MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Dr David Clark	**Portfolio**	Commerce and Consumer Affairs Digital Economy and Communications
Title of Cabinet paper	**Reviews of Commerce Commission Levy Funding Under the Telecommunications Act and Part 4 of the Commerce Act**	**Date to be published**	25 May 2021

List of documents that have been proactively released		
Date	**Title**	**Author**
25 May 2021	*(Cabinet Paper) 'Reviews of Commerce Commission Levy Funding Under the Telecommunications Act and Part 4 of the Commerce Act'*	*Office of the Minister of Commerce and Consumer Affairs* *Office of the Minister for the Digital Economy and Communications*
25 May 2021	*(Minute of Decision) 'Reviews of Commerce Commission Levy Funding Under the Telecommunications Act and Part 4 of the Commerce Act'*	*Cabinet Economic Development Committee*
25 May 2021	*'Cost Recovery Impact Statement for the Cost Recovery of Funding for the Commerce Commission's Regulation of Telecommunications, Electricity, and Gas Markets'*	*MBIE*

Information redacted **NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Office of the Minister for the Digital Economy and Communications

Chair, Cabinet Economic Development Committee

REVIEWS OF COMMERCE COMMISSION LEVY FUNDING UNDER THE TELECOMMUNICATIONS ACT AND PART 4 OF THE COMMERCE ACT

Proposal

1 This paper seeks agreement to:

1.1 increase industry levy funding for the Commerce Commission's economic regulation functions under the Telecommunications Act 2001 and Part 4 of the Commerce Act 1986, commencing from 1 July 2021; and

1.2 amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019.

2 This proposal is fiscally neutral to the Crown and has been developed following formal consultation with industry levy payers and other interested stakeholders.

Executive Summary

3 The Commerce Commission has a range of regulatory functions intended to support market competition and consumer and business confidence. It enforces competition, fair trading and consumer credit laws. It also implements economic regulation in several sectors that have little or no competition to achieve outcomes in those sectors as if they were competitive.

4 Two areas where the Commerce Commission performs economic regulation are:

4.1 electricity lines services, gas pipeline services, and specified airport services supplied by the three major international airports at Auckland, Wellington and Christchurch under Part 4 of the Commerce Act 1986; and

4.2 telecommunications services under the Telecommunications Act 2001.

5 An independent review of the Commerce Commission done by PricewaterhouseCoopers in 2019 confirmed a significantly increased workload for the Commission overall as a consequence of changes to most of the legislation it enforces, increased stakeholder expectations of its role, and cost pressures at the organisation's centre. The Commission considers that increased funding for its regulatory functions under Part 4 of the Commerce Act and the Telecommunications Act would enable it to achieve significantly better outcomes for consumers, in line with government and other stakeholder expectations, than are possible with its current resourcing.

6 I am seeking additional funding for the Commerce Commission's regulatory functions under the Telecommunications Act and Part 4 of the Commerce Act.

7 The Commerce Commission's regulatory costs under Part 4 of the Commerce Act and the Telecommunications Act are almost fully recovered from the regulated businesses via levies and so are therefore fiscally neutral to the Crown.

Part 4 of the Commerce Act funding options

8 The Commerce Commission's baseline funding for its responsibilities under Part 4 of the Commerce Act was last reviewed in 2013. Since then, the social, economic and environmental context for electricity and gas networks has changed considerably. The scope and stakeholder expectations of the Commission's role in regulating 30 electricity lines and four gas pipeline networks have increased greatly and become more complex, resulting in a much greater workload for the Commission with consequent cost pressures.

9 A discussion paper on the future funding for the Commerce Commission's work under Part 4 of the Commerce Act, released in December 2020, presented four funding options (including a 'no new funding' option) for the regulation of electricity lines services and gas pipeline services. Under the preferred option, the Commission's current funding would be increased:

9.1 in the case of electricity lines services, from $28.3 million over five years ($5.7 million average per annum) to $45.0 million over the five financial years 2021/22 to 2025/26 ($9.0 million average per annum); and

9.2 in the case of gas pipeline services, from $9.7 million over five years ($1.9 million average per annum) to $15.0 million over the five financial years 2021/22 to 2025/26 ($3.0 million average per annum).

10 The Commerce Commission has estimated that the cost for the average New Zealand household of running the regulatory regime for energy networks under the preferred levels of funding for electricity lines services and gas pipeline services would be 57 cents per month (or 0.33% of the average household's energy expenditure). This is up from 41 cents per month on the Commission's 2019/20 expenditure.

11 In addition, the Commerce Commission is required to carry out a second statutory review of the fundamental rules, requirements and processes (input methodologies) which underpin the regulation of electricity lines, gas pipeline, and specified airport services by no later than December 2023.

12 There is currently no funding provided specifically for the input methodologies review. The Commerce Commission estimates that it will need a total of $8 million for the review of input methodologies, spread over the three financial years 2021/22 to 2023/24 (the initial input methodologies review in 2016 and the Transpower capital expenditure input methodologies review in 2018 cost $7.65 million). The cost of the review would be recovered via levies imposed on all of the suppliers of services regulated under Part 4 of the Commerce Act, including the three airports supplying specified airport services.

13 The discussion paper relating to Part 4 of the Commerce Act did not address a review of baseline funding requirements for the regulation of specified airport services. This recognised the economic downturn due to COVID-19 and the serious financial implications of the pandemic for the three airports concerned and, more generally, the

international aviation sector. The Commerce Commission considers that it will be able to adequately fulfil its regulatory responsibilities for specified airport services over the next few years within the existing funding baseline. I support this approach.

Telecommunications funding options

14 The Commerce Commission's remit in the telecommunications sector has expanded appreciably during the past decade, while its annual baseline has not been reviewed since 2012, when it was reduced from $7.8 million to its current level of $6 million. Amongst other things, the expanded remit includes the requirement for the Commission to implement and then administer the new wholesale fibre broadband services regime.

15 A discussion paper on the future funding of the Commerce Commission's regulatory functions under the Telecommunications Act, also released in December 2020, put forward four funding options (including a 'no new funding' option). The preferred funding option would see an increase in the current annual $6 million baseline by $9 million (i.e. a total of $15 million per annum). Of this increase, $5.5 million per annum would be earmarked specifically for administering the new fibre services regime.

16 The Commerce Commission has estimated that the cost for the average New Zealand household of running the telecommunication regulatory regime under the preferred level of funding would be 40 cents per month (or 0.28% of average monthly communications bills). This is up from 30 cents per month on the Commission's 2019/20 expenditure.

Proposed amendments to the Telecommunications Levy Regulations

17 The telecommunications discussion paper also included a proposal to amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019, under which levies are payable by telecommunications operators regulated under the Telecommunications Act. This is necessary to ensure that only those telecommunications operators who are subject to the new fibre broadband services regime bear the Commerce Commission's costs of administering the regime from financial year 2022/23.

Submissions on the impact of COVID-19

18 Some submissions on the two discussion papers from regulated businesses raised concerns that any increases in levy funding would not be appropriate at this time given the economic impacts of COVID-19 on them. While I acknowledge that the pandemic presents significant challenges for the economy and businesses, the regulated businesses are monopolies and able to pass on the costs incurred from levies to their customers who are typically telecommunications and energy retailers. As above, the preferred funding options would not have a significant impact on New Zealand households.

Background

19 The Commerce Commission is an independent Crown entity and a key economic regulatory agency for New Zealand. It has a range of functions intended to support market competition and consumer and business confidence. It enforces competition, fair trading and consumer credit laws. It also implements economic regulation in several sectors that have little or no competition to achieve outcomes in those sectors as if they were competitive.

20 Two of the areas where the Commerce Commission has economic regulation responsibilities are:

20.1 electricity lines services, gas pipeline services, and specified airport services supplied by the three major international airports at Auckland, Wellington and Christchurch under Part 4 of the Commerce Act 1986; and

20.2 telecommunications services under the Telecommunications Act 2001.

21 Although funding for the Commerce Commission's functions under Part 4 of the Commerce Act and the Telecommunications Act is disbursed to the Commission through a Budget appropriation, the Commission's regulatory costs (except any litigation costs) are recovered by the Crown from the regulated businesses.[1] This means funding for these functions is fiscally neutral to the Crown.

Independent review of the Commerce Commission

22 In recent years the Commerce Commission has faced a significantly increased workload as a consequence of changes to most of the legislation it enforces, increased government and stakeholder expectations of the Commission's role, and cost pressures at the organisation's centre due to significant growth in the number of front-line staff. These dynamics have resulted in considerable strain on the Commission's resources over time, and on the Commission's capacity and capability to effectively deliver the outputs and outcomes expected of it.

23 In recognition of this, in 2019 the Ministry of Business, Innovation and Employment commissioned PricewaterhouseCoopers to undertake an independent review of the Commerce Commission to provide assurance regarding the efficiency and effectiveness of the Commission, identify any opportunities for lifting the Commission's performance and identify the appropriate size of the Commission (i.e. identify a preferred level of funding).

24 The review found that overall the Commerce Commission is performing well and using its resources efficiently and effectively. Additionally, the review provided compelling arguments for an increase in the Commission's baseline funding in relation to both its Crown-funded and levy-funded responsibilities, for a number of reasons:

24.1 an identified need for making investments which would lift across-the-board organisational performance and impact (e.g. investments in process automation and data and analytics capability);

24.2 the extra demands on and higher expectations of the Commerce Commission as a result of myriad new functions and duties, due to both significant changes across the legislation enforced by the Commission and changing societal expectations; and

24.3 the need to do more discretionary activities expected of a competent regulator, such as stakeholder engagement, advocacy, policy development consultation and legislative reform, intelligence, and strategic thinking.

25 Furthermore, the review identified that the Commerce Commission faces significant cost pressures at its centre due to its transitioning from 'village to town'. The review

[1] Some regulatory functions under the Telecommunications Act and Part 4 of the Commerce Act are funded directly by regulated businesses on a 'user pays' basis, although this revenue is not significant compared to levy-payer funding.

concluded that the number of Commission front-line staff has reached a level where a step-change in centralised infrastructure and support functions is necessary to systematise and formalise core processes and procedures, and any increase in costs arising from this transition should be apportioned appropriately across the Commission's various functions, including its levy-funded functions.

Cabinet approved increased funding of Crown-funded activities for Budget 2020

26 Following the independent review, Cabinet considered and approved a budget bid for an increase in the Commerce Commission's baseline funding related to its Crown-funded activities only (i.e. in relation to the enforcement of competition, fair trading and consumer laws) as part of Budget 2020 [CAB-20-MIN-0155.05 refers].[2]

27 Despite the independent review having identified the need to increase the baselines for the Commerce Commission's levy-funded activities, any potential baseline funding increases would first require consultation with levy payers and other stakeholders.

Consultation on electricity, gas, and telecommunications sector levy funding

28 I consider it important that the Commerce Commission is adequately funded to continue performing its economic regulation functions effectively under both the Telecommunications Act and Part 4 of the Commerce Act. This is especially important in light of new statutory functions and higher expectations of the Commission regarding the regulation of telecommunications, electricity and gas utilities.

29 There is pressure on economic regulators such as the Commerce Commission to ensure that the form and style of economic regulation is increasingly dynamic to respond to new technology and services which can offer better value for consumers, changing consumer behaviour, the availability and accessibility of data and information and the ways in which different types of businesses respond to these changes.

30 The need for the Commerce Commission to be adequately resourced is even more pronounced in light of the COVID-19 pandemic, to ensure that it can have a meaningful impact in New Zealand's economic recovery. Adequate funding will ensure that it can continue to be a modern and credible economic regulator which is able to adopt a proactive and pragmatic approach to regulation.

31 With this in mind, as well as the findings and recommendations from the 2019 independent baseline review, in December 2020 I approved the Commerce Commission releasing two discussion papers to consult with industry levy payers and other interested stakeholders on the future funding of the Commission's regulatory responsibilities under the Telecommunications Act and Part 4 of the Commerce Act.

32 The discussion papers, which were consulted on from December 2020 to February 2021, presented the Commerce Commission's options for funding its work in each of these areas for the five financial years 2021/22 to 2025/26.

33 The discussion paper relating to Part 4 of the Commerce Act did not, however, address a review of funding requirements for the regulation of specified airport services (the current baseline is a multi-year appropriation of $2.763 million for the five financial years

2 The budget bid resulted in Cabinet approving a scaled increase in the Commerce Commission's 2019/20 baseline ($37.337 million) over the three-year period from 2020/21 to 2022/23, with an average increase of $9.311 million per annum. The increase in 2023/24 and outyears is $13.907 million per annum.

2019/20 to 2023/24).[3] This recognised the economic downturn due to COVID-19 and the serious financial implications of the pandemic for Auckland, Wellington and Christchurch airports and, more generally, the international aviation sector. The Commerce Commission considers that it will be able to adequately fulfil its regulatory responsibilities for specified airport services over the next few years within the existing funding baseline. I support this approach.

Electricity and Gas levy funding review analysis

The case for increasing levy funding

34 The baseline funding of the Commerce Commission's regulatory work in the electricity and gas sectors under Part 4 of the Commerce Act has not been reviewed since 2013. As a result of that review, the following two multi-year appropriations were established for the regulation of electricity lines services and gas pipeline services for the five financial years 2014/15 to 2018/19 (these original appropriations were rolled over for another five years, from 2019/20 to 2023/24):

34.1 Electricity lines services – $28.311 million (approx. $5.7 million average per annum).

34.2 Gas pipeline services – $9.684 million (approx. $1.9 million average per annum).

35 Since 2013, the social, economic and environmental context for electricity and gas networks has changed considerably. The scope and stakeholder expectations of the Commerce Commission's role in relation to the regulation of 30 electricity lines and four gas pipeline networks have increased greatly and become more complex, resulting in a much greater workload for the Commission with consequent cost pressures.

36 Furthermore, as noted, the Commerce Commission is transitioning organisationally from 'village to town' and its regulatory function under Part 4 of the Commerce Act is expected to absorb its share of a step-change in corporate overhead costs.

