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TRUSTPOWER SUBMISSION: TELECOMMUNICATIONS ACT REVIEW: POST-2020 REGULATORY FRAMEWORK FOR FIXED LINE SERVICES DISCUSSION PAPER

1 Introduction and overview

1.1 Overview of proposed reforms

- 1.1.1 Trustpower Limited (**Trustpower**) welcomes the opportunity to provide a submission to the Ministry of Business, Innovation, and Employment (**MBIE**) on its February 2017 *Telecommunications Act Review: Post-2020 Regulatory Framework for Fixed Line Services* Discussion Paper.
- 1.1.2 The Discussion Paper outlines the introduction of new separate pricing frameworks for:
- a) Ultra-Fast Broadband (**UFB**) and other fibre services (“the fibre pricing framework”); and
 - b) Copper services (“the copper pricing framework”)
- which will both operate from 2020 alongside the existing regulatory framework that will apply to all other forms of communication services (including mobile).¹
- 1.1.3 We understand that the fibre pricing framework will apply as follows:
- a) Chorus’ UFB network will be subject to information disclosure regulation and price-quality regulation; and
 - b) Local Fibre Companies (**LFCs**) will be subject to information disclosure regulation but will also be extensively monitored by the Commerce Commission (**the Commission**) who will have sufficient information available to it so as to enable price-quality regulation arrangements to be implemented in a timely manner if there are signs of monopolistic behaviour occurring.

¹ We note that the proposal focusses on the fibre networks operated by Chorus and LFCs and on parts of Chorus’ copper network.

- 1.1.4 We understand that the proposed copper pricing framework will be based on a “grandfathering” approach so as to recognise that the copper network is near the end of its life and is ultimately being replaced by the fibre network in urban areas.
- a) In areas where fibre is not available, Chorus will be required to continue supplying copper services at prices capped at 2019 levels (no inflation adjustment); and
 - b) Where fibre is available, copper will be de-regulated, enabling Chorus the choice as to whether to continue operating it or to close it down, subject to minimum customer protection requirements being met.
- 1.1.5 We note that MBIE is expressly seeking the views of interested parties on the proposed copper pricing framework during this current round of consultation.

1.2 Overview of Trustpower’s views and structure of this submission

- 1.2.1 In earlier submissions, we supported the previously proposed technology neutral approach. However, we understand that MBIE has decided to adopt separate regulatory models (for fibre and copper services) due to the complexities associated with adopting a single regulatory model. Our comments in this submission are provided in this context.
- 1.2.2 Our comments are intended to be of assistance to MBIE during the next phase of developing the detailed regulatory arrangements. They are specifically focussed on ensuring that:
- a) the proposed regulatory models can operate in a manner that ensures that post-2020 all customers receive telecommunications services that meet their needs, with respect to both cost and quality;
 - b) appropriate protections for customers are put in place; and
 - c) more broadly, no unintended consequences from the regulatory pricing frameworks arise.
- 1.2.3 The key areas that we have identified for consideration by MBIE at this time are as follows:
- a) Clarifying the definition of “UFB or other fibre availability in an area and ability to install a UFB connection” to ensure fibre is truly available to each house prior to the de-regulation of copper services (section 2);
 - b) Ensuring that the removal of copper doesn’t cause financial hardship to customers (section 3);
 - c) Ensuring that the anchor products that are implemented in 2020 are appropriate and fit for purpose (section 4); and
 - d) Ensuring timely implementation of price-quality regulation for LFCs if required (section 5).
- 1.2.4 Section 6 of this submission outlines some additional considerations for MBIE at this time.
- 1.2.5 We look forward to continuing to engage with MBIE on these important matters over the next few months while the detailed drafting of the pricing frameworks is further developed.

2 Clarifying the definition of “UFB or other fibre is available” to ensure fibre is truly available to a connection prior to the de-regulation of copper services

- 2.1.1 We consider it is important that the definition of “areas where UFB or other fibre is available” is unambiguous. Following discussions with MBIE we understand that the definition of UFB is only intended to cover fibre and does not extend to fixed wireless services. This should be made explicit in the relevant legislative changes.
- 2.1.2 We consider it is also important that fibre is truly available prior to the withdrawal of copper services. There are circumstances where customers will not be able to connect to fibre even though fibre is available for their address. For example, this may occur where land access issues

cannot be resolved in a Multi-Dwelling Unit or Right of Way situation, or in the case a landlord does not provide a tenant permission to install fibre. In these circumstances, while fibre is available at the roadside, it cannot be connected to the house and as such remains unavailable. If copper services are withdrawn from these consumers, it could result in a loss of service or exposure to monopolistic pricing from a service provider offering an alternative service (most likely a Fixed Wireless service).

