

16 December 2021

To: Chorus Limited
Level 10 Aon Centre
1 Willis Street
Wellington 6011

Notice to supply information to the Commerce Commission under section 193(2) of the Telecommunications Act 2001 – Compliance statements for the first regulatory period

Background

1. From 31 December 2021, Chorus Limited (Chorus) will be subject to price-quality regulation under Part 6 of the Telecommunications Act 2001 (Act) in respect of the services specified in regulation 6 of the Telecommunications (Regulated Fibre Service Providers) Regulations 2019. The Commerce Commission (Commission) must, after the date on which the relevant input methodologies (IMs) are determined but before the implementation date (1 January 2022), make a determination under s 170 of the Act specifying how price-quality regulation applies to Chorus during the first regulatory period (1 January 2022 until 31 December 2024).¹

Purpose of this notice

2. This notice requires Chorus to provide information periodically on Chorus' compliance with the price path and quality standards (and any instances of non-compliance) in our determination under s 170 of the Act (PQ determination). Under s 193(2) of the Act, this information is necessary for the Commission to monitor Chorus' compliance with the PQ determination.
3. The notice also requires Chorus to provide information semi-annually for purposes of monitoring its compliance with s 201 of the Act.
4. We require Chorus, under s 193(2)(a), (b), (c), and (d) of the Act, to provide the information set out in Attachment A of this notice.

¹ Telecommunications Act 2001, s 172(1)(a).

Timeframes for responding to this notice

5. Chorus must supply the information that relates to its price path and quality standards that is specified in this notice in accordance with the timeframes specified in clause 9.1 of the PQ determination.
6. Chorus must supply the information that relates to s 201 that is specified in this notice in accordance with the timeframes specified in clause A7.

Exemptions

7. The Commission may, at any time, by way of written notice to Chorus:
 - 7.1 exempt Chorus from any obligation in this notice, on such terms and conditions as the Commission specifies in the notice; and
 - 7.2 amend or revoke any such exemption.

Means of responding to this notice

8. Chorus must provide the Commission with the information required by sending it by email to regulation.branch@comcom.govt.nz (Attention: Manager, Fibre) with the subject line "Chorus – Response to section 193 Notice – Compliance statements for the first regulatory period".

Use of supplied information and confidentiality

9. If Chorus considers that any information it provides to the Commission in response to this notice is confidential or commercially sensitive, and that the Commission should not publish or publicly refer to any particular part of Chorus' response, Chorus must:
 - 9.1 provide that information in a separate appendix;
 - 9.2 provide both an unredacted version and a redacted version with the confidential/commercially sensitive information removed;
 - 9.3 clearly mark the information as confidential or commercially sensitive (as applicable) in the unredacted version; and
 - 9.4 for each redaction of information provide reasons why Chorus considers that part or all of the response is confidential or commercially sensitive (as applicable) and why the Commission should not publish or publicly refer to it.
10. If Chorus indicates that we should not publish or publicly refer to part of its response, we will discuss with Chorus before deciding whether to do so.

11. Please note that all responses we receive, including any parts that we decide not to publish, can be requested from the Commission under the Official Information Act 1982. This means that, if requested, we would be required to release material (whether published or not) unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult Chorus before releasing any material that Chorus has requested to not be published.

Offences under section 103 of the Commerce Act 1986

12. Sections 15(1)(l) and 15(4) of the Act provide that s 103 of the Commerce Act 1986 (Commerce Act) applies to notices made under s 193 of the Act.
13. Section 103 of the Commerce Act provides that no person shall:
 - 13.1 without reasonable excuse, refuse or fail to comply with a notice under [s 193 of the Act];
 - 13.2 in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
 - 13.3 attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
14. It is an offence to contravene s 103 of the Commerce Act and any person who does so is liable on conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in any other case.

Dated at Wellington: 16 December 2021

Signed by:



Tristan Gilbertson

Telecommunications Commissioner

Attachment A Information required

A1 Under section 193(2)(a), (b), (c) and (d) of the **Act**, **Chorus** must provide the information in clauses A3 to A11 of this Attachment.