37 In short, without additional funding, the Commerce Commission will be forced to scale back or defer its regulatory work, which would then compromise its credibility and competence as an economic regulator in the energy sector at the risk of not promoting the long-term benefit of consumers.

38 There is another reason why an imminent review of the funding of regulatory functions under Part 4 of the Commerce Act is necessary. This relates to the requirement for the Commerce Commission to carry out the second statutory review of its input methodologies. The input methodologies are the fundamental rules, requirements and processes which underpin the regulation of electricity lines services, gas pipeline services, and specified airport services and that give certainty to regulated businesses about how the Commission will apply regulation.[4] There is currently no funding provided specifically for the input methodologies review.

3 Airports will, however, need to contribute to the Commerce Commission's statutory review of input methodologies under Part 4 of the Commerce Act, which must be completed by no later than December 2023 (see below).

4 For example, the input methodologies cover key regulatory 'building blocks' such as the regulatory asset base, weighted average cost of capital (WACC), allocation of common costs, and regulatory tax.

39 Under Part 4 of the Commerce Act, the Commerce Commission must review the input methodologies no later than seven years after their date of publication. The current input methodologies were published in December 2016, meaning that the next review of them must be completed by no later than December 2023. In order to achieve this deadline, the Commission anticipates it will need to commence its review in 2021.

Funding options considered (excluding the input methodologies review)

40 The Commerce Commission presented four funding options in its discussion paper in relation to the regulation of electricity lines services and gas pipeline services, excluding funding of the upcoming input methodologies review (see below).

41 One option is ‘no new funding’ (i.e. retain the current level of funding). Each of the other three funding options presented involve additional funding for electricity lines services and gas pipeline services for the five financial years 2021/22 to 2025/26. Given the requirement for industry levies, any increase in funding would be fiscally neutral to the Crown.

42 Tables 1 and 2 below show the funding options for electricity lines services and gas pipeline services respectively. The three options involving additional funding would each increase the current five-year appropriations of $28.3 million and $9.7 million for electricity lines services and gas pipeline services respectively.

Table 1: Electricity lines services funding options

Funding option	**Additional five-year appropriation**	**Five-year appropriation**
Option 1: No new funding	–	$28.3 million ($5.7 million average per annum)
Option 2: Holding the line	$10.2 million (approx. $2.0 million average per annum)	$38.5 million ($7.7 million average per annum)
Option 3: Bridging the gap (preferred option)	$16.7 million (approx. $3.3 million average per annum)	$45.0 million ($9.0 million average per annum)
Option 4: Bridging the gap^{+}	$20.2 million (approx. $4.0 million average per annum)	$48.5 million ($9.7 million average per annum)

Table 2: Gas pipeline services funding options

Funding option	Additional five-year appropriation	Five-year appropriation
Option 1: No new funding	–	$9.7 million ($1.9 million average per annum)
Option 2: Holding the line	$3.8 million (approx. $0.8 million average per annum)	$13.5 million ($2.7 million average per annum)
Option 3: Bridging the gap (**preferred option**)	$5.3 million (approx. $1.1 million average per annum)	$15.0 million ($3.0 million average per annum)
Option 4: Bridging the gap^{+}	$6.8 million (approx. $1.4 million average per annum)	$16.5 million ($3.3 million average per annum)

43 Option 3 (bridging the gap) was identified in the discussion paper as the preferred funding option. 'Bridging the gap' refers to the Commerce Commission's assessment of where electricity and gas networks currently are in terms of their performance with respect to promoting the long-term benefit of consumers – as measured across the six performance dimensions of innovation, investment, quality, pricing, profitability and efficiency – and where the Commission would like the networks to be by 2026.

44 As shown in Tables 1 and 2, Option 3 would add:

44.1 $16.7 million over the five financial years 2021/22 to 2025/26 (approx. $3.3 million average per annum) to the current five-year appropriation of $28.3 million ($5.7 million average per annum) for the regulation of electricity lines services; and

44.2 $5.3 million over the five financial years 2021/22 to 2025/26 (approx. $1.1 million average per annum) to the current five-year appropriation of $9.7 million ($1.9 million average per annum) for the regulation of gas pipeline services.

45 The Commerce Commission has estimated that the cost for the average New Zealand household of running the regulatory regime for energy networks under the preferred levels of funding for electricity lines services and gas pipeline services would be 57 cents per month (or 0.33% of the average household's energy expenditure). This is up from 41 cents per month on the Commission's 2019/20 expenditure.

46 The other three options were not preferred for the following reasons:

46.1 Option 1 (no new funding) would mean that the current multi-year appropriations for electricity lines services and gas pipeline services would likely rollover for a further five years (unless another review before 2023/24 resulted in a funding change). No new funding would mean reducing existing staff numbers and concentrating only on delivering the mandatory, time-limited elements of the regulatory regime.

46.2 Option 2 (holding the line) would entail the Commerce Commission aiming to maintain existing focus on price-quality paths and on the review of input methodologies. This option was discounted as without additional funding from levy payers it misses some of the greatest opportunities to deal with the issues facing the electricity and gas network sectors and consumers, and to make the most of the Commission's powers to use information and analysis to influence behaviour and its approach to price-quality paths and input methodologies.

46.3 Option 4 (bridging the gap$^+$) would add to Option 3 but at a faster rate and with the aim of the Commerce Commission becoming a world-leading regulator. The Commission would develop its use of information analysis faster. It would also streamline the input methodologies, making them easier to understand, and expand its focus on consumer needs, preferences and behaviour. While the Commission considers it should have this aspiration, and there are real benefits in pursuing this approach, the option was discounted in view of the current economic climate and the need to focus on where the Commission can add most value for New Zealanders in the near future.

Funding options considered for the input methodologies review

47 In addition to the above funding requirements for electricity lines services and gas pipeline services, the Commerce Commission has estimated it will need $8 million (the preferred funding option) for its upcoming statutory review of input methodologies spread over the three financial years 2021/22 to 2023/24.[5] As noted, there is currently no funding provided specifically for the input methodologies review. The cost of the review would be recovered via levies imposed on the electricity and gas network businesses and the three airport businesses regulated under Part 4 of the Commerce Act.

48 A larger funding option for the input methodologies review of $13 million was also presented in the discussion paper. This level of funding would allow for a more comprehensive review and a simplification of the input methodologies to make them easier to navigate and engage with. However, this option was discounted to avoid imposing additional short-term costs on consumers in the current financial climate, and because it was not clear that the additional benefits would outweigh the additional costs.

Telecommunications levy funding review analysis

The case for increasing levy funding

49 The Commerce Commission's remit and scope in the telecommunications sector has expanded appreciably during the past decade. However, its annual baseline has not been reviewed since 2012, when it was reduced from $7.8 million per annum to its current level of $6 million per annum.

50 Most recently, substantial amendments to the Telecommunications Act in 2018 have given the Commerce Commission a range of new major functions, powers and duties. This includes establishing a regulatory regime for the supply of wholesale fibre broadband services and incorporating broadcasting transmission services into the telecommunications regulatory framework.

5 The initial input methodologies review in 2016 (including the Transpower capital expenditure input methodologies review, which took place in 2017-2018) cost $7.65 million.

51 The Commerce Commission is currently implementing the fibre services regime and will administer it from 1 January 2022. The regime is based on a utility economic regulation construct similar to Part 4 of the Commerce Act that applies to electricity lines services and gas pipeline services. This includes making determinations regarding input methodologies that will underpin the fibre services regime, information disclosure regulation and price-quality regulation.

52 The 2018 Telecommunications Act amendments directly impact on the Commerce Commission's future capacity to perform it regulatory work in the telecommunications sector to the standard required, along with increased government and stakeholder expectations of the Commission's regulatory role in the telecommunications sector, under its current resourcing. Apart from time-bound funding allocated to implement the fibre services regime and bring broadcasting transmission services into the telecommunications regulatory framework, there is no extra funding currently in place for these new responsibilities post-implementation or for the implications of other important legislative requirements.[6]

53 Furthermore, as well as the direct cost pressures resulting from the new responsibilities and increased government and stakeholder expectations, the Commerce Commission's telecommunications regulatory function, like its regulatory function under Part 4 of the Commerce Act, is expected to share in increased corporate overhead costs needed to fund the organisation's transition from 'village to town'.

Funding options considered

54 The Commerce Commission presented four funding options in its discussion paper in relation to its telecommunications regulatory work. One option is 'no new funding' (i.e. retain the current level of funding). The other three options would all increase the current $6 million annual baseline. Given the requirement for industry levies, any funding increase would be fiscally neutral to the Crown.

55 The increase in funding under each option was split between funding necessary for administering the new fibre services regime from 1 January 2022 and for all other regulatory functions under the Telecommunications Act.[7] The funding options are summarised in Table 3 below.

Table 3: Telecommunications funding options

Funding option	Additional annual appropriation	Annual appropriation
Option 1: No new funding	–	$6 million to administer all fibre and non-fibre

6 Time-bound implementation funding of $12.3 million was provided via a multi-year appropriation over the four financial years 2018/19 to 2021/22. Of this amount, $12 million relates to implementing the fibre services regime and the remainder to broadcasting transmission services.

7 The levy payers liable for the fibre services regime would be a subset of the overall levy payers for the wider scope of work in the telecommunications sector. The fibre services regime subset of levy payers would comprise five companies: Chorus Limited, Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited and Ultrafast Fibre Limited (collectively referred to as the 'local fibre companies').

		telecommunications regulation
Option 2: Holding the line	$7.5 million (made up of fibre services $5.5 million and non-fibre telecommunications $2.0 million)	$13.5 million to administer all fibre and non-fibre telecommunications regulation
Option 3: Bridging the gap (**preferred option**)	$9 million (made up of fibre services $5.5 million and non-fibre telecommunications $3.5 million)	$15 million to administer all fibre and non-fibre telecommunications regulation
Option 4: Bridging the gap^{+}	$10.1 million (made up of fibre services $5.5 million and non-fibre telecommunications $4.6 million)	$16.1 million to administer all fibre and non-fibre telecommunications regulation

56 Option 3 (bridging the gap) was identified in the discussion paper as the preferred funding option. 'Bridging the gap' refers to the Commerce Commission's assessment of the current status of the telecommunications sector and the medium-term outcomes sought for telecommunications infrastructure investment, competition in the sector and improved consumer outcomes. Option 3 would add $9 million per annum to the current annual baseline of $6 million, with $5.5 million per annum of the increase needed to administer the new fibre services regime from the 2021/22 financial year.

57 The Commerce Commission has estimated that the cost for the average New Zealand household of running the telecommunication regulatory regime under the preferred level of funding would be 40 cents per month (or 0.28% of average monthly communications bills). This is up from 30 cents per month on the Commission's 2019/20 expenditure.

58 The other three options were not preferred for the following reasons:

58.1 Option 1 (no new funding) would render the Commerce Commission unable to deliver on its current functions, let alone enable it to effectively administer the new fibre services regime and deliver on its other new regulatory responsibilities. This option would require the Commission to significantly scale back the scope and quality of its work and defer some existing tasks and functions (e.g. broadband speed testing; enhancing consumer outcomes by establishing improved information to support consumer choice and promote retail competition).

58.2 Option 2 (holding the line) represents funding at real (inflation adjusted) 2020 levels going forward (i.e. this level of funding would continue the status quo from a resourcing and output perspective). Without additional funding from levy payers, the Commerce Commission would be unable to meet enhanced expectations of its role (e.g. the new consumer powers under the Telecommunications Act) and to have sufficient capability to monitor and report on the telecommunications sector. This option would also not enable resourcing for anticipating and responding to emerging competition issues and protecting consumers, especially given the Commission would need to deploy a significant amount of its 2020 resources for administering the new fibre services regime.

58.3 Option 4 (bridging the gap⁺) would add to the preferred 'bridging the gap' option (Option 3). This option would provide a level of funding required to match the functions and expertise of a world-leading telecommunications regulator. It would provide the Commerce Commission with resources to invest in its internal skills and capabilities, and allow for an increased focus on international engagement to be at the forefront of anticipating regulatory needs in the face of global technological change. Option 4 was, however, discounted in light of the current economic climate and the effect of the COVID-19 pandemic on consumers.

Proposed amendment to Telecommunications Levy Regulations

Need to amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019

59 In addition to the question of future levy funding, the telecommunications discussion paper addressed the need to amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 (the Telecommunications Levy Regulations) from financial year 2022/23.

60 The Commerce Commission's telecommunications regulatory costs are initially funded by Crown appropriation and then recovered from 'telecommunications operators'[8] via the Telecommunications Regulatory Levy as specified in the Telecommunications Levy Regulations.[9]

61 The Telecommunications Levy Regulations currently require the payment of two kinds of levies (i.e. two sub-levies):

61.1 A sub-levy payable by all telecommunications operators in relation to the entirety of the Commerce Commission's regulatory work performed under the Telecommunications Act, except the work relating to the implementation of the fibre services regime.

61.2 A sub-levy payable only by the five local fibre companies to recover the costs of implementing the fibre services regime.

62 Under the Telecommunications Levy Regulations, the fibre services sub-levy is only payable until the end of the 2021/22 financial year, the year in which the implementation of the fibre services regime is to be completed by and which coincides with the end of the current multi-year appropriation for the implementation of the fibre services regime.

63 As the Telecommunications Levy Regulations now stand, from the 2022/23 financial year and outyears there would be a single, bundled levy apportioned across all

8 Under the Telecommunications Act, telecommunications operators are businesses which provide telecommunications services in New Zealand via a public telecommunications network, and have gross telecommunications revenues over $10 million per annum. They include both wholesale providers (such as Chorus Limited) and retailers (such as Spark New Zealand Limited and Vodafone New Zealand Limited).

9 The Telecommunications Regulatory Levy is limited to the amount of the Crown appropriation and any Commerce Commission costs exceeding the appropriation would need to be funded from its reserves.

telecommunications operators to recover the Commerce Commission's regulatory costs. This would include those costs relating to information disclosure and price-quality regulation administered by the Commission under the fibre services regime and which relate to the local fibre companies.