- 2.1.3 It is important that MBIE recognises that there is an interconnection between the current process seeking to address land access issues for the deployment of fibre and the ability for the proposed changes to the regulation of copper services as a result.
- 2.1.4 The currently proposed amendments to land access² could address many of the land access issues, however they will not resolve all of them, including the landlord consent issue. At this time, we still consider there is uncertainty regarding:
- a) Whether access will be provided where an invasive installation is required. If access is not granted then customers would be left in a situation of having neither copper nor fibre services available at their house; and
 - b) How the proposed disputes resolution process would work in practice.
- 2.1.5 Given these persisting uncertainties, we support MBIE in ensuring that the minimum requirements that must be met by Chorus before copper is withdrawn capture that:
- a) Customers always have access to telecommunications services; and
 - b) Fibre is truly available to be installed without objection or constraints³.
- 2.1.6 We note that the reference of “availability at a premise” as opposed to “availability in an area” that is encapsulated in the stated minimum standards goes some way towards addressing the above stated concerns with respect to availability. However, we recommend that MBIE further clarifies that the minimum standard as follows:
- “...the availability of UFB services and ability to install a UFB connection (if necessary) without objection or constraint and at no cost...”
- 2.1.7 We also note that the specific minimum requirements for withdrawal outlined in the Discussion Paper includes “anchor products or suitable commercial alternative are available to affected premises”⁴. It is unclear what would be considered a “suitable commercial alternative”. For example, would this be limited to fibre products or will it also potentially include wireless products. This should be made unambiguous.
- 2.1.8 We note that, if it is intended that a “commercial alternative” could include wireless products, these should be open access products.
- 2.1.9 We recommend that further guidance is provided by MBIE around the minimum standards to be incorporated into the regulated Copper Withdrawal Code (**the Code**).⁵ In particular, we suggest the following points need consideration, in addition to those outlined above:
- a) What is intended by a reference to a “premise” – i.e. if there is a granny flat at the back of the house would this be considered as separate premise.
 - b) Where only a commercial alternative provided by an LFC is available to a premise, then it is possible that customers may experience bill shock as the LFC’s pricing would not be regulated.

² Refer to the *Telecommunications (Property Access and Others matters) Amendment Bill*

³ We note that potential changes to ensure access is not unreasonably prohibited could be incorporated into other legislative arrangements such as the *Residential Tenancies Act 1983*. We would be happy to explore these further with MBIE.

⁴ Discussion Paper, at page 7. We note alternatively that in the Cabinet paper the reference is only to the availability of anchor products.

⁵ Further details of our views regarding the development of the Code are outlined in section 6.2 of this submission.

Does MBIE intend to incorporate any sort of safeguards into the design to protect customers in these circumstances?

- 2.1.10 We note that it is vital that the detailed design clarifies these matters (and identifies any other areas of uncertainty) so as to avoid unintentional outcomes arising. We look forward to continuing to work with MBIE on this.

3 Ensuring that the removal of copper doesn't cause financial hardship to customers

- 3.1.1 We are concerned that broader customer welfare issues could arise if there is any cost associated with the installation of fibre for customers.
- 3.1.2 We understand that MBIE intends for there to be no costs associated with installation of the UFB connection in the majority of cases.⁶ However, we note that there may be additional costs to customers associated with adjusting alarm systems, phones may need changing, purchasing a modem, potential wiring integration, installation of the ONT within the house etc.
- 3.1.3 It is unclear whether these additional costs are intended to be captured by the proposed minimum requirements for copper withdraw that MBIE has outlined.
- 3.1.4 If a customer has previously chosen to not have UFB installed due to price considerations, then requiring them to incur these indirect costs if copper is removed will either:
- a) create a welfare issue by requiring them to incur indirect costs associated with the installation fibre they cannot afford; or
 - b) result in them no longer having access to basic telecommunications services.
- 3.1.5 We consider that either of these alternative outcomes would be sub-optimal from a policy perspective, particularly as telecommunications is widely considered to be an essential service.
- 3.1.6 We recommend that MBIE clarifies:
- a) that the definition of zero costs, which is referred to in the minimum standards, captures all related costs associated with the UFB installation, at least for customers that would otherwise be unable to have fibre installed; and
 - b) how it is intended that the costs associated with the installation of UFB will be covered.
- 3.1.7 We look forward to continuing to work with MBIE to ensure an appropriate framework to protect customers is implemented as part of this reform package.

4 Ensuring that the anchor products that are implemented in 2020 are appropriate

- 4.1.1 We consider that the Commission should determine the appropriate specifications of the anchor products closer to the start of the first regulatory period (in 2020). This is because the anchor products must be fit for purpose and remain a viable alternative to the services made available commercially.
- 4.1.2 There is a risk that if the anchor products are defined now, with respect to both specifications and prices, they may not be fit for purpose even before they are implemented given the fast pace of change within the industry. It is for this reason that it is important that the regulatory regime incorporates arrangements to review the service specifications and prices for the anchor products for each regulatory control period (at a minimum).
- 4.1.3 We also have some reservations around the use of the 2019 prices and how this might be distortionary under the revenue cap regime. However, we note MBIE's strong preference for

⁶ Discussion Paper, at page 7.

ensuring price stability is maintained through the implementation of any new regulatory regime and look forward to working with the Commission to ensure that this continues to be applied in the future.