A2 In this Attachment, unless the context requires otherwise,—

A2.1 terms used in this notice that are defined in the **IM determination** or the **PQ determination** (as applicable) but not in this notice have the same meanings as in the **IM determination** or the **PQ determination** (as applicable);

A2.2 a word which denotes the singular also denotes the plural and vice versa;

A2.3 any reference to “includes” means “includes, but is not limited to”; and

A2.4 words or phrases in bold type have the following meanings:

A

Act means the Telecommunications Act 2001;

annual compliance statement means a written statement in respect of the quality standards that complies with clause A6;

C

Chorus has the same meaning as defined in the **IM determination**;

Commission has the same meaning as defined in s 5 of the **Act**;

D

director has the same meaning as defined in the **IM determination**;

F

fibre network has the same meaning as defined in s 5 of the **Act**;

FFLAS has the same meaning as ‘fibre fixed line access services’ as defined in s 5 of the **Act**;

forecast allowable revenue has the same meaning as defined in the **PQ determination**;

forecast total FFLAS revenue has the same meaning as defined in the **PQ determination**;

H

Half-year 1 means 1 January to 30 June;

Half-year 2 means 1 July to 31 December;

I

IM determination means the *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, including any amendment in effect at the time of the commencement of the **PQ determination**;

incentive includes a promotion, rebate, discount, or financial incentive **Chorus** provides to a retail service provider;

independent auditor means a person who—

(a) is qualified for appointment as auditor of a company under the Companies Act 1993;

- (b) has no relationship with, or interest in, **Chorus** that is likely to involve the person in a conflict of interest;
- (c) has not assisted with the preparation of the **annual compliance statement** or provided advice or opinions (other than in relation to audit reports) on the methodologies or processes used in preparing the **annual compliance statement**;
- (d) is neither professionally associated with nor directed by any person who has provided or assisted with the provision of the information specified in subclause (c) above;
- (e) has the necessary expertise to properly prepare an assurance report required by clause A11; but
- (f) need not be the same person as the person who audits **Chorus'** accounts for any other purpose;

ISAE (NZ) 3000

means the *International Standard on Assurance Engagements (New Zealand) 3000 (Revised), Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, issued by the New Zealand Auditing and Assurance Standards Board of the External Reporting Board in July 2014 and incorporating amendments up to the

date of this notice under s 12(b) of the Financial Reporting Act 2013;

O

other FFLAS income

means income received by **Chorus** in respect of **PQ FFLAS**, excluding income from **PQ FFLAS** the **price(s)** of which are related to the quantity supplied;

P

price

has the same meaning as defined in the **IM determination**;

price path compliance statement

means a written statement in respect of **forecast allowable revenue** that complies with clause A4;

PQ determination

means the *Fibre PQ determination 2021* [2021] NZCC [27], made on 16 December 2021;

Q

quantities

has the same meaning as defined in the **IM determination**;

R

regulatory year

has the same meaning as defined in the **IM determination**; and

S

SAE 3100

means the *Standard on Assurance Engagements 3100 (Revised) – Assurance Engagements on Compliance*, issued by the External Reporting Board in March 2017 and incorporating amendments up to the date of this notice under s 12(b) of the Financial Reporting Act 2013.

Price path compliance statement

- A3 In accordance with the timeframes specified under s 194(2)(e) of the **Act** in clause 9.1.1 of the **PQ determination**, **Chorus** must provide to the **Commission**—
- (a) a **price path compliance statement**; and
 - (b) schedules reflecting the **prices**, forecast **quantities**, and forecast **other FFLAS income** used in the calculation of **forecast total FFLAS revenue**, disclosed in an electronic format that is compatible with Microsoft Excel, at the same time as providing the **price path compliance statement**.
- A4 The ‘price path compliance statement’ must—
- (a) state—
 - (i) whether **Chorus** has complied with the price path in clause 7.2 of the **PQ determination** for the **regulatory year**; and
 - (ii) the date the statement was prepared; and
 - (b) include—
 - (i) where the statement is prepared under clause 9.1.1(a) or (b) of the **PQ determination**, a certificate in the form specified in clause A8 of this notice, signed by at least one **director** of **Chorus**;
 - (ii) **Chorus’** calculations of its **forecast total FFLAS revenue** and **forecast allowable revenue** together with supporting information for all components of the calculations; and
 - (iii) if **Chorus** has not complied with the price path,—
 - (A) the reasons for the non-compliance; and
 - (B) any actions **Chorus** took to mitigate any non-compliance and to prevent similar non-compliance in future **regulatory years**.

Compliance statement in respect of quality standards

- A5 In accordance with the timeframes specified in clause 9.1.2 of the **PQ determination**, **Chorus** must provide to the **Commission** an **annual compliance statement**.
- A6 The ‘annual compliance statement’ must—
- (a) state whether **Chorus** has complied with the quality standards in clause 8 of the **PQ determination** for the **regulatory year**;

- (b) state the date the statement was prepared;
- (c) include a certificate in the form specified in clause A9 of this notice, signed by at least one **director of Chorus**;
- (d) be accompanied by an assurance report meeting the requirements in clause A11 of this notice; and
- (e) include any information reasonably necessary to demonstrate whether **Chorus** has complied with clause 8 of the **PQ determination**, including details of the quality standards calculations as specified in Schedule 4 of the **PQ determination**, together with supporting information for all components of the calculations.

