

[Day] [Month] 2021

To: Chorus Limited
Level 10 Aon Centre
1 Willis Street
Wellington 6011

Attention: [Name]
[Title]

[Draft] Notice to supply information to the Commerce Commission under section 221 of the Telecommunications Act 2001 – wash-up information

Background

1. From 31 December 2021, Chorus Limited (Chorus) will be subject to price-quality regulation under Part 6 of the Telecommunications Act 2001 (Act) in respect of the services specified in Regulation 6 of the Telecommunications (Regulated Fibre Service Providers) Regulations 2019. The Commerce Commission (Commission) must, after the date on which the relevant input methodologies (IMs) are determined but before the implementation date (1 January 2022), make a determination under s 170 specifying how price-quality regulation applies to Chorus during the first regulatory period (1 January 2022 until 31 December 2024, that we refer to as PQP1).¹

Purpose of this notice

2. The information sought in this request is necessary to enable the Commission to carry out its functions and exercise its powers under ss 194-196 of the Act to determine price-quality paths for Chorus, and to apply the relevant IMs in doing so (as required by s 175 of the Act).
3. In setting Chorus' forecast allowable revenue for future regulatory periods (regulatory periods other than PQP1), the Commission requires wash-up information for each regulatory year of PQP1 from Chorus.
4. As such, we require Chorus, under section 221(1)(c) and 221(1)(e)-(g) of the Act, to provide the information set out in Attachment A of this notice.

Responding to this notice

5. Chorus must supply the information specified in Attachment A of this notice in accordance with the timeframes specified in clauses A5 and A6 of Attachment A.

¹ Telecommunications Act 2001, s 172(1)(a).

Variations, extensions and exemptions

6. The Commission may, on Chorus' application, grant Chorus a variation to the information requirements set out in this notice to account for any practical limitations on Chorus' ability to provide the specified information by the specified time.
7. For the purposes of clause 6:
 - a) if Chorus applies for a variation, its application must:
 - i) be in writing;
 - ii) explain why Chorus considers that a variation to the information requirements is reasonably justified having regard to the circumstances; and
 - iii) be made no later than 30 working days before the applicable time limit is due to expire.
 - b) if the Commission decides to grant Chorus a variation, then:
 - i) the approved form of the variation shall take effect by the Commission giving or posting written notice of the variation to Chorus; and
 - ii) the notice effecting the approved form of the variation must specify the reasons for the variation.
8. The Commission may, on Chorus' application, grant Chorus an extension to the timeframes set out in clauses A5 and A6 of Attachment A of this notice.
9. For the purposes of clause 8:
 - a) if Chorus applies for an extension, its application must:
 - i) be in writing;
 - ii) explain why Chorus considers that an extension to the time limit is reasonably justified having regard to the circumstances; and
 - iii) be made no later than 30 working days before the applicable time limit is due to expire.
 - b) if the Commission decides to grant Chorus an extension, then:
 - i) the approved form of the extension shall take effect by the Commission giving or posting written notice of the extension to Chorus;
 - ii) the notice effecting the approved form of the extension must specify the period of the extension and the reasons for the extension.
10. The Commission may, at any time, by way of written notice to Chorus:
 - a) exempt Chorus from any obligation in this notice, on such terms and conditions and for such period as the Commission specifies in the notice; and

- b) amend or revoke any such exemption.

Means of responding to this notice

11. In accordance with the timeframes in clauses A5 and A6 of Attachment A, Chorus must:
 - 11.1 produce and provide the Commission with the information required by uploading it to the Commission's box.com data room which is available at [https://commercecommission.box.com/s/\[folder_number\]](https://commercecommission.box.com/s/[folder_number]); and
 - 11.2 when information is uploaded, notify the Commission by sending an email to regulation.branch@comcom.govt.nz with the subject line "Chorus – Response to section 221 Notice – wash-up information" and marked for the attention of Manager, Fibre price-quality and information disclosure.
12. Narrative information is to be provided or published in searchable Adobe PDF format. Numerical information is to be provided or published in electronic form in an 'unlocked' Microsoft Excel file format.