64 The Commerce Commission costs of administering the fibre services regime going forward will remain a sizeable portion of the overall Commission costs for telecommunications regulation. Where it can be done easily, consistent with best-practice cost recovery, those subject to the regulation should bear the costs. To ensure that only those telecommunications operators who are subject to regulation relating to the fibre services regime (i.e. the local fibre companies) bear the costs of administering the regime from 2022/23, it is necessary to amend the Telecommunications Levy Regulations.

Financial Implications

65 As noted, funding provided by the Crown to the Commerce Commission for economic regulation under the Telecommunications Act and Part 4 of the Commerce Act is almost entirely recovered from regulated suppliers through levies. Accordingly, the preferred funding proposals would have no impact on the Government's operating balance or debt.

66 As set out above, the costs of running the regulatory regimes under the preferred funding proposals would be limited for the average New Zealand household.

Legislative Implications

67 I am proposing that the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 be amended to ensure that only the local fibre companies, subject to the fibre services regime, are liable for the costs of administering the fibre services regime from 2022/23 and outyears.

68 Under the Telecommunications Act, levy regulations may be made by Order in Council on the recommendation of the Minister responsible for the Telecommunications Act (currently the Minister for the Digital Economy and Communications).

69 The Telecommunications Act requires the Minister to consult with those persons and organisations that the Minister considers appropriate having regard to the subject matter of the proposed regulations. This requirement was met through consultation on the Commerce Commission's discussion paper on the future funding of the Commission's regulatory responsibilities under the Telecommunications Act.

Impact Analysis

Regulatory Impact Statement

70 The impact analysis requirements apply to the proposals in this paper. A stage 2 Cost Recovery Impact Statement (CRIS), which is designed specifically for proposals seeking agreement on cost recovery levels, is attached.

Quality of the impact analysis

71 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Cost Recovery Impact Statement prepared by MBIE. The panel considers that the information

and analysis summarised in the statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Population Implications

72 There are no population implications from the proposals in this paper.

Human Rights

73 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

74 This paper was prepared by the Ministry of Business, Innovation and Employment. Officials from The Treasury and the Commerce Commission were consulted on this paper, and support the recommendations. The Department of Prime Minister and Cabinet has been informed.

Communications

75 Subject to Cabinet agreeing to the proposals in this paper, I propose that my officials from the Ministry of Business, Innovation and Employment write to all:

75.1 levy payers advising them of the outcome of the funding review applicable to them; and

75.2 parties that submitted on a discussion paper advising them of the outcome of the funding review on which they submitted.

Proactive Release

76 I propose to release this paper proactively by having it published on the Ministry of Business, Innovation and Employment's website, subject to withholdings as appropriate under the Official Information Act 1982, within 30 business days.

Recommendations

The Minister of Commerce and Consumer Affairs and the Minister for the Digital Economy and Communications recommend that the Committee:

1 **note** that the regulation of telecommunications, electricity lines, and gas pipelines services by the Commerce Commission is funded by levies on businesses that operate these services;

2 **note** that one of the Commerce Commission's core functions is to set price-quality paths that last up to five years;

3 **note** that the timing of the Commerce Commission's expenditure across each regulatory pricing period is uncertain and lends itself to an approach that utilises the flexibility provided by multi-year appropriations;

4 **note** that the Commerce Commission consulted regulated suppliers, consumer groups and other interested stakeholders from December 2020 to February 2021 on the

appropriate level of funding to efficiently and effectively regulate the provision of telecommunications, electricity lines, and gas pipelines services in New Zealand;

5 **note** that officials from the Ministry of Business, Innovation and Employment have reviewed submissions on the Commerce Commission’s preferred funding proposal and support the following levy funding for the regulation of telecommunications, electricity lines, and gas pipelines services:

	$m – increase/(decrease)				
Vote Business Science and Innovation **Minister of Commerce and Consumer Affairs** **Minister for the Digital Economy and Communications**	**2021/22**	**2022/23**	**2023/24**	**2024/25**	**2025/26**
Non-tax revenue: Levy on Regulated Parties	28.476	30.693	29.490	27.321	26.863
	2026/27	**2027/28**	**2028/29**	**2029/30**	**2030/31**
	26.394	26.675	27.590	27.321	26.863
	2031/32 and outyears				
	26.969				

6 **agree** to fund the regulation of telecommunications, electricity lines, and gas pipelines services in line with the Commerce Commission’s preferred funding proposal, as outlined in recommendation 5 above;

7 **agree** to amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 to ensure that only those telecommunications operators who are subject to regulation relating to the new fibre broadband services regime bear the costs of administering the regime from financial year 2022/23;

8 **invite** the Minister for the Digital Economy and Communications to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendation 7 above;

9 **direct** the Ministry of Business, Innovation and Employment to write to all levy payers and other parties that submitted on the Commerce Commission’s discussion papers advising them of the outcome of the reviews;

10 **agree** to establish a new Non-Departmental Output Expense "Regulation of Telecommunications Services for the Period 2022-2025" as a multi-year appropriation in Vote Business, Science and Innovation for the three financial years 2022/23 to 2024/25;

11 **agree** that the scope of this appropriation be "This appropriation is limited to the regulation of telecommunications services under the Telecommunications Act 2001.";

12 **approve** the following changes to appropriations to give effect to recommendations 5 and 10, with no impact on the operating balance or debt:

	$m – increase/(decrease)					
Vote Business, Science and Innovation **Minister for the Digital Economy and Communications**	**2021/22**	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27**
Non-Departmental Output Expense: Regulation of Telecommunications Services 2022-2025	-	64.074			-	-
Non-Departmental Output Expense: Enforcement of Telecommunications Sector Fibre and Broadcasting Transmission Service Regulation	5.218	-	-	-	-	-
Non-Departmental Output Expense: Communications: Enforcement of Telecommunications Sector Regulation	**2021/22**	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27**
	9.821	(6.000)	(6.000)	(6.000)	14.384	14.336
	2027/28	**2028/29**	**2029/30**	**2030/31**	**2031/32 and outyears**	
	14.500	15.787	15.787	14.384	14.959	

13 **note** that the indicative spending profile for the new multi-year appropriation described in recommendation 12 above is as follows:

	$m – increase/(decrease)		
Indicative annual spending profile	**2022/23**	**2023/24**	**2024/25**
	20.500	21.787	21.787

14 **approve** the following changes to appropriations to give effect to recommendation 6, with no impact on the operating balance or debt:

	$m – increase/(decrease)					
Vote Business, Science and Innovation **Minister of Commerce and Consumer Affairs**	**2021/22**	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27**
Non-Departmental Output Expense: Commerce and Consumer Affairs: Regulation of Electricity Lines Services	26.215			-	-	-

2019-2024						
Non-Departmental Output Expense: Commerce and Consumer Affairs: Regulation of Electricity Lines Services	**2021/22**	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27**
	-	-	-	9.001	9.822	8.541
	2027/28	**2028/29**	**2029/30**	**2030/31**	**2031/32 and outyears**	
	8.673	9.001	9.001	9.822	9.008	

15 **note** that the indicative new spending profile for the remaining financial years in the multi-year appropriation described in recommendation 14 above is as follows:

	$m – increase/(decrease)		
Indicative annual spending profile	**2021/22**	**2022/23**	**2023/24**
	8.541	8.673	9.001

16 **approve** the following changes to appropriations to give effect to recommendation 6, with no impact on the operating balance or debt:

	$m – increase/(decrease)					
Vote Business, Science and Innovation **Minister of Commerce and Consumer Affairs**	**2021/22**	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27**
Non-Departmental Output Expense: Commerce and Consumer Affairs: Regulation of Gas Pipelines Services 2019-2024	9.821			-	-	-
Non-Departmental Output Expense: Commerce and Consumer Affairs: Regulation of Natural Gas Services	**2021/22**	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27**
	-	-	-	2.533	2.657	3.517
	2027/28	**2028/29**	**2029/30**	**2030/31**	**2031/32 and outyears**	
	3.502	2.802	2.533	2.657	3.002	

17 **note** that the indicative new spending profile for the new multi-year appropriation described in recommendation 16 above is as follows:

	$m – increase/(decrease)		
Indicative annual spending profile	**2021/22**	**2022/23**	**2023/24**
	3.517	3.502	2.802

18 **agree** to establish a new Non-Departmental Output Expense "Review of Commerce Act Input Methodologies for Economic Regulation for the Period 2021-2023" as a multi-year appropriation in Vote Business, Science and Innovation for the three financial years 2021/22 to 2023/24;

19 **agree** that the scope of this appropriation be "This appropriation is limited to the review of input methodologies for economic regulation under Part 4 of the Commerce Act.";

20 **approve** the following changes to appropriations to give effect to recommendations 6 and 18 with no impact on the operating balance or debt:

<table>
<tr><th></th><th colspan="5">$m – increase/(decrease)</th></tr>
<tr><th>Vote Business, Science and Innovation

Minister of Commerce and Consumer Affairs</th><th>2021/22</th><th>2022/23</th><th>2023/24</th><th>2024/25</th><th>2025/26</th></tr>
<tr><td>Non-Departmental Output Expense:
Commerce and Consumer Affairs: Review of Commerce Act Input Methodologies for Economic Regulation for the Period 2021-2024</td><td colspan="3">8.000</td><td>-</td><td>-</td></tr>
</table>

21 **note** that the indicative spending profile for the new multi-year appropriation described in recommendation 20 above is as follows:

	$m – increase/(decrease)		
Indicative annual spending profile	**2021/22**	**2022/23**	**2022/23**
	2.082	4.018	1.900

22 **authorise** the Minister of Finance, the Minister for the Digital Economy and Communications and the Minister of Commerce and Consumer Affairs to jointly approve the establishment of future multi-year appropriations in succession to those outlined above;

23 **authorise** the Minister of Finance, the Minister for the Digital Economy and Communications and the Minister of Commerce and Consumer Affairs to jointly approve any adjustments to appropriations that correspond to adjustments to the levy.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

Minister for the Digital Economy and Communications

Stage 2 Cost Recovery Impact Statement

Cost Recovery Impact Statement for the Cost Recovery of Funding for the Commerce Commission's Regulation of Telecommunications, Electricity, and Gas Markets

Agency Disclosure Statement

This Cost Recovery Impact Statement (**CRIS**) has been prepared by the Ministry of Business, Innovation and Employment. It provides an analysis of options to fund, from 1 July 2021, the costs of the Commerce Commission's:

- regulation of telecommunications services (which includes the regulation of the new wholesale fibre broadband services regime and incorporation of broadcasting transmission services into the telecommunications regulatory framework) under the Telecommunications Act 2001
- regulation of electricity lines services and gas pipeline services under Part 4 of the Commerce Act 1986
- second statutory review of input methodologies under Part 4 of the Commerce Act 1986, which is applicable to all services regulated under Part 4 including electricity lines, gas pipeline, and specified airport services supplied at the three major international airports at Auckland, Wellington and Christchurch and which must be completed by the end of December 2023.[1]

The above regulatory costs are recovered through levies on regulated businesses. The statutory authorities for the cost-recovery charges are provided for the following regulations:

- Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019, for telecommunications services regulatory costs
- Commerce (Levy on Suppliers of Regulated Goods and Services) Regulations 2009, for electricity lines services, gas pipeline services, and input methodologies review regulatory costs.

With the exception of the input methodologies review, this CRIS does not consider the Commerce Commission's funding for the regulation of specified airport services, the regulatory costs of which are also recovered through levies on the three airports under the Commerce (Levy on Suppliers of Regulated Goods and Services) Regulations 2009.[2] Nor does it analyse the Commission's funding for the regulation of the dairy sector under the Dairy Industry Restructuring Act 2001, the regulatory costs of which are recovered under regulations made under that Act. Levy funding for both of these regulatory functions remains sufficient.

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1 Input methodologies are the fundamental rules, requirements and processes the Commerce Commission must determine for services regulated under Part 4 of the Commerce Act 1986. They cover key regulatory 'building blocks' such as the regulatory asset base, weighted average cost of capital (WACC), allocation of common costs, and regulatory tax.

2 This recognises the economic downturn due to the COVID-19 pandemic and the serious financial implications of the pandemic for Auckland, Wellington and Christchurch airports and more generally, the international aviation sector. The Commerce Commission considers that it will be able to adequately fulfil its regulatory responsibilities for specified airport services over the next few years within the existing funding baseline.

This CRIS also does not consider the Commerce Commission's direct Crown funding (i.e. non-cost-recoverable funding) for its responsibilities in relation to competition, fair trading, and consumer credit laws. This funding was increased in Budget 2020, with the exception of funding for the regulation of engine fuel markets under the Fuel Industry Act 2020 (the Commission subsequently received $0.5m in funding for the 2020/21 financial year for preliminary set-up work relating to the Fuel Industry Act, with ongoing funding for administering the Act to be the subject of a separate budget bid as part of Budget 2021).

The current funding review follows an independent review of the Commerce Commission in 2019, initiated by the Ministry of Business, Innovation and Employment and done by PricewaterhouseCoopers, which looked into the Commission's baseline funding across all of its responsibilities. The review confirmed a significantly increased workload for the Commission and higher expectations of the Commission's role across all its regulatory functions, together with cost pressures including at the organisation's centre.

The analysis of funding options in this CRIS was informed by submissions received by the Commerce Commission from levy payers and other interested parties on two discussion papers, which were consulted on simultaneously from December 2020 to February 2021.[3]

The Commerce Commission's preferred funding option for each of telecommunications services, electricity lines services, gas pipeline services, and the input methodologies review is Option 3 (labelled as 'bridging the gap'). We have set out the costings underpinning the Commission's estimates for how much Option 3 in each case will cost in this CRIS.