Compliance statement in respect of s 201 of the Act

A7 **Chorus** must provide the **Commission** with the following information for **Half-year 1** by 31 July and in respect of **Half-year 2** by 31 January for each **regulatory year** of the first regulatory period:

- (a) a summary of the incentives **Chorus** has offered, including which regulated FFLAS the incentives apply to, the design principles, the criteria for, and structure of the incentives;
- (b) copies of **Chorus** offer documents that set out the details of each of the incentives as offered to retail service providers;
- (c) a summary of the processes **Chorus** has taken to ensure that its prices charged for **FFLAS**, including any incentives, comply with s 201;
- (d) state whether **Chorus** has complied with s 201;
- (e) If **Chorus** has not complied with s 201, the reasons for the non-compliance; and
- (f) a certificate in the form specified in clause A10 of this notice, signed by at least one **director of Chorus**.

Form of director's certificate for price path compliance statement

A8 The **director's** certificate referenced at clause A4(b)(i) of this notice must take the following form:

I/We, [insert full name/s], being director/s of Chorus Limited certify that, having made all reasonable enquiries, to the best of my/our knowledge and belief, the attached price path compliance statement of Chorus, and related information, prepared for the purposes of the *Fibre Price-Quality Path Determination 2021*, has been prepared in accordance with all the relevant requirements,

and all forecasts used in the calculations for forecast total FFLAS revenue and forecast allowable revenue are demonstrably reasonable**[except in the following respects]*.

**[insert description of non-compliance]*

[Signatures of director(s)]

[Date]

*Delete if inapplicable.

Note: Section 103(2) of the Commerce Act 1986 provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it. It is an offence to contravene section 103(2) and any person who does so is liable on summary conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in any other case.

Form of director's certificate for annual compliance statement

A9 The **director's** certificate referenced at clause A6(c) of this notice must take the following form:

I/We, *[insert full name/s]*, being director/s of Chorus Limited certify that, having made all reasonable enquiries, to the best of my/our knowledge and belief, the attached annual compliance statement of Chorus, and related information, prepared for the purposes of the *Fibre Price-Quality Path Determination 2021*, has been prepared in accordance with all the relevant requirements**[except in the following respects]*.

**[insert description of non-compliance]*

[Signatures of director(s)]

[Date]

*Delete if inapplicable.

Note: Section 103(2) of the Commerce Act 1986 provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it. It is an offence to contravene section 103(2) and any person who does so is liable on summary conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in any other case.

*Form of **director's** certificate for s 201 compliance statement*

- A10 The **director's** certificate referenced at clause A7(f) of this notice must take the following form :

I/We, [*insert full name/s*], being director/s of Chorus Limited certify that, having made all reasonable enquiries, to the best of my/our knowledge and belief, consider that Chorus Limited has complied with s 201 of the Telecommunications Act **[except in the following respects]*.

**[insert description of non-compliance]*

[Signatures of director(s)]

[Date]

**Delete if inapplicable.*

Note: Section 103(2) of the Commerce Act 1986 provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it. It is an offence to contravene section 103(2) and any person who does so is liable on summary conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in any other case.

Independent auditor's report on annual compliance statement

- A11 For the purposes of clause A6(d) of this notice, **Chorus** must procure an assurance report by an **independent auditor** in respect of the **annual compliance statement** that is prepared in accordance with **SAE 3100** and **ISAE (NZ) 3000**, signed by the **independent auditor** (either in their own name or that of their firm), and that—
- (a) is addressed to the **directors of Chorus** and to the **Commission** as the intended users of the assurance report;
 - (b) states—
 - (i) that it has been prepared in accordance with **SAE 3100** and **ISAE (NZ) 3000**;
 - (ii) the work done by the **independent auditor**;
 - (iii) the scope and limitations of the assurance engagement;
 - (iv) the existence of any relationship (other than that of auditor) which the **independent auditor** has with, or any interests which the **independent auditor** has in, **Chorus** or any of its subsidiaries;

- (v) If appropriate, a description of any significant inherent limitations associated with the evaluation of the compliance activity against the compliance requirements; and
 - (vi) whether, in the **independent auditor's** opinion, as far as appears from an examination, the information used in the preparation of the **annual compliance statement** has been properly extracted from **Chorus'** accounting and other records, sourced from its financial and non-financial systems; and
- (c) states whether (and if not, the respects in which it has not), in the **independent auditor's** opinion, **Chorus** has complied, in all material respects, with the **PQ determination** in preparing the **annual compliance statement**.