

16 April 2020

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Dear Julian

Response to Chorus' notice of force majeure

Purpose

1. The purpose of this letter is to provide our initial response to your notice of force majeure¹ which was sent to the Commerce Commission (**the Commission**)² on 3 April 2020.

Covid-19 pandemic

2. The COVID-19 pandemic brings with it many challenges. The Commission is committed to doing what it can to ensure that the telecommunications sector is focused on providing essential services to New Zealanders during these unprecedented times, particularly in light of the substantial increase in use of our telecommunications networks during the lockdown.
3. The Commission accepts that the movement to Alert Level 4 and the declaration of a state of national emergency, together with the impacts of COVID-19 in New Zealand, constitute a force majeure event as outlined in clause 15.1 of the Chorus Fibre Deed.
4. The Commission welcomes the Chorus notification to stakeholders, including retail service providers, of a force majeure event and notes that additional information on the impact on service levels is to be provided to Chorus' customers.

¹ In accordance with clause 15 of the Chorus Fibre Deed. The Chorus Fibre Deed is available at <https://www.mbie.govt.nz/assets/9009ad3f84/chorus-fibre-deed.pdf>.

² The Chorus notice of force majeure to the Commission is available at <https://comcom.govt.nz/about-us/covid-19/regulated-industries>.

Our expectations during and after the force majeure event

5. During the force majeure event, the Commission expects Chorus to comply with clause 15.2 of the Fibre Deed. Clause 15.2 of the Fibre Deed provides that:

If Chorus fails, or believes it might fail, to meet an obligation under these Undertakings because of a force majeure event, it will...

- (b) *in the case of an anticipated failure, continue to meet the obligation for as long as possible; and*
- (c) *following the failure, do all it reasonably can to meet the obligation as soon as is practicable.*
6. Where Chorus fails to meet an obligation under these Undertakings due to the force majeure event, the Commission expects Chorus will give notice to the affected retail service provider(s) and retain documentation demonstrating how the force majeure event prevented Chorus from meeting the obligation. The Commission may use this information should we wish to review the management of this force majeure event.
7. The Commission suggests that Chorus consider how this force majeure event will be managed proportionately by Chorus during the expected future de-escalation in alert levels or in the likely case where there are different Covid-19 alert levels applied at a town, city, territorial local authority, regional or national level, as outlined by the Government.³

Next steps and getting in touch

8. Thank you for all the work you are doing to ensure New Zealanders remain connected at the moment.
9. We remain open and responsive to industry feedback, to ensure that companies can focus on providing essential goods and services during the COVID-19 pandemic.
10. Please contact Simon Thomson on (04) 924 3791 or simon.thomson@comcom.govt.nz if you have any questions about this letter.

Yours sincerely,



Stephen Gale
Telecommunications Commissioner

³ At <https://covid19.govt.nz/alert-system/covid-19-alert-system/>.