Use of supplied information and confidentiality

13. Where Chorus considers that any information it provides to the Commission in response to this notice is confidential or commercially sensitive, and that the Commission should not publish or publicly refer to any particular part of its response, Chorus must, in addition to the requirements in clauses A5 and A6 of Attachment A, by the dates set out in clauses A5 and A6 of Attachment A:
 - a) provide both an unredacted version, and a redacted version with the information Chorus considers confidential/commercially sensitive removed;
 - b) clearly mark the information as confidential or commercially sensitive (as applicable) in both the redacted and unredacted versions;
 - c) provide a listed index of all information that Chorus considers confidential or commercially sensitive (as applicable); and
 - d) give clear reasons why Chorus considers that part of the response is confidential or commercially sensitive (as applicable), and why the Commission should not publish or publicly refer to it.
14. If the Commission considers that it is necessary or desirable to publish or publicly refer to Chorus' response or a part of its response, the Commission will discuss with Chorus before deciding whether to do so.
15. Please note that all responses we receive, including any parts that we decide not to publish, can be requested from the Commission under the Official Information Act 1982. This means that if requested, we would be required to release material (whether published or not) unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult before releasing any material that Chorus has requested not be published.

Offences under section 103 of the Act

16. Sections 15(1)(l) and 15(4) of the Act provide that s 103 of the Commerce Act 1986 (Commerce Act) applies to notices made under s 221 of the Act.

17. Section 103 of the Commerce Act provides that no person shall:
- a) without reasonable excuse, refuse or fail to comply with a notice under [section 221 of the Act];
 - b) in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
 - c) attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
18. It is an offence to contravene section 103 of the Commerce Act and any person who does so is liable on conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in any other case.

Dated at Wellington: [Day] [Month] 2021

Signed by:

[Name]

Commissioner

Attachment A Information required

- A1 Under sections 221(1)(c) and (e)-(g) of the **Act**, **Chorus** must provide the information in this attachment.
- A2 **Chorus** must comply, where relevant, with Part 3 Subpart 1: Specification of Price and Revenues of the **IM determination** when responding to the requirements in this attachment.

Interpretation

- A3 In this attachment, references to clauses in the **IM determination** refer to the **IM determination** as it is currently proposed to be amended by the [Revised draft] Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021 (published on our website on 30 September 2021). If we decide to make further amendments to the **IM determination** in 2021, at final version of this notice will refer to the **IM determination** as amended by the final version of the abovementioned amendment determination.
- A4 Unless the context otherwise requires:
- A4.1 a word which denotes the singular also denotes the plural and vice versa;
- A4.2 unless stated otherwise, any reference to “includes” means “includes, but is not limited to”;
- A4.3 references to clauses or subclauses are to clauses or subclauses in this attachment; and
- A4.4 in this attachment, words or phrases in bold type have the following meanings:

A

Act	means the Telecommunications Act 2001;
actual allowable revenue	has the meaning given in the IM determination and is the amount calculated for a regulatory year in accordance with clause A7;
allocator value	has the meaning given in the IM determination

B

BBR model means the document titled “Chorus NZL MAR Model v68n for Commission v3.xlsb” published on 27 May 2021 [Note: We intend for the final version of this notice to include a reference to a model obtained from Chorus under a separate s 221 notice prior to the final version of this notice being published];

C

capex allowance has the meaning given in the **IM determination**;

Chorus has the meaning given in the **IM determination**;

Commission has the meaning given in s 5 of the **Act**;

connection capex variable adjustment has the meaning given in the **IM determination**;

CPI means:

- (a) (a) subject to paragraph (b), the consumer price index stipulated for each quarter in the ‘All Groups Index SE9A’ as published by Statistics New Zealand; and in respect of quarters prior to any
- (b) quarter in which the rate of GST is amended after this determination comes into force, the same index as described in paragraph (a), multiplied by the Reserve Bank of New Zealand’s forecast change in that index (expressed as a decimal) rising from the amendment;