5 Ensuring timely implementation of price-quality regulation for LFCs if required

- 5.1.1 We understand that MBIE proposes the introduction of only information disclosure regulation for LFCs at this time as they don't consider there is a significant risk of monopolistic behaviour arising.
- 5.1.2 Our preference, however, continues to be that LFCs are subject to price-quality regulation from the offset, as it is uncertain how timely the Commission could be in seeking to address any monopolistic behaviour that arises. It would be unreasonable for customers to be exposed to inappropriately high prices for any period of time.
- 5.1.3 In the alternative, if MBIE remains of the view that LFCs should be subject to only information disclosure, it will be important that MBIE ensures that the regulatory arrangements limit any impediments to the Commission acting in a timely manner. For example, we note MBIE's advice that the proposed information disclosure regulatory arrangements will require LFC's to provide sufficient information for a proxy Regulated Asset Base (**RAB**) to be constructed by the Commission. This will be of significant value for monitoring purposes and potentially enable a timely response to any issues.
- 5.1.4 It will also be important to ensure that the existing non-discrimination and equivalence of inputs obligations persist. These are further discussed below.

6 Other issues

6.1 Withdraw of TSO obligations

- 6.1.1 We understand that MBIE's proposal is to remove the TSO obligations on Chorus and Spark inside areas where UFB or other fibre is available. In LFC areas, MBIE contends that there will be strong competition between fibre and copper, as well as the threat of regulation from the Commission, which will drive the development of fibre alternatives. We make a few points on this below.
- 6.1.2 Firstly, for the reasons outlined above, we believe that the TSO obligations should only be removed where a fibre service is actually connected to the property.
- 6.1.3 Secondly, while other parties may contend that the TSO obligations be removed where there are alternative services, such as mobile and fixed wireless available, we disagree.
- 6.1.4 We believe that the TSO obligations should only be withdrawn where there is an equivalent open access alternative available. Currently, the only open access alternative available on an equivalence of inputs basis are fibre services. We consider that it is important that all retailers continue to be involved in this discussion given the potential implications to customers.
- 6.1.5 Finally, if the intention is that LFCs provide a replacement service to the TSO service, we believe that MBIE should specifically require that of them. This could be in the form of introducing some form of anchor products, or requiring that a voice connection be provided within a wholesale pricing construct.

6.2 Development of the Copper Withdrawal Code

- 6.2.1 As previously stated, we support the notion that the Commission should develop the Copper Withdrawal Code. We do not believe that the TCF will be able to reach a unanimous decision, and that attempts to do so will only waste time.

- 6.2.2 We do, however, believe that this Code should be developed in conjunction with industry. This could be in the form of a newly established advisory group or working party.
- 6.2.3 As outlined in our September 2016 submission to MBIE, we consider that the arrangements from the Electricity Industry Act with respect to the establishment of advisory groups would be suitable.
- 6.2.4 We remain of the view that the TCF will not achieve these outcomes in its current form, as it makes decisions that are in the best interests of incumbent retailers who have effective control of the TCF Board and its activities.
- 6.2.5 It is important that this Code be implemented prior to the withdrawal of copper, and be suitably tested by all industry participants. MBIE might consider requiring that the Code be in place by a certain date.

6.3 Important to retain non-discrimination and equivalence of inputs obligations

- 6.3.1 We emphasise the importance of the non-discrimination and equivalence of inputs obligations in the Deeds of Undertaking for both copper and fibre. As a challenger seeking access we have little bargaining power in negotiating favourable commercial terms with Chorus and LFCs. We have no access to an alternative network, and have no ability to offer alternative services or propositions to our customers.
- 6.3.2 We are unsure whether these obligations will still apply where copper is deregulated, or to Chorus' and LFCs commercial fibre services. We firmly believe that these obligations are integral to ensuring a level playing field in access to fixed-line services, and should continue to apply in all circumstances.

