



SUBMISSION BY ENABLE NETWORKS LIMITED AND ULTRAFASST FIBRE LIMITED ON MBIE DECLARATION OF ANCHOR SERVICES EXPOSURE DRAFT OF REGULATIONS

This submission is made by Enable Networks Limited (**Enable**) and Ultrafast Fibre Limited (**Ultrafast Fibre**) in response to the Ministry of Business, Innovation & Employment's (**MBIE**) *Declaration of anchor and direct fibre access services - Exposure draft of regulations to be made under sections 227 and 228 of the Telecommunications Act 2001* dated May 2021 (**Exposure Draft**).

Price

Clause 14(4) of Schedule 1AA of the Telecommunications Act 2001 provides that the price for anchor services for the first regulatory period must be "*based on the maximum price that may be charged for providing the service under a UFB contract, with an annual CPI adjustment mechanism*".

The draft regulation proposes to set the price for the anchor services at the price cap which came into effect on 1 July 2020, with a CPI adjustment to take place on 1 January 2023. This is contrary to clause 14(4) of Schedule 1AA as it would apply the 2020 price cap for anchor services in 2021 and 2022 which is inconsistent with the concept of an annual CPI adjustment.

Under Clause 9(6) of clause 14 of Schedule 1AA an LFC may on 1 January each year starting on 1 July 2020 apply an annual CPI adjustment to the UFB price caps. Chorus is therefore entitled to increase its GPON bitstream 2 Accelerate 100/20 price cap of \$47.15 and its secondary voice service price cap of \$25.63 by CPI on 1 July 2021. If it does so, those adjusted price caps will be the starting regulated price caps.

To comply with Parliament's direction that anchor services be subject to an annual CPI adjustment mechanism, the first CPI adjustment must be made on 1 July 2022, not 1 January 2023 as contemplated in the Exposure Draft. Parliament set 1 July as the date for the "*annual CPI adjustment to the maximum price*" in clause 9(6) of Schedule 1AA of the Act, and that date must be applied in any regulations made under the Act.

Service descriptions and conditions of service

The Exposure Draft also proposes to create new service descriptions for the anchor services by amending the service descriptions and conditions of service of Chorus' GPON bitstream 2 Accelerate 100/20 and secondary voice services. In our view the changes proposed in the regulations are ultra vires.

Firstly, clause 14(3) of Schedule 1AA provides that the service description or conditions of service of the regulated service must not be materially different from the terms set out in the equivalent UFB contract. The terms and conditions of the broadband anchor service and voice anchor service set out in the Exposure Draft are materially different from the terms set out in the UFB contracts for Chorus' GPON bitstream 2 Accelerate 100/20 and secondary voice services and therefore contrary to clause 14(3) of Schedule 1AA.

Secondly, clause 14(4) of Schedule 1AA of the Act provides that the regulations must prescribe a maximum price for an anchor service "*that is based on the maximum price that may be charged for providing **the service** under a UFB contract*". The highlighted words confirm that Parliament's intention was that the anchor services be materially the same as the equivalent UFB services; in this case Chorus' current UFB GPON bitstream 2 Accelerate 100/20 and secondary voice services.

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