D

director has the meaning given in the **IM determination**;

F

fibre asset	has the meaning given in the IM determination ;
first regulatory period	means the three-year period beginning 1 January 2022 and ending 31 December 2024;
forecast allowable revenue	has the meaning given in the IM determination ;

G

GST	has the meaning given in s YA 1 of the Income Tax Act 2007;
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I

IM determination	means the <i>Fibre Input Methodologies Determination 2020</i> [2020] NZCC 21, including any amendment in effect as of 1 January 2022;
implementation date	has the meaning given in the IM determination ;
independent auditor	means a person who— <ol style="list-style-type: none"> (a) is qualified for appointment as auditor of a company under the Companies Act 1993; (b) has no relationship with, or interest in, Chorus being audited that is likely to involve the person in a conflict of interest; (c) has not assisted with the preparation of the wash-up information report or provided advice or opinions (other than in relation to audit reports) on the methodologies or processes used in preparing the wash-up information report; (d) has the necessary expertise to properly prepare an assurance report required by clause A11; but

- (e) need not be the same person as the person who audits **Chorus's** accounts for any other purpose;

individual capex	has the meaning given in the IM determination ;
initial RAB model	means the document titled “Chorus NZL Core BBM v314_124f CRM IAV CC for Commission v2 adjusted capex opex.xlsb” published on 30 April 2021 on the following page of the Commission’s website: https://comcom.govt.nz/regulated-industries/telecommunications/projects/fibre-price-quality-path-and-information-disclosure [Note: We intend for the final version of this notice to include a reference to a final version of the transitional initial PQ RAB model];
initial RAB value	has the meaning given in the IM determination ;
ISAE (NZ) 3000	means the <i>International Standard on Assurance Engagements (New Zealand) 3000 (Revised), Assurance Engagements Other than Audits or Reviews of Historical Financial Information</i> , issued by the New Zealand Auditing and Assurance Standards Board of the External Reporting Board in July 2014 and incorporating amendments up to the date of this notice under s 12(b) of the Financial Reporting Act 2013;
O	
opex allocation model	means the document titled “BBM Opex Allocation v3.32 for Commission.xlsm” provided to the Commission on 18 June 2021 [Note: We intend for the final version of this notice to include a reference to a final version of the opex allocation model];

P

pass-through cost	has the meaning given in the IM determination ;
PQ FFLAS	has the meaning given in the IM determination ;
PQ RAB	has the meaning given in the IM determination ;
PQP1 determination	means the Fibre Price-Quality Path Determination [2021] NZCC [XX]
price	means an individual fee or charge, in nominal terms exclusive of GST , for the provision of PQ FFLAS , and priced has a corresponding meaning;

Q

quantity	means the amount of PQ FFLAS provided, which corresponds to the units in which each tariff, fee, or charge (or individual component of each) is priced ;
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R

regulatory year	has the meaning given in the IM determination ;
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S

SAE 3100	means the <i>Standard on Assurance Engagements 3100 (Revised) – Assurance Engagements on Compliance</i> , issued by the External Reporting Board in March 2017 and incorporating amendments up to the date of this notice under s 12(b) of the Financial Reporting Act 2013;
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T

total FFLAS revenue	has the meaning given in the IM determination and is the amount calculated for a regulatory year in accordance with clause A8;
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transitional initial PQ RAB means the sum of all “opening RAB values” of all **fibre assets** for the **PQ RAB** as of the **implementation date**, as determined under clause 3.3.1(7)-(9) of the **IM determination**;

W

wash-up information report means an information report that meets the requirements in clause A10; and

working day has the meaning given in s 5 of the **Act**.

Wash-up calculation requirements

A5 **Chorus** must provide:

A5.1 within 50 **working days** of the end of **regulatory year 2022**, the values of **actual allowable revenue** and **total FFLAS revenue** and associated **wash-up information report** for that **regulatory year**;

A5.2 within 50 **working days** of the end of **regulatory year 2023**, the values of **actual allowable revenue** and **total FFLAS revenue** and associated **wash-up information report** for that **regulatory year**; and

A5.3 within 50 **working days** of the end of **regulatory year 2024**, the values of **actual allowable revenue** and **total FFLAS revenue** and associated **wash-up information report** for that **regulatory year**.

