

16 September 2021

Tristan Gilbertson
Telecommunications Commissioner
Commerce Commission
BY EMAIL

Dear Tristan

PART 6 IMPLEMENTATION: PQ RAB DRAFT DECISION & FINAL STAGES

I am writing firstly to acknowledge the effort and commitment of you and your team through the lengthy process to implement the new regulatory framework for Chorus, as this process draws to a close. We will not always agree, but I appreciate the dedication and constructive engagement from the Commission over this multi-year process.

I also write to emphasise once more the importance of upcoming decisions in shaping the future of fibre services and investors' confidence in the Part 6 regulatory regime. These include:

- Chorus' initial PQ RAB, including the financial loss asset
- Expenditure allowances, quality standards and the MAR for PQP1
- New information disclosure requirements.

Together these decisions materially affect Chorus' financial position and our ability to fund future investment in our network and services. It is imperative that the final decisions are robust, evidence-based and support long-term investment for the benefit of end-users.

Chorus is concerned that, at most critical decision points through this process, the Commission has chosen a route that downplays the risks faced by investors in the UFB roll-out and has the effect of lowering revenues for Chorus. These decisions to date have created real concern that Chorus will not have the opportunity to achieve financial capital maintenance, because the initial RAB will not reflect the full costs and risks of the investment. Such under-compensation would hinder our ability to persuade investors to support ongoing network development expenditure – meaning the regime would have failed at the first hurdle.

However, there is still time to ensure the final price-quality decisions enable Chorus to deliver the full potential of fibre for New Zealand. To this end I welcome the recognition in the Commission's recent PQ RAB draft decision paper of the importance of this decision on future investment, pricing and the wider economy.

The price-quality draft decision in May 2021 proposed large cuts to Chorus' planned expenditure. These cuts were based on the misunderstanding or misapplication of Chorus and macroeconomic data. Since we made our expenditure proposals in late 2020, external

trends (faster than expected growth in building consents and property developments) have forced us to increase planned capex to meet end-user demand. This means there is no scope for cuts – even moderate reductions would impact investment in services and business capability. Cuts of the magnitude proposed would be catastrophic for our business, damage retail competition and harm consumer interests, now and in the future.

The PQ RAB draft decision is generally more positive; we agree with many of the Commission’s conclusions in that decision. However, the \$6b RAB estimate has been dismissed too quickly – that option is still open to the Commission and would best meet the intent of the Act by ensuring that the full cost of standing up the fibre network is captured.

We are very concerned with the proposed change to the cost allocators for Chief Technology Officer (CTO) common costs in the PQ RAB draft decision. This would have an outsized impact on Chorus’ revenues as the allocation change would also cut Chorus’ shared systems opex (and therefore MAR) by nearly \$40m in PQP1. This cut would have a material impact on our shared systems, which are required for the UFB build and to continue to operate the network. The Commission should be very cautious before making cuts of this magnitude.

I also reiterate my support for the Commission’s plan to finalise all RAB and cost allocation decisions by December 2021, with only adjustments for the difference between actual and forecast 2020/21 values being made in 2022. Delivering to that plan will provide certainty for all interested parties and ensure the requirements of the Act are met. The Commission should not delay the RAB determination beyond this calendar year.

Conclusion

End-users are continuing to experience the benefits of the Chorus fibre network. As you know, we recently announced our intention to upgrade all customers currently on 100/20 Mbps plans to 300/100 Mbps plans at no extra cost. Robust regulatory settings need to be in place to support such improvements, as does a level playing field for competition. Chorus fully supports the Commission’s ongoing initiatives to ensure broadband marketing information provided to consumers is complete and accurate.

The final PQ and ID decisions must reflect Chorus’ market context and commercial realities. It is essential that the PQ expenditure allowances are sufficient to fund all necessary services for end-users and continue to promote fibre uptake, and the PQ RAB is set at a level that will promote future investment.

I look forward to engaging with you further.

Yours sincerely



JB Rousselot
Chief Executive