6.4 Merits review

- 6.4.1 We remain supportive of adopting the approach taken to merits review in Part 4 of the Commerce Act. We note the April 2016 MBIE evaluation of the merits review regime, and agree with some of the comments made, namely that:
- a) The merits review regime contributed to regulatory certainty over the long term, and increased the Commission's accountability and discipline in making decisions;
 - b) An inquisitorial process has some benefits, however these could be achieved within the Commission's processes rather than in the Court;
 - c) The closed record requirement incentivises parties to provide all relevant evidence to the Commission during its consultation process. This is evidence that all parties have the opportunity to review and make cross-submissions on. Smaller players are unlikely to participate in merits review Court proceedings; and
 - d) Evidence from Australia suggests that the materially better threshold is necessary to prevent opportunistic behaviour from regulated suppliers.
- 6.4.2 Accordingly, we believe that the closed record requirement and 'materially better' threshold should be retained. The 'materially better' threshold is now better understood, and provides an appropriate benchmark for Court intervention.
- 6.4.3 We remain of the view that two experts should sit on the Court with the judge.
- 6.4.4 We would also encourage MBIE to consider requiring the Commission to incorporate 'hot-tubbing' and other forms of improved industry involvement into its processes to better inform decision making, and potentially reduce the extent of future merits appeals.
- 6.4.5 Any departure from Part 4 at this point in the process should be consulted on with all of industry given the potential implications.

6.5 Nationwide services

- 6.5.1 We are concerned that regional pricing variations amongst Chorus and LFCs may lead to suboptimal customer outcomes as the same products may not be available in all regions at the same price. Regional pricing would be a departure from the status quo and would likely cause confusion for some customers. As a result, we would expect RSPs to offer national pricing structures in order to improve the customer experience. This will led to cross-subsidies occurring as larger players can spread costs across a larger national customer base.
- 6.5.2 We are concerned that ultimately this may act as a barrier to entry and recommend that MBIE considers this important matter further.
- 6.5.3 Our answers to the specific questions posed in the Consultation Paper are attached in Appendix A.
- 6.5.4 For any questions relating to the material in this submission, please contact me on 07 572 9888.

Regards,



Paul Bacon
Head of Markets

Appendix A: Responses to consultation questions

Question	Response
Copper services	
<p>1. What are your views on the proposal to deregulate copper services in areas where UFB or other fibre services are available? What do you see as the benefits and risks?</p>	<p>1.1 We consider the proposed approach should be effective provided that equivalent services are available to customers when copper is deregulated. To ensure that this can be achieved we consider that the UFB service needs to be truly available to the customer (i.e. not just theoretically available) and that non-discrimination and equivalence obligations should apply.</p> <p>1.2 We also consider that it's important that the customer can transfer away from copper at zero cost and receive no lesser quality of service than previously. Further details of our specific views regarding these matters are outlined in our submission.</p>
<p>2. What are your views on the proposal to continue regulation of copper services outside areas where UFB or other fibre services are available?</p>	<p>2.1 We support continuing regulating services in areas where UFB or other fibre services are not available.</p>
<p>3. What risks do you see in these proposals? Please comment on any ways you think these risks could be mitigated.</p>	<p>3.1 The actual availability of UFB or other fibre services as an alternative to copper is important. Otherwise there are significant risks created that a customer will not have access to any sort of telecommunications service (if copper services are removed) or alternatively may be exposed to monopoly pricing (if copper services are deregulated but UFB or other fibre services are not actually available to the customer).</p> <p>3.2 We note that the minimum standards outlined by MBIE in the Discussion Paper seek to address and have made some suggestions for further enhancements of the proposed minimum standards in section 2 and 3 of our submission.</p> <p>3.3 There is also a risk that over time the anchor products become the poor cousins of the commercial variants. Further details of our recommendations for ensuring this doesn't occur are outlined in section 4 of our submission.</p>

Telecommunications Service Obligation (TSO) changes	
4. Please comment on the proposal to remove the TSO obligations on Chorus and Spark New Zealand inside areas with UFB or other fibre available	4.1 We are supportive of the proposed removal of TSO obligations in areas where UFB or other fibre alternatives are available contingent on the issues around ensuring that alternative arrangements are actually available to customers are addressed.
5. What risks do you see in this proposal? Please comment on any ways you think these risks could be mitigated	5.1 The risks are similar to those outlined in response to question 3 above.
Copper withdrawal requirements	
6. Please comment on the proposed consumer protection requirements, including your views on how each requirement should be framed (for example, how much notice should Chorus provide before withdrawing copper service?)	<p>6.1 We consider that at a minimum Chorus should provide 3 years notice that a copper service will be withdrawn. This will ensure that there is sufficient time for other arrangements for customers to be made.</p> <p>6.2 Further details on our views around the proposed customer protection requirements are outlined in section 3-4 of this submission.</p>
Impacts on consumers	
7. Does the ability for end-users to switch to fibre services offer sufficient protection for consumers, in areas where copper is deregulated?	7.1 As outlined above we are concerned that on occasions UFB or other fibre services may not be truly available to customers. It is important in these circumstances that appropriate arrangements are in place to ensure that they continue to receive telecommunications services through a commercial arrangement, at no lesser standard than today with respect to both quality and price. Refer to section 2 for further details of our views.