



Cabinet Economic Growth and Infrastructure Committee

Minute of Decision

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Review of the Telecommunications Act 2001: Final Decisions on Fixed Line Services, Mobile Regulation and Consumer Protection

Portfolio Communications

On 10 May 2017, the Cabinet Economic Growth and Infrastructure Committee (EGI):

Background

- 1 **noted** that in September 2015, the Minister for Communications (the Minister) consulted on the regulatory settings for communications markets after 2020;
- 2 **noted** that:
 - 2.1 Ultra-Fast Broadband (UFB) pricing is currently controlled by contracts, which expire at the end of 2019;
 - 2.2 there is widespread support for the government to set in place a building blocks (BBM) pricing regime after that date;
- 3 **noted** that in April 2016, EGI:
 - 3.1 made the following high level decisions in relation to the new pricing framework:
 - 3.1.1 to move to a utility-style regulatory regime with a BBM pricing methodology for UFB services from 1 January 2020;
 - 3.1.2 if BBM price control is implemented for Chorus' UFB services, that it also be implemented for its copper services;
 - 3.1.3 that these regulatory settings be established in the Telecommunications Act 2001 (the Act), rather than the Commerce Act 1986;
 - 3.1.4 that the current obligation to unbundle the point-to-multipoint parts of the UFB network from 1 January 2020 be retained;
 - 3.1.5 that the government support a policy of maintaining price stability in the transition to a new regime;

- 3.2 authorised consultation on the following options for promoting competition in mobile markets:
- 3.2.1 streamlining the Commerce Commission's process to recommend price regulation (the Schedule 3 process);
 - 3.2.2 directly intervening to make roaming or co-location a price regulated service;

[EGI-16-MIN-0040]

- 4 **noted** that in August 2016, EGI agreed to the release of the *Telecommunications Act Review: Options Paper*, seeking input on ways to help promote competition in mobile markets [EGI-17-MIN-0164];
- 5 **noted** that in December 2016, EGI noted that the Minister intended to separately bring back proposals relating to mobile markets and dealing with non-price issues, such as dispute resolution, fault rectification and installation service levels [EGI-16-MIN-0361];

Fixed line services

- 6 **noted** that in December 2016, EGI agreed to the detailed elements of the new pricing framework for fixed line services, including that:
- 6.1 outside areas where UFB or other (non-UFB) fibre services are available, Chorus will be required to continue providing the 'unbundled bitstream access' (UBA) wholesale copper broadband product, as well as the 'unbundled copper low frequency service' (UCLFS) wholesale copper voice product (which supports the Telecommunications Service Obligation) on the same terms as it is required to do so on 31 December 2019;
 - 6.2 the 2019 regulated prices for UBA and UCLFS, which have been set by the Commerce Commission, will be 'rolled over' annually in nominal terms and continue to apply to those copper services that remain regulated from 1 January 2020;
 - 6.3 on 1 January 2020, copper services will be deregulated inside areas where UFB and other (non-UFB) fibre services are available;
 - 6.4 the Telecommunications Service Obligation for Local Residential Telephone Service will be removed from Chorus and Spark inside areas with UFB or other (non-UFB) fibre from 1 January 2020;

[EGI-16-MIN-0361]

- 7 **noted** that, following analysis of submissions and advice from officials, the Minister has decided on refinements to the detailed policy package implementing the pricing framework;

Further de-regulation of copper

8 **noted that:**

8.1 in December 2016, EGI agreed that after 1 January 2020, there will be a regular review mechanism whereby further deregulation of copper can take place as fibre is rolled out, and that regulation of a particular area will be subject to the Minister for Communications being satisfied that fibre is sufficiently widely available in that area [EGI-16-MIN-0361];

8.2 following further submissions and analysis, the Minister now recommends a revised approach on the basis that it will streamline the administrative process;

9 **agreed to recommend** that Cabinet rescind the decision referred to in paragraph 8.1 above; and instead

10 **agreed that:**

10.1 there will be a regular review mechanism whereby further deregulation of copper can take place as fibre is rolled out;

10.2 the Commerce Commission will decide whether a particular area can be deregulated based on it being satisfied that fibre is sufficiently available in that area;

