

Chorus' views on additional incentives payment information

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Published information supports Chorus' incentive payments

1. On 30 September the Commission published additional information relating to Chorus' proposed customer incentives expenditure:
 - 1.1 Chorus' response to a Commission information request relating to the incentive payments Chorus intends to offer in the first regulatory period and the steps Chorus has or will take to ensure any incentive payments it offers comply with its regulatory obligations.
 - 1.2 A context note from Chorus to the Commission on Chorus' customer incentives expenditure.
 - 1.3 Four letters from stakeholders outlining their views on the Commission's draft decisions relating to incentive payments.
2. The Commission has requested stakeholders' views on the information published including whether the information provided by Chorus on incentive payments raises any issues with respect to the section 201 geographically consistent pricing requirement.
3. The key message from the stakeholder letters is that Chorus' incentives have enabled vigorous retail competition which benefits end-users. It is imperative that our incentives are continued otherwise the playing field would be further tipped in favour of vertically integrated MNOs. An additional regulatory approval process would create unnecessary complexity and uncertainty.
4. The information Chorus has provided about participation in our RSP incentive offers confirms that our customers rely on our incentive programmes. They should not be disrupted because of unsubstantiated concerns about future compliance obligations. In terms of s166(2) considerations, our incentives are particularly important in helping non-MNO RSPs compete with MNOs and the Commission should be guided by the need to continue to support the growth of retail competition.

Commission's role in assessing incentives expenditure

5. The scope of the Commission's task in setting an appropriate expenditure allowance for incentives is well canvassed in our context note. We explained why the Commission doesn't have to form an *ex ante* view on compliance of individual incentive offers. To recap:
 - 5.1 The Commission's current task is to assess our proposed expenditure against the evaluation criteria in the Capex IM and approve a capex envelope for incentives, not to analyse and approve each individual incentive offer on an *ex ante* basis. The Commission's expenditure allowance does not constrain the types of incentives Chorus can offer during the regulatory control period.
 - 5.2 Our incentive programmes are well-established and we have robust processes for competition and compliance testing for individual offers.
 - 5.3 The Commission has a parallel *ex post* enforcement role and can choose to investigate any incentive that it considers may breach Chorus' obligations.

6. Our expenditure proposal reflects our overall expectations of an efficient level of expenditure on customer acquisition and retention across a range of different initiatives. If the Commission determined that a particular offer was not compliant that would not mean Chorus would not incur the associated expenditure. Rather, Chorus would re-deploy the expenditure in the form of a different incentive. An assessment of whether historic incentives would comply with obligations not yet in force is therefore not determinative of the question of the appropriate size of the expenditure envelope.

Chorus' planned incentives do not raise section 201 compliance issues

7. Section 201 – the geographically consistent pricing obligation – comes into effect on 1 January 2022. The Commission's specific focus on s 201 compliance in this stakeholder consultation is inappropriate. The relevant forum for inviting comment on compliance with regulatory obligations is via the Commission's monitoring and enforcement division.
8. It is not relevant to the Commission's price-quality path consultation whether our past incentives have complied with the future s 201 this obligation. The Commission should not be seeking to make compliance determinations about future conduct.
9. While we object to the narrow focus on s 201 compliance, as explained in our context note and information request response, our planned incentives for CY2022 do not raise any s 201 concerns:
 - 9.1 Our incentive offers do not differentiate between RSPs or end-users based on their geographic location and, for the most part, are available nationally.
 - 9.2 While in some limited scenarios incentives are offered on a more targeted basis (e.g. targeting end-users with inactive intact ONTs), geographic location of RSPs or end-users is not the determining factor in any of our incentive offers.
10. We will continue to assess all proposed incentive offers to ensure we comply with our regulatory obligations including s 201.