The Commerce Commission has estimated that the cost for the average New Zealand household of running:

- the telecommunication regulatory regime under the Telecommunications Act 2001 with the preferred level of funding would be 40 cents per month (or 0.28% of average monthly communications bills), which is up from 30 cents per month on the Commerce Commission's 2019/20 expenditure
- the regulatory regime for electricity lines services and gas pipeline services under Part 4 of the Commerce Act 1986 with the preferred funding option would be 57 cents per month (or 0.33% of the average household's energy expenditure), which is up from 41 cents per month on the Commerce Commission's 2019/20 expenditure.[4]

In addition to addressing funding options, this CRIS includes a proposal to amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019, under which, as noted, levies are charged and payable by regulated suppliers ('telecommunications operators') in relation to the Commerce Commission's regulation of telecommunication services under the Telecommunications Act 2001. This is necessary to ensure that only those telecommunications operators who are subject to the new wholesale fibre broadband services regime bear the Commission's costs of administering the regime from financial year 2022/23.

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3 Commerce Commission, *Review of the Commerce Commission's funding for the regulation of Telecommunications and Fibre under the Telecommunications Act 2001*; and *Review of the Commerce Commission's funding for the regulation of electricity and gas networks under Part 4 of the Commerce Act 1986*. Both discussion papers are available on the Commerce Commission's website.

4 We consider these estimate to be the upper limit. In reality, the costs of the levies would be passed on to both business and residential customers. The Commerce Commission's analysis assumes they would be entirely passed on to residential customers.

Daniel O'Grady
Manager
Competition and Consumer Policy
Ministry of Business, Innovation and Employment

01/ 04 / 2021

Executive summary

This Cost Recovery Impact Statement (**CRIS**) considers a proposal to:

- increase industry levy funding for the Commerce Commission's (the **Commission**) economic regulation functions under the Telecommunications Act 2001 and Part 4 of the Commerce Act 1986, commencing from 1 July 2021
- amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019.

The proposal is fiscally neutral to the Crown and has been developed following formal consultation with industry levy payers and other interested stakeholders.

The Commission has a range of regulatory functions intended to support market competition and consumer and business confidence. It enforces competition, fair trading and consumer credit laws. It also implements economic regulation in several sectors that have little or no competition to achieve outcomes in those sectors as if they were competitive.

Two areas where the Commission performs economic regulation are:

- electricity lines services,[5] gas pipeline services,[6] and specified airport services[7] under Part 4 of the Commerce Act
- telecommunications services under the Telecommunications Act.

An independent review of the Commission, initiated by the Ministry of Business, Innovation and Employment (**MBIE**) and done by PricewaterhouseCoopers, in 2019 confirmed a significantly increased workload for the Commission overall as a consequence of changes to most of the legislation it enforces, increased stakeholder expectations of its role, and cost pressures including at the organisation's centre.

The Commission considers that increased funding for its regulatory functions under Part 4 of the Commerce Act and the Telecommunications Act would enable it to achieve significantly better outcomes for consumers, in line with government and other stakeholder expectations, than are possible with its current resourcing.

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5 Supplied by 29 local electricity distribution businesses and Transpower New Zealand Limited.

6 Supplied by four gas distribution businesses and one gas transmission business.

7 Supplied by the three major international airports at Auckland, Wellington and Christchurch.

Part 4 of the Commerce Act funding options

The Commission's baseline funding for its responsibilities under Part 4 of the Commerce Act was last reviewed in 2013. Since then, the social, economic and environmental context for electricity and gas networks has changed considerably. The scope and stakeholder expectations of the Commission's role in regulating 30 electricity and five gas networks have increased greatly and become more complex, resulting in a much greater workload for the Commission with consequent cost pressures.

A discussion paper on the future funding for the Commission's work under Part 4 of the Commerce Act, released in December 2020, presented four funding options (including a 'no new funding' option) for the regulation of electricity lines services and gas pipeline services. Under the preferred option, the Commission's current funding would be increased:

- in the case of electricity lines services, from $28.3 million over five years ($5.7 million average per annum) to $45.0 million over the five financial years 2021/22 to 2025/26 ($9.0 million average per annum)
- in the case of gas pipeline services, from $9.7 million over five years ($1.9 million average per annum) to $15.0 million over the five financial years 2021/22 to 2025/26 ($3.0 million average per annum).

The Commission has estimated that the cost for the average New Zealand household of running the regulatory regime for energy networks under the preferred levels of funding for electricity lines services and gas pipeline services would be 57 cents per month (or 0.33% of the average household's energy expenditure). This is up from 41 cents per month on the Commission's 2019/20 expenditure.[8]

In addition, the Commission is required to carry out a second statutory review of the fundamental rules, requirements and processes (input methodologies) which underpin the regulation of electricity lines, gas pipeline, and specified airport services by no later than December 2023.

There is currently no funding provided specifically for the input methodologies review. The Commission estimates that under its preferred funding option for the review, it will need a total of $8 million for the review of input methodologies, spread over the three financial years 2021/22 to 2023/24. The cost of the review would be recovered via levies imposed on all of the suppliers of services regulated under Part 4 of the Commerce Act, including the three airports supplying specified airport services.

The discussion paper relating to Part 4 of the Commerce Act did not address a review of baseline funding requirements for the regulation of specified airport services. This recognised the economic downturn due to the COVID-19 pandemic and the serious financial implications of the pandemic for the three airports concerned and more generally, the international aviation sector. The Commission considers that it will be able to adequately fulfil its regulatory responsibilities for specified airport services over the next few years within the existing funding baseline.

8 We consider this estimate to be the upper limit. In reality, the costs of the levy would be passed on to both business and residential customers. The Commission's analysis assumes it would be entirely passed on to residential customers.

Telecommunications funding options

The Commission's remit in the telecommunications sector has expanded appreciably during the past decade, while its annual baseline has not been reviewed since 2012, when it was reduced from $7.8 million to its current level of $6 million. Amongst other things, the expanded remit includes the requirement for the Commission to implement and then administer the new wholesale fibre broadband services regime.

A discussion paper on the future funding of the Commission's regulatory functions under the Telecommunications Act, also released in December 2020, put forward four funding options (including a 'no new funding' option). The preferred funding option would see an increase in the current annual $6 million baseline by $9 million (i.e. a total of $15 million per annum). Of this increase, $5.5 million per annum would be earmarked specifically for administering the new fibre services regime.

The Commission has estimated that the cost for the average New Zealand household of running the telecommunication regulatory regime under the preferred level of funding would be 40 cents per month (or 0.28% of average monthly communications bills). This is up from 30 cents per month on the Commission's 2019/20 expenditure.[9]

Proposed amendments to the Telecommunications Levy Regulations

The telecommunications discussion paper also included a proposal to amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019, under which levies are payable by telecommunications operators regulated under the Telecommunications Act. The amendment is necessary to ensure that only those telecommunications operators who are subject to the new fibre broadband services regime bear the Commission's costs of administering the regime from financial year 2022/23.

Conclusions

This CRIS supports the preferred funding options noted above for funding the Commission's costs in relation to the regulation of telecommunications services under the Telecommunications Act and the regulation of electricity lines services and gas pipeline services and statutory review of input methodologies under Part 4 of the Commerce Act.

In addition, this CRIS concludes that the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 need to be amended to ensure that only those telecommunications operators who are subject to the new fibre services regime bear the costs of administering the regime from financial year 2022/23.

Status quo

The Commission is an independent Crown entity and a key economic regulatory agency for New Zealand. It has a range of functions intended to support market competition and consumer and business confidence. It is responsible for competition, fair trading, and consumer credit laws.[10]

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9 We consider this estimate to be the upper limit. In reality, the costs of the levy would be passed on to both business and residential customers. The Commission's analysis assumes it would be entirely passed on to residential customers.

10 These laws are contained in the Commerce Act 1986, Fair Trading Act 1986 and Credit Contracts and Consumer Finance Act 2003.

It also implements economic regulation in several sectors that have little or no competition to achieve outcomes in those sectors as if they were competitive:

- the telecommunications sector (which includes the regulation of the new wholesale fibre broadband services regime and incorporation of broadcasting transmission services into the telecommunications regulatory framework) under the Telecommunications Act 2001
- electricity lines services,[11] gas pipeline services[12] and specified airport services[13] under Part 4 of the Commerce Act 1986
- the dairy sector under the Dairy Industry Restructuring Act 2001
- engine fuel markets under the Fuel Industry Act 2020.

The Commission's work is funded through:

- **Crown funding**: the Crown funds the Commission for administering competition, fair trading, and consumer credit laws and regulating engine fuel markets through general taxation
- **Levy funding**: the Crown funds the Commission's regulatory responsibilities under the Telecommunications Act, Part 4 of the Commerce Act and the Dairy Industry Restructuring Act through levies on regulated businesses.[14]

Crown funding

In Budget 2020, Cabinet increased the Commission's direct Crown funding [CAB-20-MIN-0155.05 refers]. The below table shows the funding Cabinet agreed to add to the 2019/20 baseline of $37.337m:[15]

2020/21	2021/22	2022/23	2023/24 and outyears
$7.034m	$9.774m	$11.126m	$13.907m

The increase followed an independent baseline review (**Baseline Review**), commissioned by MBIE and done by PricewaterhouseCoopers, in 2019. The purpose of the Baseline Review was to provide assurance regarding the efficiency and effectiveness of the Commission, identify any opportunities for lifting the Commission's performance and identify the appropriate size of the Commission (i.e. identify a preferred level of funding).

11 Supplied by 29 local electricity distribution businesses and Transpower New Zealand Limited.

12 Supplied by four gas distribution businesses and one gas transmission business.

13 Supplied by the three major international airports at Auckland, Wellington and Christchurch.

14 A very small part of the Commission's regulatory functions is funded directly by regulated businesses on a 'user pays' basis (e.g. regulated businesses supplying electricity lines services and gas pipeline services pay the Commission fees when applying for a 'customised' price-quality path under Part 4 of the Commerce Act). Another exception is the Commission's litigation costs, which are funded entirely through Crown-appropriated litigation funds.

15 The increase in Crown funding did not include funding relating to the regulation of engine fuel markets under the Fuel Industry Act. However, the Commission subsequently received $0.5m in funding for the 2020/21 financial year for preliminary set-up work relating to the Act. Ongoing Crown funding for the Commission to administer the Act is the subject of a separate budget bid as part of Budget 2021.

Independent review of the Commission

The Baseline Review found that overall the Commission is performing well and using its resources efficiently and effectively, but also provided compelling reasons to increase the Commission's funding for both its Crown-funded and levy-funded responsibilities. These included:

- an identified need to invest in lifting organisational performance and impact (e.g. investments in process automation and data and analytics capability)
- the extra demands on, and higher expectations of, the Commission (e.g. as a result of new legislative functions and duties and changing societal expectations)
- the need to do more discretionary activities expected of a competent regulator (e.g. stakeholder engagement, education and advocacy, second opinion to policy development and legislative reform, intelligence, and strategic thinking).

The Baseline Review also identified the significant cost pressures the Commission is facing at the centre due to it transitioning from 'village to town'. The 'village to town' theme is that the number of Commission front-line staff has reached a level where a step-change in centralised infrastructure and support functions (e.g. strategy, IT systems, procurement, and data and analytics functions) is needed to systematise and formalise core processes and procedures.[16]

Levy funding

Other than Crown funding mentioned above, the Commission is funded through the appropriations shown in the below table. The Crown recovers each item of appropriated funding through levies on regulated businesses. The appropriations are therefore fiscally neutral for the Crown.

Sector	Appropriation type	Cap (Annual or MYA) ($m)
1. Telecommunications services (other than fibre services and broadcasting transmission services)	Annual	6.000
2. Telecommunications services (fibre services and broadcasting transmission services)	Multi-year appropriation (4-year: 2018/19 – 2021/22)	12.300
3. Electricity lines services	Multi-year appropriation (5-year: 2019/20 -2023/24)	28.311
4. Gas pipeline services	Multi-year appropriation (5-year: 2019/20 – 2023/24)	9.684

16 The Commission now has around 250 staff, up from 180 five years ago, as a result of new statutory functions being given to it and increasing expectations of the Commission's role. It expects that number to grow further as it manages and supports even more new functions, powers and duties.

5. Specified airport services	Multi-year appropriation (5-year: 2019/20 – 2023/24)	2.763
6. Dairy	Annual	0.757

Levy funding for electricity lines services and gas pipeline services

The Commission's work relating directly to electricity lines services and gas pipeline services under Part 4 of the Commerce Act is funded over a five-year period through multi-year appropriations 3 and 4 in the above table. The Commission's costs are recoverable through levies charged to regulated suppliers under the Commerce (Levy on Suppliers of Regulated Goods and Services) Regulations 2009.

The Commission's levy funding for electricity and gas was last reviewed in 2013.

Input methodologies review under Part 4 of the Commerce Act

In addition to its ongoing regulatory functions under Part 4 of the Commerce Act for electricity lines, gas pipeline, and specified airport services, the Commission is statutorily required to review its input methodologies at least every seven years to ensure they remain fit for purpose.[17] The Commission completed its first review of the input methodologies in 2016. It is required to review them again before the end of 2023.

As with the costs of its other regulatory functions under Part 4 of the Commerce Act, the costs of the review will be recoverable through levies from regulated businesses payable under the Commerce (Levy on Suppliers of Regulated Goods and Services) Regulations 2009.

The Commission does not currently have funding specifically appropriated for the next input methodologies review.

Levy funding for telecommunications, fibre, and broadcasting transmission services

The Commission's telecommunications, fibre, and broadcasting transmission services regulatory functions are funded through two budget appropriations (appropriations 1 and 2 in the above table) and recovered through levies on 'telecommunications operators'.[18] The levies are payable via two sub-levies prescribed under the Telecommunications (Commerce Commissions Costs) Levy Regulations 2019:

- **Annual appropriation**: The amount of this appropriation is recovered through one of the sub-levies payable by all telecommunications operators. In 2012 the Vote Communications appropriation was reduced from $7.79m to $6.0m per year from the 2012/13 financial year. It has not been reviewed since then.

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17 Input methodologies are the fundamental rules, requirements and processes the Commission must determine for services regulated under Part 4 of the Commerce Act. They cover key regulatory 'building blocks' such as the regulatory asset base, weighted average cost of capital (WACC), allocation of common costs, and regulatory tax. The input methodologies are applicable to all regulated services, i.e. electricity lines, gas pipeline, and specified airport services.