11 **agreed** that in areas where copper is deregulated, it will no longer be subject to Subpart 4 of Part 2A of the Telecommunications Act 2001, which requires non-discrimination and equivalence of inputs for the copper network;

12 **noted that:**

12.1 in December 2016, EGI agreed that the pricing framework for copper services be reviewed by the Commerce Commission no later than 2023 to ensure it remains fit for purpose, with the Commission making recommendations as to whether to continue with the arrangements or modify them (for example, by re-regulating copper services if necessary) [EGI-16-MIN-0361];

12.2 following further analysis, the Minister now recommends a revised approach on the basis that it will streamline the administrative process;

13 **agreed to recommend** that Cabinet rescind the decision referred to in paragraph 12.1 above; and instead

14 **agreed** that the pricing framework for copper services be reviewed by the Commerce Commission no later than 2025 to ensure it remains fit for purpose, with the Commission making recommendations as to whether to continue with the arrangements or modify them (for example, by re-regulating copper services);

15 **noted that:**

15.1 in December 2016, EGI agreed that the 2019 regulated prices for UBA and UCLFS, which have been set by the Commerce Commission, will be 'rolled over' annually in nominal terms and continue to apply to those copper services that remain regulated from 1 January 2020 [EGI-16-MIN-0361];

- 15.2 following further submissions and analysis, the Minister now recommends a revised approach on the basis that it will produce better outcomes for consumers, investors and suppliers;
- 16 **agreed to recommend** that Cabinet rescind the decision referred to in paragraph 15.1 above, and instead
- 17 **agreed** that the 2019 regulated prices for UBA and UCLFS, which have been set by the Commerce Commission, will be ‘rolled over’ annually (with a CPI adjustment) and continue to apply to those copper services that remain regulated from 1 January 2020;

Specification of anchor products

- 18 **noted** that:
- 18.1 in December 2016, EGI agreed that the Commerce Commission will thereafter be responsible for updating the specifications of the anchor product set, prior to each regulatory period, to ensure that it:
- 18.1.1 provides an upper limit on pricing for a product that is attractive to a large number of customers;
- 18.1.2 provides a price and quality ‘anchor’ for the other ‘non-anchor’ products provided by regulated suppliers;
- 18.2 following further submissions and analysis, the Minister now recommends a revised approach on the basis that it will produce better outcomes for consumers, investors and suppliers;
- [EGI-16-MIN-0361]
- 19 **agreed to recommend** that Cabinet rescind the decision referred to in paragraph 18.1 above, and instead
- 20 **agreed** that the Commerce Commission will be responsible for updating the specifications of the anchor product set, prior to each regulatory period, to ensure that it:
- 20.1 provides an upper limit on pricing for an entry-level product;
- 20.2 provides a price and quality ‘anchor’ for the other ‘non-anchor’ products provided by regulated suppliers;
- 21 **agreed** that the anchor product prices will be exempt from Part 2 of the Commerce Act until such time as they become cost-based;

Valuing regulatory assets

- 22 **noted** that:
- 22.1 in December 2016, EGI agreed that the opening value of each regulated supplier’s Regulated Asset Base (RAB) will be determined by the Commerce Commission on the basis of the unrecovered historic costs incurred by the regulated supplier, but only to the extent that those costs were efficiently incurred [EGI-16-MIN-0361];
- 22.2 following further submissions and analysis, the Minister now recommends a revised approach on the basis that it will streamline regulatory processes;

