

24 December 2021

Dear Stakeholder,

Compliance assessment of LFCs' PON fibre access service non-price terms

1. The purpose of this letter is to inform stakeholders that the Commerce Commission (**Commission**) has completed the compliance assessment of the non-price terms of the local fibre companies' (**LFC**) point-to-multipoint layer 1 fibre access service (**PONFAS**) offers.¹
2. The Commission has decided to open an investigation into whether the non-price terms of Chorus' PONFAS offer comply with the equivalence and non-discrimination obligations under its Deed of Open Access Undertaking (**Fibre Deed**).
3. In relation to the other LFCs, while we have some concerns as to whether the non-price terms of those LFCs' PONFAS offers are consistent with their obligations, the Commission does not intend to take any further steps at this time. However, we will continue to monitor and keep this matter under close review, and may consider it appropriate to take further steps (including opening an investigation) at a later stage.

Overview of the compliance assessment

4. The Commission opened a compliance assessment of the non-price terms of LFCs' PONFAS offers on 29 May 2020. The purpose of the compliance assessment was to assess whether the non-price terms of the LFCs' PONFAS offers were consistent with the equivalence and non-discrimination obligations applying to the LFCs, following concerns having been raised by access seekers.²
5. We undertook an assessment of the matters raised and subsequently put the potential issues we found to the LFCs, seeking their comments and any information and/or documents they considered relevant to their responses. All LFCs responded to our request.

¹ The PON Fibre Access Service is defined in the fibre deeds. Available here: <https://comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunication-deeds>

² https://comcom.govt.nz/data/assets/pdf_file/0026/217448/Letter-to-stakeholders-Compliance-assessment-of-PON-Fibre-Access-Service-non-price-terms-29-May-2020.pdf

6. The Commission has now concluded its compliance assessment and has decided to open an investigation into whether the non-price terms of Chorus' PONFAS offer breach its obligations under the Fibre Deed. We have not yet formed a view on whether or not Chorus has in fact breached the Fibre Deed.
7. As explained above, we have not decided to open an investigation into the other LFCs' PONFAS offers at this stage.

Next steps

8. We have published guidance and a series of factsheets on equivalence and non-discrimination in the telecommunications market to help businesses comply with the Telecommunications Act 2001 and other legislation we enforce. These are available on our website.³ We recommend that the LFCs review these and seek legal advice on complying with their obligations.
9. Please direct any communications to Arthy Ananthapavan at arthy.ananthapavan@comcom.govt.nz or 04 924 3725.

Yours sincerely



Robert Cahn
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³ <https://comcom.govt.nz/regulated-industries/telecommunications/regulated-services/equivalence-and-non-discrimination-guidance>