



Further consultation on regulations to be made  
under section 226 of the Telecommunications Act  
2001

Submission | MBIE

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Public Version



## Introduction

1. Following analysis of submissions on the draft regulations under section 226 of the Telecommunications Act, MBIE is considering a change to the proposed draft.
2. MBIE had proposed in the earlier consultation that Chorus be subject to Information Disclosure (**ID**) and Price Quality regulation (**PQR**) in all FFLAS areas, including those areas served by LFC UFB fibre network providers.
3. Following submissions, MBIE is now considering modifying the regulations so that they apply only ID regulation (rather than ID and PQR) to Chorus in geographic areas where Chorus is not the UFB supplier.
4. The Ministry reasoning is that it would be disproportionate to apply PQR regulation to Chorus in areas where other LFCs have the largest fibre market share but are only subject to Information Disclosure regulation.

## Implications

5. In principle we support the proposed approach. Firms shouldn't be regulated unless they have the ability to exercise market power or there is market failure, and the benefits of regulation outweigh the costs.
6. In this case, while we recognise that Chorus is the incumbent copper provider and the provider of fibre to new developments in certain LFC areas, we have not considered whether that is likely to give Chorus the ability to exercise market power to distort competition in an LFC area. Nonetheless, it's difficult to see a significant competition concern where Chorus is simply offering fibre services in LFCs UFB areas and access seekers and consumers expect to have continued access to LFC UFB fibre which is subject to ID and Commission oversight. The Ministry should consider the proposed carve out.
7. However, Chorus is in some cases the exclusive fibre provider to sub-divisions and commercial developments in LFC areas (i.e. business parks, malls). These are generally greenfield developments where fibre providers compete for fibre reticulation rights and there is no copper network backstop. Accordingly, sole fibre providers in these geographic areas are likely to have market power that can be exploited.
8. We understand that there are currently a limited number of impacted customers. At this stage, we understand that there is a small number of greenfield residential and commercial developments where Chorus is the sole fibre provider, although the number of impacted customers is likely to increase over time. Chorus reporting suggests it may have around 15,000 broadband fibre connections outside Chorus UFB areas<sup>[1]</sup>. In practice, these customers will not have a fixed line alternative to Chorus fibre.

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<sup>[1]</sup> Rough estimate based on report total BB GPON connections relative UFB reported GPON connections. This will overstate impacted customers as it will include those outside Chorus and LFC UFB areas.

9. Therefore, the Ministry may want to consider refining the proposed carve out so that it relates to the ability to access fibre services from another UFB provider. For example, that PQR regulation would not apply to Chorus where the end-users' premises, building or other access point is able to access a fibre service, and have a connection within a reasonable time frame, of another regulated fibre service provider.
10. The Commission could then apply this test in practice, drawing on the copper withdrawal code principles and processes where relevant.

**[End]**