18 Under the Telecommunications Act, telecommunications operators are those businesses providing telecommunications services in New Zealand via a public telecommunications network and have gross revenues of over $10m per year. They include both wholesale providers (like Chorus) and retailers (like Spark, Vodafone, and 2degrees).

- **Fibre services and broadcasting transmission services implementation MYA**: When the Telecommunications (New Regulatory Framework) Amendment Act was passed in 2018, a one-off 4-year multi-year appropriation (**MYA**) of $12.3m was established. This purpose of this time-bound appropriation is principally to recover the Commission's costs of implementing the new regulatory framework for wholesale fibre broadband services.[19] The fibre MYA is recovered through the second sub-levy, payable by five companies providing wholesale fibre services.[20]

The below table shows the Commission's funding profile for the regulation of telecommunications services, fibre services and broadcasting transmission services for the four financial years from 2018/19 to 2021/22:

Funding profile – Telecommunications and Fibre (including Broadcasting)					
Sector / appropriation	**2018/19 ($m)**	**2019/20 ($m)**	**2020/21 ($m)**	**2021/22 ($m)**	**Total ($m)**
Telecommunications	6.000	6.000	6.000	6.000	**N/A**
Fibre (and Broadcasting)	3.200	5.000	3.300	0.800	**12.300**

Review of cost recovery charges

In recent years the Commission has faced a significantly increased workload as a consequence of major changes to most of the legislation it enforces, increased government and stakeholder expectations of the Commission's role (e.g. more direct engagement with stakeholders, both businesses and consumers), and cost pressures including at the organisation's centre due to significant growth in the number of front-line staff.

As confirmed in the Baseline Review:

- these dynamics have resulted in considerable strain on the Commission's resources over time and across all of its regulatory responsibilities, including in relation to its regulatory functions under the Telecommunications Act and Part 4 of the Commerce Act, and as a consequence of this
- the Commission's capacity and capability to deliver effectively on the outputs and outcomes expected under the legislation for which it is responsible in enforcing and on government and stakeholder expectations has been impacted considerably.

In regards specifically to the Telecommunications Act and Part 4 of the Commerce Act, the increased expectations on the Commission as an economic regulator working in the long-term interests of consumers follow global trends. In particular, since the last baseline reviews of the Commission's funding for the regulation of telecommunications in 2012 and electricity lines and gas pipeline services in 2013, economic regulators are expected as part of evolving

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19 Of the $12.3m, $12.0m relates to the implementation of the fibre services regime and $0.3m to bringing broadcasting transmission services into the telecommunications regulatory regime.

20 The five companies, commonly referred to as the 'Local Fibre Companies', are Chorus Limited, Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited and Ultrafast Fibre Limited. The fibre services levy is actually comprised of two amounts: one amount relates to the cost of information disclosure regulation, payable by all of the Local Fibre Companies. The other amount relates to the cost of price-quality regulation, payable only by Chorus Limited as it is the only company subject to price-quality regulation.

best regulatory practice and with respect to the long-term benefit of consumers to respond more dynamically to new technology, new services, consumer behaviour, the availability and accessibility of data, and the ways businesses with different governance structures respond to these changes. Modern economic regulators therefore need skills in data analysis, consumer engagement, behavioural economics, and an understanding of the needs of different stakeholders, along with the ability to identify where they can deliver the biggest overall benefit to consumers.

As noted, the increase in the Commission's funding in Budget 2020, following the Baseline Review, related only to baseline funding for its Crown-funded activities (i.e. in relation to its non-levy-recoverable regulatory functions). Despite the Baseline Review having identified also the need to increase the baselines for the Commission's levy-funded regulatory functions, consideration of any increases to those baselines first required consultation with levy payers and other stakeholders.

Electricity lines services and gas pipeline services

The Commission states that given its current funding it is not able to employ all its powers and functions for the regulation of electricity lines services and gas pipeline services under Part 4 of the Commerce Act. It states also that out of necessity it is spending more each year than its implied budget (a per annum split of its five-year MYA appropriations).

The pressures on the Commission's funding include:

- the need to adequately resource the Commission to shine a light on the performance of regulated businesses through its summary and analysis function, including importantly in relation to the businesses' maintenance and investment in their infrastructure assets which provide essential services to New Zealanders
- consumers' and the Government's expectations for the way the Commission engages with consumers in making decisions affecting them
- the need for the Commission to engage effectively with all regulated businesses and other stakeholders to understand their needs and constraints and plan ahead
- the need for the Commission to proactively monitor compliance with, and enforce, rules it puts in place in a timely way to minimise harm to consumers.

Furthermore, as the Commission transitions organisationally from 'village to town', its electricity and gas regulatory functions are expected to absorb an appropriate share of the step-change in consequential costs.

Without an increase in its funding, the Commission will need to narrow its regulatory focus to delivering price-quality paths, rather than expanding its focus to meet the full expectations of consumers, industry participants and the Government.

Input methodologies review under Part 4 of the Commerce Act

As noted, the Commission has a statutory obligation under Part 4 of the Commerce Act to review its input methodologies before the end of 2023. By its nature, this work is resource intensive. It will require the Commission to begin the review in financial year 2021/22. The review work will be spread over three years (2021/22 to 2023/24). The Commission's funding does not currently account for the review work.

Telecommunications, fibre and broadcasting transmission services

Substantial amendments to the Telecommunications Act in 2018 gave the Commission a range of major new functions, powers and duties on top of its existing workload under the Act. Among other things, the amendments:

- established a regulatory regime for the supply of wholesale fibre broadband services
- brought broadcasting transmission services into the telecommunications regulatory framework
- introduced wider consumer provisions (e.g. a requirement for the Commission to monitor retail service quality and make information available in a way that informs consumer choice with the aim of improving consumer outcomes).

At the same time, government and stakeholder expectations of the Commission's role in the telecommunications sector have increased significantly as the Commission is expected to respond to new technology, consumer behaviour, accessibility of data and information, and a need to develop its overall understanding of asset management health and risks to the supply of essential services.

The 2018 amendments to the Telecommunications Act directly impact on the Commission's future capacity to perform its regulatory functions to the standard required under its current resourcing. The one-off $12.3m 4-year MYA for fibre services ($12m) and broadcasting transmission services ($0.3m) will be exhausted by June 2021. There is currently no ongoing funding for these new responsibilities post-implementation or for the implications of other important legislative requirements. Without further funding, the Commission would need to fund its ongoing fibre services activities from the existing annual telecommunications appropriation of $6m or from its reserves.

As well as the direct cost pressures resulting from the new responsibilities and increased stakeholder expectations, the Commission's telecommunications regulatory function, like its regulatory function under Part 4 of the Commerce Act, is expected to share in increased corporate overhead costs needed to fund the organisation's transition from 'village to town'.

Cost Recovery Principles and Objectives[21]

Principles

In developing the cost recovery charges discussed in this CRIS, we have considered the Office of the Auditor General's *Good practice guide: Charging fees for public sector goods and services* and The Treasury's *Guidelines for Setting Charges in the Public Sector*.

The principles underpinning the recovery of the Commission's levy-funded regulatory costs used in this CRIS are:

- **Effectiveness**: The Commission's funding should enable it to meet its legal obligations and the reasonable expectations of Ministers, businesses and consumers.

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21 A principle is a general rule that should be used to guide cost recovery design. A feasible option must meet the stated principles. An objective is more of a goal that a specific cost recovery proposal should meet. The recommended option does not need to meet all of the objectives.

- **Equity**: The costs of funding the Commission's work and growth should be shared by the persons responsible for, or benefitting from, the work and growth.
- **Efficiency**: The Commission should use its resources efficiently and in a manner most likely to promote the long-term benefit of New Zealand consumers.

In relation to other key principles set out in The Treasury's *Guidelines for Setting Charges in the Public Sector*:

- **Authority**: None of the options considered in this CRIS involves imposing a levy for which there is no legal authority to charge.
- **Simplicity**: There is no material difference between the options considered in this CRIS regarding their simplicity.
- **Accountability, consultation and transparency**: The Commission is accountable to Parliament through its annual review and through the scrutiny of the Regulations Review Committee. The Commission's consultation with levy payers and other interested stakeholders from December 2020 to February 2021 on funding proposals for its work under the Telecommunications Act and Part 4 of the Commerce Act adopted an 'open book' manner, including providing detailed costings and assumptions in proposing additional funding.

Objectives

Our key objectives in reviewing the Commission's funding in this CRIS are to ensure the Commission can maximise the long-term benefit of consumers in relation to the supply of telecommunications, electricity lines, and gas pipeline services by:

- analysing and using data to provide insights into new technologies, new services and the behaviours of market participants and adjusting its regulatory interventions accordingly
- tailoring its engagement with market participants and consumers to gather and provide targeted information, educate, guide and proactively deter misconduct.

Policy Rationale: Why a user charge? And what type is most appropriate?

Competitive, fair and efficient markets have characteristics of both a public and private good. Everybody benefits from the Commission's activities seeking to ensure markets are competitive and fair – businesses and consumers alike.

The supply of some goods and services in New Zealand face limited or no competition. Some of these involve also the supply of essential services for New Zealand households and businesses, like the services regulated under the Telecommunications Act and Part 4 of the Commerce Act. Because of these characteristics, they are subject to additional regulation designed to protect consumers from the absence of, or limits on, competitive rivalry in the market. The protection of consumers includes limiting excessive profits by regulated suppliers, ensuring an appropriate quality of service and the sharing of efficiency gains, and incentivising investment and innovation.

Furthermore, the regulatory frameworks under the Telecommunications Act and Part 4 of the Commerce Act and their administration by the Commission benefits business by providing regulatory certainty. This is fundamental to ensuring that regulated businesses continue to have the confidence to undertake investments in their infrastructure assets to deliver essential services effectively, efficiently and reliably for the long-term benefit of consumers.

Reflecting this, the Commission is overall funded through a combination of Crown funds from general taxation and levies charged to regulated businesses. In the case of the Telecommunications Act and Part 4 of the Commerce Act, almost all the costs of the Commission's regulatory functions are recovered though levies paid by businesses supplying regulated services.[22]

Options for electricity and gas levy funding

Option 1: No new funding

In this option the Commission would have approximately $7.6m of funding per year on average to deliver on all obligations relating to the regulation of electricity lines services and gas pipeline services under Part 4 of the Commerce Act ($5.7m for electricity lines services and $1.9m for gas pipeline services).[23] Increasing overheads would require a reduction in staff numbers and the Commission would only be able to meet its minimum statutory obligations, which would need to account for the second review of the input methodologies.

No new funding would limit the Commission to:

- continuing to undertake price-quality path resets required under price-quality regulation but keeping them focused on updating price-quality paths and delivering only incremental improvements, rather than pursuing significant innovations in the way it sets price-quality paths
- delivering a minimal amount of performance monitoring and reporting sufficient to meet its statutory obligation to do so
- taking a more reactive approach to its compliance and enforcement work
- relying solely on formal consultation processes that smaller stakeholders may be less well equipped to participate in, instead of undertaking consumer outreach.

Option 2: Holding the line

Option 2 would entail the Commission aiming to only maintain its existing focus. The option would involve the Commission:

- continuing to focus primarily on rule setting, and setting and administering price-quality paths
- continuing to deliver a limited amount of performance monitoring and reporting, with a focus on monitoring profitability, and having limited capacity to make progress in other critical areas, like understanding and challenging businesses' asset management practices to ensure that the performance of essential infrastructure is resilient and not at risk of failure

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22 As noted, a very small amount of the Commission's funding is recovered from fees on a 'user-pays' basis and litigation costs are funded entirely through Crown-appropriated litigation funds. The costs of the Commission's centre are shared between direct Crown funding and levies paid by regulated suppliers.

23 This is calculated as a per annum split of the Commission's current five-year MYA appropriations for the regulation of electricity lines services and gas pipeline services.

- undertaking similar levels of consumer outreach as it has in recent years.

The Commission has estimated this option would cost:

- $10.4m of funding per year on average, comprising $7.7m for electricity lines services and $2.7m for gas pipeline services
- $8m for the seven-year input methodologies review spread over the three financial years 2021/22 to 2023/24.[24]

Option 3: Bridging the gap (preferred option)

In this option, the Commission would seek the following outcomes by 2026:

Investment and quality

- All electricity and gas networks:
    - have a good understanding of what their customers need, and what they are offering to their consumers
    - have asset management practices directed at supplying services at the quality consumers demand, and that are underpinned by an understanding of asset condition, criticality and risk, and appropriate levels of resilience
    - consistently achieve the core quality measures and are starting to respond to any broader measures the Commission puts in place.

Innovation

- The leading-edge electricity networks seeking out and adopting innovative technologies and articulating the benefits to consumers of those technologies.
- Electricity networks adapting their business models to embrace new ideas to deliver benefits to consumers.
- Gas networks adapting to decarbonisation.

Efficiency

- The Commission has increased its ability to track the efficiency of electricity and gas networks.
- There is an improvement in the average efficiency of electricity and gas networks.
- Industry participants are more aware of network businesses' efficiency and network managers are looking to actively compare themselves against their peers in pursuit of efficiency gains.

The Commission has estimated this option would cost:

- $12m per year on average, comprising $9m for electricity and $3m for gas
- $8m for the input methodologies review spread over the three financial years 2021/22 to 2023/24.

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24 While ongoing funding for the regulation of specified airport services is not under consideration in this CRIS, the three airports supplying specified airport services will need to contribute to the cost of the input methodologies review.

Option 4: Bridging the gap+

In this option, the Commission would aim for the same overall outcomes as 'bridging the gap' (Option 3), but at a faster rate and with the aim of becoming a best-in-class regulator. The Commission would make additional investments in its internal skills and capabilities and focus more on international engagement to be at the forefront of anticipating regulatory needs in the face of global technological change.

For the input methodologies review, this option would enable a more comprehensive review and a simplification of the input methodologies to make them easier to navigate and engage with.

The Commission has estimated this option would cost:

- $13m per year on average (comprising $9.7m for electricity and $3.3m for gas)
- $13m for the input methodologies review spread over the three financial years 2021/22 to 2023/24.

Options analysis for electricity and gas levy funding

The following options are assessed against Option 1 (no new funding).