- 23 **agreed to recommend** that Cabinet rescind the decision referred to in paragraph 22.1 above, and instead
- 24 **agreed** that the opening value of each regulated supplier's asset base at 2020 will be determined by the Commerce Commission as follows:
- 24.1 post-2011 assets should be valued on the basis of the actual costs incurred by the supplier in constructing or acquiring those assets, which have not yet been recovered at 2020 (termed 'depreciated actual costs');
- 24.2 pre-2011 assets should also be valued on the basis of the actual costs incurred by the supplier in constructing or acquiring those assets, and due to the difficulties in obtaining reliable information about the amount and recovery of those costs, the depreciated values recorded by Chorus in its accounting statements should be adopted (termed 'depreciated historic cost');
- 25 **agreed** that in either case a replacement cost valuation will not be acceptable because it is not an estimate of historic costs incurred by the supplier;
- 26 **noted** that:
- 26.1 in December 2016, EGI agreed that in determining costs incurred for the RAB, the Commerce Commission must have regard to the government's objectives of accelerating the widespread deployment of fibre-to-the-premise and encouraging end-user uptake, including by ensuring that:
- 26.1.1 efficient costs incurred as a direct result of meeting specific requirements in UFB or UFB extension programme contracts are included;
- 26.1.2 efficient costs of 'standard' and 'non-standard' installations are included;
- 26.1.3 the value of the opening RAB is increased by the financial losses efficiently incurred by suppliers prior to 2020 to the extent that those losses arose from meeting specific requirements under the UFB or UFB extension programme contracts (including the timeframes for rollout and the prices that can be charged);
- [EGI-16-MIN-0361]
- 26.2 following further submissions and analysis, the Minister now recommends a revised approach on the basis that it will streamline regulatory processes;
- 27 **agreed to recommend** that Cabinet rescind the decision referred to in paragraph 26.1 above; and instead
- 28 **agreed** that in determining costs incurred for the RAB, the Commerce Commission must have regard to the government's objectives of accelerating the widespread deployment of fibre-to-the-premise and encouraging end-user uptake, including by ensuring that:
- 28.1 costs incurred as a direct result of meeting specific requirements in UFB or UFB extension programme contracts are included;
- 28.2 costs of 'standard' and 'non-standard' installations are included;

- 28.3 the value of the opening RAB is increased by the financial losses incurred by suppliers prior to 2020 to the extent that those losses arose from meeting specific requirements under the UFB or UFB extension programme contracts (including the timeframes for rollout and the prices that can be charged);

Direct Fibre Access Services

- 29 **agreed** that the Direct Fibre Access Service (DFAS) will be price-regulated;
- 30 **agreed** that the price for DFAS (from 1 January 2020) will be set at the 2019 level, and will be adjusted annually at the rate of inflation;
- 31 **agreed** that the price for DFAS will be exempt from action under Part 2 of the Commerce Act;
- 32 **agreed** that the Commerce Commission will determine the price, non-price and quality terms for DFAS prior to each regulatory period (except the first);
- 33 **noted** that:
- 33.1 in December 2016, EGI agreed to include a mechanism that, after 2023, enables the Commerce Commission to commence an investigation at any time after a certain overall threshold of fibre uptake has been achieved (for example, 65 percent) into:
- 33.1.1 whether the unbundled fibre services should become price-capped anchor products;
- 33.1.2 whether anchor products should become purely cost-based;
- 33.1.3 whether the 'form of control' should change from a revenue cap to 'price caps' (where all services provided by a supplier are subject to price caps set by the Commerce Commission);
- [EGI-16-MIN-0361]
- 33.2 following further submissions and analysis, the Minister now recommends a revised approach on the basis that it will produce better outcomes for consumers, investors and suppliers;
- 34 **agreed to recommend** that Cabinet rescind the decision referred to in paragraph 33.1 above, and instead
- 35 **agreed** to include a mechanism that, after 2023, enables the Commerce Commission to commence an investigation at any time criteria are met into:
- 35.1 whether the unbundled fibre services should become (or in the case of DFAS, remain) price-capped products;
- 35.2 whether anchor products should become purely cost-based;
- 35.3 whether the 'form of control' should change from a revenue cap to 'price caps' (where all services provided by a supplier are subject to price caps set by the Commerce Commission);

Mobile markets

- 36 **noted** that following analysis of submissions, the Minister has finalised a policy package to provide the Commerce Commission with enhanced capability to address emerging issues with wholesale mobile markets;
- 37 **noted** that the Minister will be writing to the Commerce Commission outlining his interest in the Commission conducting a study on the wholesale mobile market;
- 38 **agreed** to streamline the Schedule 3 processes to deliver more timely regulatory outcomes;
- 39 **agreed** to set a 'hard' deadline for the Commerce Commission to deliver its final Schedule 3 report to the Minister within 240 working days (or a 120 day limit for investigations into changing a 'specified' service to a 'designated' service);
- 40 **agreed** to make conferences and public hearings during the Schedule 3 process optional (i.e. at the Commerce Commission's discretion);
- 41 **agreed** to make undertakings submitted during a Schedule 3 investigation a 'one-shot' process, allowing only a single undertaking to be tabled (rather than successive, incrementally improved undertakings);
- 42 **agreed** to provide the Commerce Commission with the power to recommend either a one-stage (final pricing principle only) or two-stage (both initial pricing principle and final pricing principle) pricing process, when undertaking a Schedule 3 investigation;

