence for costs and functions of consumers' roles in other jurisdictions.

Given that expediency may be of value in the tight development time-frame proposed (before any extension), perhaps existing consumer representation could be leveraged or supported, rather than starting afresh. If an extension is sought and given, then the extended process may allow a new approach to consumer representation to be more fully considered.

Yours sincerely

Rebecca Osborne
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¹ [Telecommunications \(New Regulatory Framework\) Amendment Bill](#) As reported from the Economic Development, Science and Innovation Committee