Objective	2. Holding the line	3. Bridging the gap	4. Bridging the gap+
Effectiveness	✓ Commission's effectiveness improved over Option 1. It would stand still rather than going backwards. Commission unable to meet the increased stakeholder expectations, particularly in terms of consumer engagement expectations and its ability to deliver high-value monitoring and reporting.	✓✓ Commission's effectiveness significantly improved over Options 1 and 2.	✓✓✓ Similar to Option 3 but further effectiveness gains. A more comprehensive input methodologies review and a simplification of the input methodologies to make them easier to navigate and engage with.
Equity	✓ Same as Option 1. These is no proposed change to who pays what proportion of the levies.	✓ Same as Option 1.	✓ Same as Option 1.
Efficiency	✓ Commission's efficiency improved over Option 1. It would stand still rather than going backwards.	✓✓✓ Significant improvements to efficiency over Options 1 and 2. Commission has increased its ability to track the efficiency of	✓✓ Similar to Option 3. Likely efficiency gains from a more comprehensive input methodologies review. Simplification of the input methodologies

Objective	2. Holding the line	3. Bridging the gap	4. Bridging the gap+
		electricity and gas networks. Likely improvement in the average efficiency of networks. Industry participants are more aware of network businesses' efficiency and network managers are looking to actively compare themselves against their peers in pursuit of efficiency gains.	would make them easier to navigate and engage with. Increased burden on stakeholders to provide information and participate in regulatory consultations.
Analysis capability	✓ The Commission would retain its analysis capability at its current level, rather than having to reduce it under Option 1. The Commission could continue to deliver a limited amount of performance monitoring and reporting, with a focus on monitoring profitability, and having limited capacity to make progress in other critical areas, like understanding and challenging businesses' asset management practices to ensure that the performance of essential infrastructure is resilient and not at risk of failure.	✓✓ The Commission would increase the level of effort and attention it commits to performance monitoring and reporting and making this information available to the public. This work will have a renewed emphasis on monitoring of the risks to network reliability and resilience. With a clearer picture of the performance of networks, the Commission will be able to share better information with consumers about how their networks are performing, incentivise the continuous improvement of network performance, and better target its interventions at the areas that matter most.	✓✓✓ Similar to Option 3 but with faster development of the Commission's performance monitoring work – including in the area of asset management.
Tailored and proactive engagement	✓ The Commission will be able to maintain its current level of stakeholder	✓✓ The Commission will be able to: (1) increase its engagement with	✓✓✓ Similar to Option 2 but accelerated and with increased focus on: (1) international

Objective	2. Holding the line	3. Bridging the gap	4. Bridging the gap+
	engagement, rather than having to dial it back under Option 1.	consumers and consumer groups – including by getting out of Wellington and Auckland and visiting stakeholders where they live and work; (2) work more effectively across the energy markets regulatory system; and (3) increase its sector outreach.	engagement to be at the forefront of anticipating regulatory needs in the face of global technological change; and (2) collaborating across government in relation to the broader energy regulatory system. This accelerated approach may ask too much too quickly from businesses and consumers in terms of the engagement and consultation burden.

Who will be required to pay the electricity and gas levies?

Section 53ZE of Part 4 of the Commerce Act requires every supplier of goods or services regulated under Part 4 to pay the levy determined in accordance with regulations made under section 53ZE(2). Levies are currently charged and payable under the Commerce (Levy on Suppliers of Regulated Goods and Services) Regulations 2009 by the suppliers of electricity lines, gas pipeline, and specified airport services, as follows:

- 29 electricity distribution businesses
- Transpower
- four gas distribution businesses and one gas transmission business
- the three major international airports at Auckland, Wellington and Christchurch.

We are not proposing any change to who pays the levies or how each regulated supplier's share of the total levies payable is calculated.

Assets and revenues of regulated electricity and gas networks

	Electricity Distribution	Electricity Transmission	Gas Pipeline Services
Regulated suppliers	29 electricity distribution businesses	Transpower	1 transmission 4 distribution
2019 Regulated Assets / Revenues	$12.08b assets Revenues of $2.6b per annum	$4.6b assets Revenues of $945m per annum	2.5b assets Revenues of $541m per annum

Options for telecommunications levy funding

Option 1: No new funding

In this option the Commission would continue to have $6m of funding per year to deliver on all obligations under the Telecommunications Act, including the new obligations around the fibre services regime, retail service quality and broadcasting transmission services. Without new funding the Commission would not be able to meet all of its statutory obligations or stakeholder expectations.

The Commission would continue to prioritise work addressing the biggest harms. This would entail focusing almost exclusively on the new fibre services regulation, i.e. setting price-quality paths for Chorus and information disclosure requirements for all five Local Fibre Companies that are subject to fibre services regulation.

The Commission would cease its broadband testing programme and other consumer-facing engagements. It would have limited capacity to advance retail service quality or undertake market studies like its recent 'mobile market study', which provide valuable pulse checks on the state of competition in the telecommunications sector and identify areas that are performing well or areas that may require further investigation or intervention.

Option 2: Holding the line

In this option the Commission would aim to maintain the same outcomes in each of the three areas – infrastructure, competition and consumer – it has used to assess outcomes in the supply of telecommunications and fibre services to date. Under this scenario, where the industry is in 2020 is where the Commission would aim for it to be in 2026.

Under Option 2, the fibre services regime would be funded to an appropriate level but the Commission would do significantly less market analysis and compliance, investigation and consumer-facing work in its non-fibre regulatory work than under Option 3 below.

The Commission has estimated this option would cost $8.0m per year to regulate the telecommunications services excluding fibre services. This is based on a head count of 21 full-time equivalents and $1.5m in external costs. The fibre services costs would be the same as in Options 3 and 4 below, i.e. $5.5m per year to administer the fibre services regime. This is comprised of a head count of 18 full-time equivalents and $500k in external costs.

Option 3: Bridging the gap (preferred option)

In this option, the Commission would seek to increase its impact in several areas:

Infrastructure

- Embedding and administering the new fibre services regime.
- Ensuring those remaining on legacy copper services continue to receive adequate service.
- Supporting cooperation between mobile and wireless network operators where it is uneconomic to invest individually (e.g. infrastructure sharing).
- Working with all industry participants and other Government agencies to deepen its understanding of:

  - gaps in coverage, including plans for upgrades in coverage, capacity and technology
  - asset health management practices underpinned by an understanding of asset condition, criticality and risk.

Competition

- Incentivising Chorus and the other four Local Fibre Companies to continue to bring products and services to market that meet retail service providers' and consumers' needs.
- Improving the Commission's ability to access timely data and make assessments at a sub-national level to determine the level of competition across technologies and providers. This will enable the Commission to more effectively remove barriers to competition and reduce regulation if costs exceed the benefits of the intervention.
- Providing input into MBIE's upcoming allocation of 5G spectrum.
- Seeking to better understand developments and trends regarding data and platforms overseas to understand how they might impact the New Zealand market.
- Strengthening the Commission's compliance capacity to ensure market players have a good understanding of their obligations and are confident to act.

Consumer

- Applying the Commission's new powers under the 2018 amendments to the Telecommunications Act.
- Ensuring consumers are supported through the transition from copper to fibre, both through the 111 and Copper Withdrawal Codes and providing consumers with information to make good choices regarding the products and services available to them.
- Working with industry to establish codes addressing the frictions consumers have navigating product offerings, including switching processes, billing issues and services not meeting expectations.
- Providing independent information on the coverage and performance of networks available to consumers to help demystify the options, including mobile coverage and performance data.
- Reviewing the disputes resolution scheme, mandated under the 2018 amendments to the Telecommunications Act, at least every three years.

The Commission has estimated this option would cost $9.5m per year to regulate the telecommunications services excluding fibre services. This is based on a head count of 24 full-time equivalents and $2.34m in external costs. The fibre services regime costs would be the same as in Options 2 and 4, i.e. $5.5m per year to administer the regime. This is comprised of a head count of 18 full-time equivalents and $500k in external costs.

Option 4: Bridging the gap+

In this option the Commission would aim for the same outcomes as 'bridging the gap' (Option 3) but would bridge the gap at a faster rate, in particular in the 'competition' and 'consumer' outcomes areas. There would also be a greater focus on capability building and international engagement to enable the Commission to anticipate regulatory needs in the face of global technological change.

The Commission has estimated this option would cost $10.6m per year to regulate telecommunications services excluding fibre services. This is comprised of a head count of 27 full-time equivalents and $2.8m in external costs. The fibre services regime costs would remain the same as in Options 2 and 3, i.e. $5.5m per year to run the regime. This is comprised of a head count of 18 full-time equivalents and $500k in external costs.

Options analysis for telecommunications levy funding

The following options are assessed against Option 1 (no new funding).

Objective	2. Holding the line	3. Bridging the gap (preferred option)	4. Bridging the gap+
Effectiveness	✓ Commission could meet statutory obligations. Unchanged consumer frustration levels with retail service quality and general dissatisfaction levels with industry.	✓✓ Commission could increase its impact in the areas described in the description of Option 3 above.	✓✓✓ Potential additional benefits to Option 3 are: • Further investment in internal skills and capabilities, and in consumer and industry engagement. • An increased focus on international engagement to help anticipate regulatory needs in the face of global technological change.
Equity	✓ Same as Option 1. These is no proposed change to who pays what proportion of the levies.	✓ Same as Option 1.	✓ Same as Option 1.
Efficiency	✓ Commission would continue to use its resources efficiently.[25] The number of personnel would be maintained at the 2020/21 level. Commission would not be able to leverage the increase in its central capability to achieve	✓✓✓ Commission's increased analysis and greater proactive engagement and enforcement approach likely to make interventions more timely and effective than under Options 1 and 2, thereby increasing impact and efficiency.	✓✓ Similar to Option 3 but consumer campaigns may exceed Commission's and stakeholders' capacity to adapt to change in approach at speed. Potential over-saturation of consumers with information, adding to consumer confusion around products and

25 The Baseline Review found the Commission is using its resources efficiently and effectively.

Objective	2. Holding the line	3. Bridging the gap (preferred option)	4. Bridging the gap+
	desirable sector outcomes.		services and resulting in disengagement. Increased burden on stakeholders to provide information and participate in regulatory consultations.
Analysis capability	✓ The Commission would retain its analysis capability at its current level, rather than having to reduce it under Option 1.	✓✓ Significantly improved ability to plan interventions based on new data analysis capability additional to Options 1 and 2.	✓✓✓ Similar to Option 3 but with additional investment in internal skills and capabilities, in domestic engagement with industry and consumers and in international engagement to identify global trends.
Tailored and proactive engagement	✓ Greater engagement than under Option 1 but limited change from Commission's current approach. Few opportunities for additional engagement with consumers and the wider industry. Limited ability to focus on guidance/advice while regulatory regime is in significant transition.	✓✓ Significantly improved ability over Options 1 and 2 to plan interventions based on tailored and proactive engagement. Particular focus on groups in sector that have had limited interaction with Commission.	✓✓✓ Similar to Option 3 but with additional benefits: • Additional increase in Commission's consumer-facing activities (e.g. availability, service mapping and performance information linked to price and retail service quality information). • Commission would have a greater presence in industry compliance, education and engagement. • Greater focus on engagement with small- to medium-service providers. • Commission would spend additional effort maintaining existing, and building new, international relationships to keep

Objective	2. Holding the line	3. Bridging the gap (preferred option)	4. Bridging the gap+
			up with best practice and contribute to the debate on the impact of new technologies and business models on the regulatory system.

Who will be required to pay the telecommunication and fibre services levies?

The telecommunications and fibre services levies are payable by telecommunications operators in accordance with the requirements of the Telecommunications Operator (Commerce Commission Costs) Levy Regulations 2019.

The next section addresses why the Telecommunications Operator (Commerce Commission Costs) Levy Regulations 2019 will need to be amended.

Amendment of Telecommunications Levy Regulations

The Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 (the **Telecommunications Levy Regulations**) need to be amended to ensure that only those telecommunications operators subject to regulation relating to the fibre services regime (i.e. the five Local Fibre Companies) are allocated the costs of administering the regime from 2022/23.

The Telecommunications Levy Regulations currently only require the fibre services sub-levy to be paid until the end of the 2021/22 financial year. This is the year by which the implementation of the fibre services regime is to be completed and the year the current MYA for fibre services ends.

If the Telecommunications Levy Regulations were not amended, there would be a single, bundled levy apportioned across all telecommunications operators from the 2022/23 financial year and outyears to cover the Commission's regulatory costs. This would include costs relating to information disclosure regulation and price-quality regulation implemented under the fibre services regime.

The Commission's costs for the regulation of fibre services will remain a sizeable portion of its overall costs for telecommunications regulation. Where it can be done easily, consistent with best-practice cost recovery, those subject to the regulation should bear the costs.

The level of the proposed fee and its cost components (cost recovery model)

Proposed electricity and gas levies

The proposed levies for electricity and gas under the preferred funding option (Option 3) are:[26]

Sector	2019/20 funding	Proposed annual funding	% Change
Electricity	$5.7m	$9.0m	59%
Gas	$1.9m	$3.0m	55%

The electricity and gas levies are based on an estimated head count of 41 full-time equivalents and $1.3m in external costs. See table in **Annex 1** for more detailed costings.

Forecast total revenues for electricity and gas

	FY21/22	FY22/23	FY23/24	FY24/25	FY25/26	Total
Electricity	$8.541m	$8.673m	$9.001m	$9.001m	$9.822m	**$45.038m**
Gas	$3.517m	$3.502m	$2.802m	$2.533m	$2.657m	**$15.011m**

Proposed levy for input methodologies review

The proposed levy for the second input methodologies review, which the Commission is statutorily required to complete before the end of 2023, under Option 3 is:

	Expenditure on 2016 IM review	Proposed funding for upcoming IM review	% Change
Input methodologies review	$7.65m	$8m	5%

The proposed levy for the input methodologies review is based on an estimated head count of 13.5 full-time equivalents and $1.24m in external costs over a three-year period. See **Annex 1** for more detailed costings.