Consumer matters

- 43 **agreed** to the following three broad policy objectives for consumers in the telecommunications sector:
- 43.1 consumers should be able to make informed choices about retail telecommunications services;
 - 43.2 consumers should be able to expect service quality at competitive standards, as well as competitive prices;
 - 43.3 if problems arise, there should be efficient and responsive complaint and dispute resolution procedures.
- 44 **agreed** to modify the Commerce Commission's monitoring powers to:
- 44.1 require reporting on retail service quality for telecommunications consumers;
 - 44.2 make such information readily accessible to consumers;
- 45 **agreed** to enable the Commerce Commission to establish regulated codes:
- 45.1 with wide industry coverage;
 - 45.2 for the purpose of protecting consumers (with a focus on improving retail service quality);
 - 45.3 if the industry fails to establish a code of sufficient standard;
- 46 **agreed** to the Commerce Commission having a power to apply to the Courts for remedies to address serious or systemic consumer issues;

- 47 **agreed** to require the Commerce Commission to:
- 47.1 review the Telecommunications Disputes Resolution Scheme periodically to provide advice to the Minister on whether:
- 47.1.1 Part 4B of the Telecommunications Amendment Act (No 2) 2006 should be implemented;
- 47.1.2 the existing scheme requires improvement; or
- 47.1.3 an alternative disputes resolution scheme should be developed;

Other matters

- 48 **agreed** to repeal the information disclosure provisions still remaining in Part 2B of the Telecommunications Act 2001 (the Act);
- 49 **agreed** to repeal the residual terms determinations provisions in subpart 1 of Part 2 of the Act;
- 50 **agreed** to repeal sections within Part 2A relating to the structural separation of Telecom that are no longer needed;
- 51 **agreed** to repeal sections 69R and 69S relating to Chorus' line of business restrictions;
- 52 **agreed** to repeal the offence for indecent telephone calls for pecuniary gain (section 113 of the Act);
- 53 **agreed** to update references from 'Telecom' to 'Spark' in the Act, as appropriate;
- 54 **agreed** to update references from 'Ministry of Economic Development' to 'Ministry of Business, Innovation and Employment';
- 55 **agreed** to repeal the requirement for the Minister to review the regulatory framework (section 157AA of the Act);
- 56 **agreed** to repeal any expired provisions in the Act;

Next steps

- 57 **noted** that the Minister intends to release a copy of the paper and minute associated with the submission EGI-17-SUB-0087, when he makes public announcements about the outcomes of the review of regulatory settings;
- 58 **noted** that the Telecommunications (New Regulatory Framework) Amendment Bill has a **s9(2)(f)(iv)** on the 2017 Legislation Programme **s9(2)(f)(iv)**
- 59 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy decisions described in the paper under EGI-17-SUB-0087;
- 60 **authorised** the Minister to make decisions on any minor or technical matters that may arise during the drafting process;

61 **noted** that the Minister for Communications intends to report to the Cabinet Legislation Committee ^{s9(2)(f)(iv)} seeking agreement to introduce a Bill that incorporates the changes agreed above

Janine Harvey
Committee Secretary

Present:

Hon Paula Bennett
Hon Steven Joyce (Chair)
Hon Simon Bridges
Hon Amy Adams
Hon Michael Woodhouse
Hon Anne Tolley
Hon Dr Nick Smith
Hon Judith Collins
Hon Paul Goldsmith
Hon Louise Upston
Hon Alfred Ngaro
Hon Nicky Wagner
Hon Jacqui Dean
Hon David Bennett
Hon Tim Macindoe
Hon Scott Simpson
Hon Te Ururoa Flavell

Officials present from:

Officials Committee for EGI

Hard-copy distribution:

Minister for Communications