

28 April 2023

[REDACTED]
Chorus Limited
Level 10 Aon Centre
1 Willis Street
Wellington 6011

By email only [REDACTED]
[REDACTED]

Dear [REDACTED],

Investigation of the non-price terms of Chorus' PON Fibre Access Service

1. As you know, the Commerce Commission has been investigating whether the non-price terms of Chorus' point-to-multipoint layer 1 fibre access service (**PONFAS**) offer comply with the equivalence and non-discrimination obligations in Chorus' Deed of Open Access Undertaking (**Fibre Deed**).¹
2. We write to inform Chorus that the Commission has decided not to progress the investigation further and will therefore close the investigation without taking enforcement action.
3. We will publish the closing of the investigation, including this letter, on our case register shortly.

Investigation

4. Chorus published its PONFAS offer in December 2019. Around this time, several access seekers raised concerns with the Commission about the non-price terms of the local fibre companies' (**LFCs**) PONFAS offers.

¹ Chorus' Fibre Deed for UFB1 is available at:
https://comcom.govt.nz/_data/assets/pdf_file/0025/90466/Chorus-Fibre-Deed-6-October-2011.PDF.

5. The Commission opened a compliance assessment of the non-price terms of Chorus and the other LFCs' PONFAS offers on 29 May 2020.² We sought and received submissions from access seekers, and put these potential issues to the LFCs for comment.
6. During this time, we also published guidance and a series of factsheets on equivalence and non-discrimination in the telecommunications market.³
7. The compliance assessment was concluded in November 2021. The outcome of the compliance assessment was to open an investigation into whether the non-price terms of Chorus' PONFAS offer breach its equivalence and non-discrimination obligations under the Fibre Deed.
8. The investigation was subsequently opened on 23 December 2021, and broadly looked at the following non-price terms issues:
 - 8.1 provisioning time for new connections and transfers;
 - 8.2 access to the distribution fibres;
 - 8.3 complexity of ordering; and
 - 8.4 ordering sequence.
9. During the investigation, we considered the information already provided to the Commission during the compliance assessment, and obtained further information from Chorus and third parties to enable us to better understand the issues. We thank Chorus for its cooperation with the Commission during the investigation.

Outcome

10. Based on the information reviewed, the Commission has decided not to progress the investigation further. We will therefore close the investigation without taking enforcement action.
11. This was a finely balanced decision. It should not be taken as an endorsement that we consider Chorus' wider PONFAS offer to be compliant with the equivalence and non-discrimination obligations in the Fibre Deed.
12. Closing the investigation at this time does not in any way limit our ability to consider aspects of Chorus' PONFAS offer in any future investigation or regulatory work.

² Details of this compliance assessment are available on our case register at: <https://comcom.govt.nz/case-register/case-register-entries/Chorus-Limited,-Enable-Networks-Limited,-Northpower-Fibre-Limited,-and-Ultrafast-Fibre-Limited>.

³ Available on our website at: <https://comcom.govt.nz/regulated-industries/telecommunications/regulated-services/equivalence-and-non-discrimination-guidance>.

13. We note that, from 1 January 2025, the Commission may review whether an unbundled fibre service be declared in regulations.
14. Further, we remind Chorus that the Telecommunications Act 2001 provides for access seekers to enforce the Fibre Deeds in the High Court.
15. If you have any questions in relation to the above, please direct any communications to Rachael Coyle at [REDACTED].

Yours sincerely

A large black rectangular redaction box covering the signature of Tristan Gilbertson.

Tristan Gilbertson
Telecommunications Commissioner