Forecast total revenue for input methodologies review

	FY21/22	FY22/23	FY23/24	Total
IM review	$2.082m	$4.018m	$1.900m	**$8.000m**

26 Average figures per annum based on five-year funding profile.

Proposed telecommunications and fibre services levies

The proposed levies for telecommunications services and administering the fibre services regime under Option 3 are:

Sector	2019/20 expenditure	Proposed annual funding	% Change
Telecommunications	$6.0m	$9.5m	58%
Fibre (including broadcasting transmission services)	$4.9m[27]	$5.5m	12%

The proposed telecommunications levy is based on an estimated head count of 24 full-time equivalents and $2.34m in external costs. See table in **Annex 1** for more detailed costings.

The proposed fibre services levy is based on an estimated head count of 18 full-time equivalents and $0.5m in external costs. See **Annex 1** for more detailed costings.

Forecast total revenues for telecommunications and fibre services

	FY21/22	FY22/23	FY23/24	FY24/25	FY25/26	Total
Telecommunications	9,118	9,215	9,929	9,929	9,236	**47,427**
Fibre	5,218	5,285	5,858	5,858	5,148	**27,367**

Impact analysis

Proposed electricity and gas levies

We summarise our analysis of potential impacts of the proposed electricity and gas levies in our preferred option (Option 3) in the below table:

	Costs	Benefits
Levy payers	The levy payers will pass on the increase in levies to consumers. We do not therefore anticipate any costs for levy payers. We do not envisage a material impact on demand for energy services or a material increase in the barriers to entry for the electricity lines services or gas pipeline services markets.	The Commission will be able to adapt more quickly to a changing energy environment, develop better regulations, administer and enforce regulatory requirements in a more consistent and timely manner, and provide more regulatory certainty, which is critical for ensuring continued investment and innovation in regulated sectors.

27 Although this was the 2019/20 expenditure relating to the implementation of the fibre services regime, this funding currently would fall to $0 in the 2021/22 financial year.

	Costs	Benefits
	The businesses liable to pay the levies are large businesses likely to be able to comfortably manage the increase in levies (see the table above under *Who will be required to pay the electricity and gas levies?*).	
Consumers	The Commission estimated the direct cost on the average New Zealand household from the proposed levy would be 57 cents per month or 0.33% of their average energy expenditure.[28] This would represent an increase from 41c per month based on the Commission's 2019/20 expenditure.	The Commission will be able to update and improve its regulations, better enforce contraventions of the regulations, and monitor the performance of regulated services. This will help to ensure consumers continue to be protected from the risks of monopoly infrastructure providers and receive the benefits they enjoy in competitive markets – like limiting excess profits, ensuring an appropriate quality of service and sharing in the benefits of efficiency gains, and incentivising investment and innovation.

Proposed telecommunications and fibre services levies

We summarise our analysis of potential impacts of the proposed telecommunications and fibre services levies in our preferred Option 3 in the below table:

	Costs	Benefits
Levy payers	The levy payers are likely to pass on the increase in levies to consumers. We do not therefore anticipate any costs for levy payers. We do not envisage a material impact on demand for telecommunications services. A new entrant into the telecommunications market must have $10m worth of qualified revenue before it must pay the levy, and any levy is proportionate	The Commission will be able to adapt more quickly to a changing telecommunications sector environment, develop better regulations, administer and enforce regulatory requirements in a more consistent and timely manner, and provide more regulatory certainty, critical for ensuring continued investment and innovation in regulated sectors.

28 We consider this estimate to be the upper limit. In reality, the costs of the levy would be passed on to both business and residential customers. The Commission's analysis assumes it would be entirely passed on to residential customers.

	Costs	Benefits
	to the level of qualifying revenue. The increase in levies will not therefore impose a material additional barrier to entry.	
Consumers	The Commission estimated the direct cost on the average New Zealand household from the proposed levy would be 40 cents per month or 0.28% of their average monthly communications expenditure. This would represent an increase from 30 cents per month based on the Commission's 2019/20 expenditure.[29]	The Commission will be able to update and improve its regulations, better enforce contraventions of the regulations, and monitor the performance of regulated services. This will help to ensure consumers continue to be protected from the risks of monopoly infrastructure providers and receive the benefits they enjoy in competitive markets – like limiting excess profits, ensuring an appropriate quality of service and sharing in the benefits of efficiency gains, and incentivising investment and innovation.

Reasonableness comparisons

The Commission compared the proposed levies to its overseas counterparts.

Telecommunications regulation comparator

- The expenditure of ComReg of Ireland on its electronic communications activities (excluding postal and premium rate service) was €29.17m in 2017, €30.37m in 2018 and €32.304m in 2019. ComReg has a broader role than the Commission's role in the New Zealand telecommunications sector. For example, these figures include ComReg's role in spectrum management, the responsibility for which in New Zealand sits outside the Commission. In 2019, ComReg had 118 staff employed to undertake its electronic communications work.

Energy regulation comparators

- BNetza, the German multi-sector network regulator, has had over 2,000 staff working on network regulation across different sectors.
- Ofgem, the British energy regulator, regulates both markets and networks. It has a total staff of over 800, with about 500 engaged in economic regulation. Around 100 are involved in network regulation.
- The Irish water and energy regulator spends approximately $20.6m a year on energy regulation, although this includes regulating markets as well as networks.

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29 We consider this estimate to be the upper limit. In reality, the costs of the levy would be passed on to both business and residential customers. The Commission's analysis assumes it would be entirely passed on to residential customers.

Economic regulator comparator

- The scope of the Australian Competition and Consumer Commission is close to the Commerce Commission's role as a whole. The expenditure for the Australian Competition and Consumer Commission in the 2019/20 year was AUD$237m with an average staffing level of approximately 900.

Consultation

The Commission consulted on two discussion papers from December 2020 to February 2021:

- *Review of the Commerce Commission's funding for the regulation of Telecommunications and Fibre under the Telecommunications Act 2001*

- *Review of the Commerce Commission's funding for the regulation of electricity and gas networks under Part 4 of the Commerce Act 1986*.

The discussion papers explained the need to increase the Commission's funding and canvassed each of the options included earlier in this CRIS. They also detailed the workplan and costings for the Commission's proposed work and sought feedback on its preferred options for increasing levies.

Consultation feedback received on funding for electricity and gas regulation (excluding the input methodologies review)

There were 16 submissions received on the future funding of the Commission's regulatory work under Part 4 of the Commerce Act, excluding the upcoming review of input methodologies (see below). Nine submissions were from energy (electricity and gas) network companies[30], three were from industry bodies[31], two were from consumer trusts that are the shareholders of electricity networks providing lines services to consumers in their regions[32] and two were from consumer groups[33].

None of the submissions indicated support for the Commission to receive no new funding. Twelve submissions signalled support for the 'bridging the gap' option. This included seven submissions received from energy network companies, two from industry bodies, one from a consumer electricity trust and the two consumer group submissions. One submission (from an electricity network company) indicated support for a variant of the 'bridging the gap+' option. The other three submissions (from an electricity network company, a consumer electricity trust and an industry body) indicated support for the 'holding the line' option.

The submissions generally acknowledged the higher workload and greater expectations (from the energy sector, consumers and government) of the Commission in regulating the energy networks, especially in light of the changing energy sector landscape (including the

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30 The submissions were from: Firstgas Group; Network Waitaki Limited; Orion New Zealand Limited; Powerco Limited; Transpower New Zealand Limited; Trustpower Limited; Unison Networks Limited; Vector Limited; and Wellington Electricity Lines Limited.

31 The submissions were from: Electricity Networks Association; Electricity Retailers' Association of New Zealand; and Energy Trusts of New Zealand.

32 The submissions were from: Counties Power Consumer Trust, which owns the shares in Counties Power Limited; and Waitaki Power Trust, which owns the shares in Network Waitaki Limited.

33 The submissions were from: Consumer NZ; and Major Electricity Users' Group.

goal of decarbonisation). They also agreed with the general direction of travel the Commission wants to take under the preferred ‘bridging the gap’ option and recognised that the Commission needs more resources to ensure that its regulatory activities are fit for purpose in a changing energy environment, to be able to accomplish its role effectively.

There was, however, some concern raised (e.g. by Network Waitaki, Unison, and Electricity Networks Association) that a substantial increase in funding could result in, as put by Network Waitaki, “regulatory overreach” by the Commission.

A key theme raised in many submissions was the need for greater outreach activity and engagement with regulated businesses and stakeholders by the Commission (again, importantly in the context of an energy landscape that is being transformed significantly and at pace), and for the Commission to be adequately resourced to enable this to happen.

For instance, Consumer NZ wants energy consumers to have greater participation in the Commission’s decision-making processes. Network Waitaki submitted that there was a need for a proactive approach from the Commission to support and educate electricity network businesses. The Electricity Networks Association, which is the industry body representing the 29 local electricity distribution/network businesses in New Zealand, stated that it had noticed a reduction in the Commission’s outreach engagement recently and that there needs to be a strong focus on stakeholders, including the Commission’s engagement with the Association.

Additionally, Transpower raised the criticality of the Commission incentivising and monitoring asset stewardship by energy networks. Firstgas Group considered that there would be significant benefits from greater outreach and engagement activity because the Commission would acquire better insight into consumer needs and preferences, as well as an improved understanding of regulated businesses’ performance and the drivers of performance. Similarly, Orion, in acknowledging the changing and increasing expectations on the Commission, summed it up as follows:

> *We believe that now is the time to ensure resourcing and capability are optimum to facilitate connectedness and collaboration between parties, to hold each other to account and maintain a focus on the long-term benefit of consumers. Reducing the Commission FTEs [full-time equivalent employees] would be detrimental in a time of significant societal shift.*

Expanding on this theme from another perspective, Firstgas Group (and similarly others, for example, Powerco, Trustpower, Unison, and Wellington Electricity Lines) indicated that greater coordination by the Commission with other government departments and regulatory agencies is necessary. It argued that without this, the Commission will be unable to fulfil the Government’s expectation that the regulatory system supports the objectives of wider government work streams. In particular, relating to the challenges posed by the issues of energy affordability or equity, climate change and energy security (that is, the so-called ‘energy trilemma’).

Consultation feedback received on input methodologies review funding

There were 17 submissions received on funding the input methodologies review. These were from the 16 parties who made submissions on the future funding of the Commission’s regulatory work excluding the review, as noted above, plus Auckland International Airport Limited.

Ten submissions signalled support for the preferred ‘bridging the gap’ option. This included five submissions received from energy network companies, two from industry bodies, one from a consumer electricity trust and the two consumer group submissions. One submission (from an electricity network company) signalled support for the ‘bridging the gap+’ option. Four submissions (all from regulated suppliers) indicated support for the ‘holding the line’ option. The remaining two submissions signalled support for no new funding.

The submissions generally acknowledged the importance of the Commission doing a thorough input methodologies review, particularly in light of significant developments and expectations in the energy sector landscape (and the implications of this for regulation under Part 4 of the Commerce Act). They also generally signalled that the required funding for the review best corresponded with the ‘bridging the gap’ option. The risk of not being funded adequately to undertake the review was noted by Transpower as follows:

> *If additional funding is not provided, there is a risk that aspects of the [input methodologies] will act as a barrier to the [energy] sector’s transition, rather than as an enabler. The review will also allow the Commission to make incremental improvements to the existing rules, which is important to ensure the rules operate as intended, with clarity and certainty.*

While the ‘bridging the gap+’ option would enable the Commission to carry out a more focused review to simplify the input methodologies and better engagement on the review, some submitters (for example, Auckland International Airport) considered that spending an extra $5 million on top of the $8 million proposed under the ‘bridging the gap’ option could not be justified relative to the perceived additional benefits and in light of the economic impacts of COVID-19.

Consultation feedback received on funding for telecommunications regulation

There were 13 submissions received on future funding of the Commission’s regulatory work under the Telecommunications Act. All submissions addressed funding for both the Commission’s current telecommunications regulatory functions and the administration of the new fibre services regime. Eight submissions were from companies providing telecommunications services[34], two were from industry bodies[35] and three were from consumer groups[36].

In the case of funding the Commission’s current telecommunications regulatory functions, seven submissions signalled support for the ‘bridging the gap’ option. This included three submissions received from telecommunication services providers, one from an industry body and the three submissions from consumer groups. Of the other six submissions, three (two telecommunication services providers and one industry body) signalled support for the ‘holding the line’ option and three (all telecommunication services providers) for the ‘no new funding’ option.

34 The submissions were from: Chorus Limited; Enable Networks Limited and Ultrafast Fibre Limited; Northpower Fibre Limited and Northpower LFC2; Spark New Zealand Limited; Trustpower Limited; Two Degrees Mobile Limited (2degrees); Vocus Group (NZ); and Vodafone New Zealand Limited.

35 The submissions were from: Internet Service Providers Association of New Zealand; and New Zealand Telecommunications Forum (the representative industry body for 95% of the telecommunications sector).

36 The submissions were from: Consumer NZ; InternetNZ; and Technology Users Association of New Zealand.

In the case of funding the administration of the new fibre services regime, nine submissions signalled support for the preferred ‘bridging the gap’ option. This included five submissions received from telecommunication services providers, one from an industry body and all three submissions from consumer groups. Of the remaining four submissions, three signalled support for the ‘holding the line’ option (two telecommunication services providers and one industry body) and one (a telecommunications service provider) for the ‘no new funding’ option.

A key focus across a number of submissions was the proposed funding levels and the timing of any increases in funding.

While Chorus, the major regulated telecommunications supplier in terms of contribution to levies paid, said it generally supports the Commission’s priorities and plans for regulatory activity (particularly for implementing improvements in the consumer area, such as retail service quality) over the next five years, it submitted that it was concerned the proposed increase under the ‘bridging the gap’ option is material and would be occurring at a time of COVID-19 economic impacts[37] and without sufficient notice to include the extra cost in its business planning.

In that context, Chorus said it would like to see the funding increase applied in stages over two years. It suggested increasing the levies for both the telecommunications and fibre services regime by half of what the Commission has proposed in financial year 2021/22 and then to the full ‘bridging the gap’ option amounts in financial year 2022/23.

