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Telecommunication Review Team
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UNISON SUBMISSION ON TELECOMMUNICATIONS ACT REVIEW: OPTIONS PAPER

Introduction

Unison welcomes the opportunity to provide a submission to the Ministry of Business, Innovation and Employment (MBIE) on its consultation paper: *Telecommunications Act Review – Options Paper*. Unison Networks Limited is an electricity distribution business that operates in the Hawke’s Bay, Taupo and Rotorua areas. The wider Unison Group also includes our subsidiary company, UnisonFibre Limited, a wholesale provider of UFB via a fibre optic network. UnisonFibre’s network spans over 700km throughout the same regions as our electricity services. Unison’s submission is focused largely on the impacts the proposals may have on UnisonFibre, but draws on our broader experiences being subject to the electricity price-quality regulation.

Unison previously submitted on MBIE’s initial consultation paper, *Regulating Communications for the Future*¹, and we note that a number of our suggested recommendations were incorporated into the current paper. We also observe that MBIE has moved away from the original proposal to implement a new *Communications Act* and instead plans to add a new part of the existing *Telecommunications Act*.

Unison’s current submission focuses only on several key topic areas, rather than responding to the specific questions MBIE has posed:

1. UnisonFibre’s position in fibre industry
2. Support for the BBM approach
3. Inclusion of copper and fibre in Chorus’ RAB
4. Ensuring nationally consistent prices with no regional variance

1. UnisonFibre’s position in the fibre industry

As noted above, UnisonFibre is a wholesale provider of UFB (fibre) in the Hawke’s Bay, Rotorua and Taupo regions. UnisonFibre is not one of the ‘local fibre companies’ (LFCs) contracted to the Crown to deploy UFB in New Zealand. UnisonFibre is instead one of the few fringe wholesale fibre companies that are effectively in direct competition with Chorus. The implications of this

¹ Unison (27 October 2015). *Unison Submission on Regulating Communications for the Future*.

mean that any regulatory intervention implemented by MBIE and the Commerce Commission (Commission), will not directly apply to UnisonFibre. However, UnisonFibre is very interested in the price-quality regulation that will apply to Chorus (and possibly to the LFCs) as this will impact indirectly on the prices the business can set.

2. Support for the BBM approach

Unison remains supportive of the overall approach of the options paper to introduce a proposed building-blocks methodology (BBM) for UFB pricing from 2020. MBIE proposes that the Commission will develop input methodologies, mirroring Part 4 requirements and that these would only apply to Chorus from 2020. While information disclosure would apply to both Chorus and LFCs, the price-quality regulation would be a backstop regulatory measure for LFCs. Unison supports this approach, and we will closely follow the development of the IMs. However, Unison submits that the timeframe for developing and implementing the IMs behind the BBM in time from 2020 will be a challenging task for the Commission. In our experience with the electricity industry, these issues are complex and often take time to resolve.

MBIE have suggested transitional arrangements be put in place in the event that the Commission is unable to implement regulation by 2020. Unison supports the transitional arrangement of a wholesale product freeze being in place as a backstop, particularly given the relative risk of the regulatory regime not meeting the 2020 deadline.

3. Inclusion of copper and fibre in Chorus' RAB

Unison has considered the two options for the treatment of Chorus' regulatory asset base (RAB):

- The first option is for Chorus to have one RAB which will include both copper and fibre assets. This is MBIE's preferred approach.
- The second option is for Chorus to have two RABs, with copper assets separated from fibre assets.

While Unison agrees with MBIE that there should be a consistent price-quality regulation approach to copper and fibre, we believe this is a complex area and the approach to setting the RAB should be determined by the Commerce Commission. We can see some merits in simply combining values for copper and fibre assets in a single RAB, on which Chorus can then make a building blocks based return, as this may avoid any distortions to invest in copper and fibre assets. However, investments in fibre and copper have been made under different regulatory frameworks on which potentially different understandings were formed by Chorus in terms of risk-reward trade-offs. Therefore, it may be appropriate to treat the assets differently to preserve these treatments. The Commerce Commission may be best placed to examine the merits of different approaches, taking into account the history of past regulatory frameworks and decisions.

4. Ensuring nationally consistent prices with no regional variance

Unison observes that the Government's original UFB initiative proposal was for the LFCs and Chorus to apply consistent (flat) wholesale prices up to the end of 2019. The aim was to ensure regionally consistent pricing to support the rollout of UFB and later the Rural Broadband Initiative (RBI).

Unison notes that the challenge for the Commission from 2020 will be to ensure Chorus' pricing in particular remains consistent with the original Government intent and that there is no regional variance. Unison submits that any potential anti-competitive behaviour, especially in areas where there is competition from alternative providers, will need to be kept in check including through the provisions of Part 2 of the Commerce Act, although Part 2 may not be sufficient to discipline anti-competitive behaviour. For example, offering regionally variable products above the set 'anchor product' offerings could be considered anti-competitive. Unison notes that MBIE are aware of this potential problem:

*"We also note that the approach to the form of control can be impacted by the potential for some competition 'at the fringes'. For example, there could be some loss of fixed line revenue from Chorus' copper services to LFCs' UFB services, or from any UFB providers' services to other technologies such as fixed wireless or 4G services."*²

Unison submits that LFCs and other fibre providers should have assurances that the price-quality regulation implemented from 2020 will not unfairly advantage Chorus. For example, if revenue cap regulation has the effect of guaranteeing Chorus's overall revenues, Chorus may have the ability and incentive to set lower prices in areas where it competes with other providers and recoup losses from areas where there is no competition.

Finally, Unison looks forward to reviewing the final draft bill for the *Telecommunications Options Paper* and contributing to the Commission's development of the IMs under the BBM. For any questions on the points raised in this submission, please contact Roanna Vining, Regulatory Affairs Analyst, by phone (06) 873 9329 or email Roanna.Vining@unison.co.nz.

Yours sincerely



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² Ministry of Business, Innovation and Employment (July 2016). *Telecommunications Act Review: Options Paper*. Page 45.