Looking beyond 2026, Chorus suggested that the 2021-2026 preceding period should be the peak for the Commission’s regulatory activities, putting forward two reasons. First, the Commission’s proposed investment in central organisation business services (e.g. in data management and stakeholder engagement) will contribute to the full spectrum of responsibilities across all the legislation the Commission enforces and should deliver efficiencies over time (others submitted this point also, for example, Vocus). Secondly, specifically in relation to non-fibre telecommunications regulation, some of the Commission’s work should decline over time (e.g. as copper services are deregulated and decommissioned). Chorus submitted that as a result of this, levies should then reduce, at least in real terms.

Similarly, in their joint submission, Enable Networks and Ultrafast Fibre, while acknowledging that the Commission has an additional regulatory role under the 2018 amendments to the Telecommunications Act in relation to improving consumer outcomes, submitted that this was offset by a reduced workload in other regulatory responsibilities, such as in the regulation of copper and mobile services. For that reason, while agreeing with the ‘bridging the gap’ option for the new fibre service regime, they, along with some other telecommunications service providers that submitted (for example, Spark), did not support increased funding for non-fibre regulatory activities as proposed, from $6 million to $9.5 million per year.

Like Chorus, Spark questioned the timing for the proposed funding increases because they would be introduced at a time when telecommunications services providers and consumers face significant economic pressure. Spark was also of the view that it was too early for the Commission to fully understand and scope its medium-term resource requirements and

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37 Some other submitters also raised this, for example, 2degrees, Vocus and New Zealand Telecommunications Forum.

therefore any funding decisions should be delayed until 2022, when the Commission's work programme could be better formulated.

Some other submitters (for example, Vodafone and New Zealand Telecommunications Forum) were opposed to what they saw as a substantial increase in the Commission's funding under the 'bridging the gap' option because of their concern that an increase in levies would be borne by the industry due to difficulty in passing through regulatory costs to consumers, given the high degree of competition amongst telecommunication services providers. This would in turn, they submitted, have consequences for expenditure on innovation and investment in the telecommunications sector.

On the other hand, Trustpower supported the 'bridging the gap' funding option. It submitted that prudent regulation of monopoly utilities is important to ensure fair outcomes for consumers. Trustpower accepted that the Commission needs to be adequately resourced, including to enable more consumer engagement in its regulatory processes (a point emphasised also by Consumer NZ), and supported the focus and scope of regulatory work proposed by the Commission.

InternetNZ considered that the level of funding under the 'bridging the gap' option is reasonable and not material when spread across New Zealand households. It suggested that the benefits to households would outweigh an increase in costs because the Commission would be able to provide households with independent high-quality information about retail internet and telecommunications services.

Conclusions and recommendations

We think that Option 3 (Bridging the gap) is the best option for funding the Commission's costs in relation to the regulation of telecommunications services under the Telecommunications Act and the regulation of electricity lines services and gas pipeline services and seven-year review of input methodologies under Part 4 of the Commerce Act, as described earlier.

This would involve providing the Commission with the following funding:

- $12m per year on average for the period 2021/22 to 2025/26 for the regulation of electricity lines services and gas pipeline services comprising:
    - $9.0m for the regulation of electricity lines services
    - $3.0m for the regulation of gas pipeline services.
- $8.0m for the input methodologies review spread over the three financial years 2021/22 to 2023/24.
- $15.0m per year for the period 2021/22 to 2025/26, comprising:
    - $5.5m per year for the ongoing administering of fibre transmission services
    - $9.5m per year for all other regulatory responsibilities under the Telecommunications Act.

As noted, to ensure that only those telecommunications operators who are subject to the fibre services regime (i.e. the five Local Fibre Companies) bear the costs of administering the regime from financial year 2022/23, the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 need to be amended.

Implementation plan

Subject to Cabinet agreeing to the proposals in this CRIS, MBIE will write to all:

- levy payers advising them of the outcome of the funding review applicable to them, and to
- parties that submitted on the discussion papers advising them of the outcome of the funding review on which they submitted.

The outcomes of the reviews will be reflected in the Estimates of Appropriation documents for 2021/22.

MBIE will undertake a process to amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 to ensure that levies are charged appropriately to telecommunications operators from financial year 2022/23.

The Commission will update its existing regulatory work programme to reflect any additional funding it receives. This will also be reflected in its annual Statement of Performance Expectations, as appropriate.

Monitoring and evaluation

The Commission is an independent Crown entity and must act independently in relation to its statutory functions. However, there is substantial information-sharing between MBIE and the Commission in terms of the policy and operational settings around competition and regulatory matters and consistent with MBIE's Crown entity monitoring role. This includes regular meetings between staff at all levels of the organisations and reporting consistent with the Crown entity monitoring requirements.

The Commission is required to report to the Minister of Commerce and Consumer Affairs, Parliament and to the general public about its regulatory work and performance. The Commission reports annually on its regulatory work and a range of financial and non-financial performance measures, including in its Annual Report, Statement of Performance Expectations and appearance before the Economic Development, Science and Innovation Select Committee.

Further, the following budgeted and estimated actuals measures of the Commission's performance in relation to the regulation of electricity lines, gas pipeline, and telecommunications services are reported in the Estimates of Appropriation (end of year performance information for the relevant appropriations is reported by the Commission in its Annual Report):

- Number of determinations (includes determinations, clarifications, reviews, codes and amendments). A determination is a formal and binding decision made by the Commission under the legislation it administers.
- Percentage of Part 4 of the Commerce Act 1986 determinations completed by statutory deadlines.
- Number of reports completed (monitoring reports, summary and analysis reports and information disclosure reports).
- Quality assurance processes for determinations and code amendments are in place and applied.

- Average time to complete telecommunications determinations.

The Commission also reports against strategic objective performance indicators in its Annual Report on the regulatory functions it carries out under all of the legislation it administers, as follows:

Markets work well

Supporting an environment that enables markets in New Zealand to function well is the cornerstone of this strategic objective. Whether markets work well (including markets with limited competition) is not solely dependent on the work the Commission does. The New Zealand economy is affected by wider circumstances such as global economic conditions, government policy, programmes related to competition, and New Zealand being a small and geographically isolated economy.

The Commission's role in encouraging markets to work well is to provide that:

- businesses understand and operate according to the rules
- there is effective competition between businesses
- competition is not undermined by anti-competitive arrangements
- market power is not misused
- mergers do not substantially lessen competition
- regulated sectors are incentivised to perform efficiently
- accurate information is available to both consumers and businesses

This outcome is measured through:

Strategic objective performance indicators	Source of information	Baseline (year)	Target
State of competition in New Zealand markets	**World Economic Forum Annual Global Competitiveness Report** New Zealand's extent of market dominance score.	52.7 out of 100 points (in 2019)	Maintain or increase
	World Economic Forum Annual Global Competitiveness Report New Zealand's competition in services score.	73.1 out of 100 points (in 2019)	Maintain or increase

Strategic objective performance indicators	Source of information	Baseline (year)	Target
Regulated suppliers provide strong and sustainable infrastructure that benefits New Zealanders	**Commerce Commission's analysis** An assessment by the Commission based on analysis of a range of metrics relating to the performance of regulated suppliers such as profitability and quality of services.	Achieved (in 2019)	Achieved

Consumers are confident market participants

Consumer confidence in markets is built on trust. Consumers, and businesses who are major consumers of goods and services themselves, want to be able to trust they are not being misled, whether about pricing, quality, or terms and conditions. They also want to trust that New Zealand's essential regulated infrastructure is reliable and efficient. Where that trust is breached, they want to feel assured that the Commission can, and does, take action.

Consumers have confidence to participate in markets when they have access to information that helps them to make informed purchasing decisions, they can assess whether businesses are trading fairly, and they feel that the system is working to protect their rights.

The Commission's role in contributing to consumer confidence is to:

- help educate New Zealanders about consumer laws, so they are empowered about their rights and how to exercise them
- help ensure consumers have access to information, so they can make informed purchasing decisions
- monitor terms and conditions related to the purchase of goods and services to ensure they are fair and able to be easily understood
- help ensure consumers are not misled about the price, characteristics and quality of goods and services and credit terms
- help ensure consumers benefit from dependable and efficient regulated services
- help ensure consumers have access to innovative products and services, promote compliance with the law, prosecute violations of the law and deter wrongful behaviour

This outcome is measured through:

Strategic objective performance indicators	Source of information	Baseline (year)	Target
Consumers are confident that competition and consumer laws are being appropriately enforced	**New Zealand Consumer Survey** This survey is conducted every two years by Consumer Protection (part of MBIE). The next survey will be conducted in 2020/21.	30% (in 2019)	Maintain or increase
Regulated suppliers provide strong and sustainable infrastructure that benefits New Zealanders	**New Zealand Consumer Survey** This survey is conducted every two years by Consumer Protection (part of MBIE). The next survey will be conducted in 2020/21.	83% (in 2019)	Maintain or increase
Consumers are confident that regulated suppliers are providing services at an appropriate price and quality	**Annual Telecommunications Survey** Consumer NZ conducts this survey every year.	Fixed line: 78% Mobile: 82% (in 2019)	Maintain or increase
	Consumer Survey – switching and perceptions of electricity retailers This survey is conducted by the Electricity Authority every two years. The next survey will be conducted in 2020/21.	73% (in 2019)	

Businesses are confident market participants

Businesses are confident market participants when they know other businesses are following the rules and if not, appropriate action is taken.

When regulated businesses are confident market participants, they will continue to invest to ensure the essential services they provide remain reliable, sustainable and fit-for-purpose.

However, business confidence and investment are affected by economic and market conditions, as well as factors specific to each company, such as the ability to access finance.

The Commission's role in improving business confidence is to:

- enhance business understanding of the legislation it is responsible for enforcing so they do not unintentionally break the rules
- ensure the rules and regulations in relation to regulated businesses are applied equally and impartially

- minimise anti-competitive or misleading conduct by competitors
- provide a predictable regulatory regime to regulated suppliers

This outcome is measured through:

Strategic objective performance indicators	Source of information	Baseline (year)	Target
Businesses are confident other businesses are complying with competition and consumer laws	**Commerce Commission Business Survey** This is a survey of businesses conducted by Colmar Brunton on behalf of the Commission every two years. The next survey will be conducted during the 2020/21 financial year.	63% (in 2019)	Maintain or increase
Businesses understand their responsibilities under competition and consumer laws	**Commerce Commission Business Survey** This is a survey of businesses conducted by Colmar Brunton on behalf of the Commission every two years. The next survey will be conducted during the 2020/21 financial year.	68% (in 2019)	Maintain or increase
Regulated suppliers are confident to invest in regulated assets	**Commerce Commission's summary and analysis information** High level assessment of aggregate level of investment (and/or major transactions involving regulated assets).	Achieved	Achieved

Review

MBIE will consider the need for a review of the levies under the Telecommunications Act and Part 4 of the Commerce Act as part of its ongoing regulatory stewardship of the Competition and Communications regulatory systems.

The trigger for any further funding review will be, for instance, whether the Commission is given additional regulatory functions (or, alternatively, whether some regulatory functions are removed), including through amendments to the Telecommunications Act or Part 4 of the Commerce Act, new government and stakeholder expectations, and evolutions in best-practice regulation.

Annex 1: Costings

The costings behind the Commission's estimated cost of Option 3 (Bridging the gap) for the regulation of energy networks – electricity lines services and gas pipeline services – are:

	Energy		
	3-year historic spend	**Proposed funding (Option 3)**	**$ Change**
Setting and removing rules			
Internal costs	$3.739m	$5.35m	-
External costs	$0.296m	$0.50m	-
Sub total	$4.035m	$5.85m	$1.82m
Analytics and insights			
Internal costs	$1.693m	$2.62m	-
External costs	$0.324m	$0.20m	-
Sub total	$2.017m	$2.82m	$0.80m
Compliance and enforcement			
Internal costs	$0.902m	$1.41m	-
External costs	$0.292m	$0.25m	-
Sub total	$1.195m	$1.66m	$0.47m
Outreach and engagement			
Internal costs	$0.351m	$1.33m	-
External costs	$0.043m	$0.35m	-
Sub total	$0.394m	$1.68m	$1.29m
TOTAL	$7.642m	**$12.01m**	$4.37m

The costings behind the Commission's estimated cost of Option 3 (Bridging the gap) for the regulation of telecommunications services (other than fibre services and broadcasting transmission services) are:

	Telecommunications		
	3-year historic spend	**Proposed funding (Option 3)**	**$ Change**
Setting and removing rules			
Internal costs	$1.52m	$1.90m	-
External costs	$0.47m	$0.18m	-
Sub total	$1.99m	$2.08m	$0.09m
Analytics and insights			
Internal costs	$1.31m	$1.34m	-
External costs	$0.89m	$1.74m	-
Sub total	$2.20m	$3.08m	$0.88m
Compliance and enforcement			
Internal costs	$0.78m	$1.82m	-
External costs	$0.03m	$0.11m	-
Sub total	$0.81m	$1.93m	$1.12m
Outreach and engagement			
Internal costs	$1.34m	$2.10m	-
External costs	$0.10m	$0.31m	-
Sub total	$1.44m	$2.41m	$0.97m
TOTAL	$6.44m[38]	**$9.50m**	$3.06m

38 The historic spend over the prior 3 years exceeds the $6m appropriation due to transfers from prior years to enable the Commission to manage the fibre service regime implementation.

The costings behind the Commission's estimated cost of Option 3 (Bridging the gap) for the regulation of fibre services and broadcasting transmission services are:

Fibre	
	Proposed funding (option 3)
Setting and removing rules	
Internal costs	$2.52m
External costs	$0.15m
Sub total	$2.67m
Analytics and insights	
Internal costs	$1.24m
External costs	$0.05m
Sub total	$1.29m
Compliance and enforcement	
Internal costs	$0.62m
External costs	$0.10m
Sub total	$0.72m
Outreach and engagement	
Internal costs	$0.62m
External costs	$0.20m
Sub total	$0.82m
TOTAL	**$5.50m**