A6 **Chorus** must provide, by 6 September 2024, demonstrably reasonable forecasts of the values of **actual allowable revenue** and **total FFLAS revenue** and associated **wash-up information report** for **regulatory year 2024**.

Calculation of actual allowable revenue

A7 The ‘actual allowable revenue’ for a **regulatory year** is equivalent to the value of **forecast allowable revenue** for the relevant **regulatory year** in Schedule 2 of the **PQP1 determination** recalculated making only the following substitutions in the **BBR model** or in calculations made in accordance with Schedule 1 of the **PQP1 determination**;

A7.1 all input values sourced from the **initial RAB model** updated to reflect:

A7.1.1 the sum of all **initial RAB values** in respect of all **fibre assets** in the **PQ RAB** as at the **implementation date**, as determined in accordance with clause 2.2.3(2) and 2.2.4(1) of the **IM determination**,

in place of:

A7.1.2 the **transitional initial PQ RAB**;

A7.2 all **allocator values** sourced from the **initial RAB model** and **opex allocation model** updated to reflect actual **allocator values** determined under clause 2.1.1 of the **IM determination**;

A7.3 the benefit of Crown financing inputs for the relevant **regulatory year** in cells "Z4658:AC4668" of the "SMARInputsFromIAV" sheet of the **BBR model** as determined under clause 2.4.10 of the **IM determination**;

A7.4 the **capex allowance** inputs sourced from the **initial RAB model** in cells Z4684:AC6183, Z6190:AC7689, and Z7696:AC9195 of the "SMARInputsFromIAV" sheet of the **BBR model**, updated to include the value of any **individual capex** determined in respect of the **first regulatory period** determined after the **first regulatory period** commenced;

A7.5 actual **pass-through costs** in cells Z9217:AC9221 of the "SMARInputsFromIAV" sheet of the **BBR model** for that **regulatory year** in place of forecast **pass-through costs**;

A7.6 in respect of **regulatory year 2024**, the **connection capex variable adjustment** for the **first regulatory period** as determined under clause 3.7.21(2) of the **IM determination** in cells Z4684:AC6183, Z6190:AC7689, and Z7696:AC9195 of the "SMARInputsFromIAV" sheet of the **BBR model**;

and

A7.7 in calculating the change in **CPI** under Schedule 1 of the **PQP1 determination**, actual values of **CPI** in place of any forecast **CPI** values.

Calculation of total FFLAS revenue

A8 'Total FFLAS revenue' is the amount calculated in accordance with the following formula—

$$\sum_i (P_i - D_i) \times AQ_i$$

where—

- i* is each tariff;
- P* is the **price**;
- D* is any discount; and
- AQ* is the actual **quantity**.

Assurance and audit requirements

A9 For the purpose of clauses A5 and A6, **Chorus** must provide to the **Commission** schedules reflecting the **prices** and actual **quantities** used to calculate **total FFLAS revenue** (for the purpose of clause A5.1-A5.3) or a forecast of **total FFLAS revenue** for the purpose of clause A6) (whichever is applicable), disclosed in an electronic format that is consistent with Microsoft Excel with the **wash-up information report**.

Wash-up information report

A10 The 'wash-up information report' must—

- A10.1 state whether **Chorus** has complied with the requirements in clauses A7 and A8 for the **regulatory year**;
- A10.2 state the date the statement was prepared;
- A10.3 be accompanied by an assurance report meeting the requirements in clause A11;
- A10.4 include a calculation of **Chorus's actual allowable revenue** calculated on the same basis as **forecast allowable revenue**; and

A10.5 include any information reasonably necessary to demonstrate whether **Chorus** has complied with clauses A5 and A6, including details of the calculations as specified in clause A7 or A8, together with supporting information for all components of the calculation.

Independent auditor's report on wash-up information report

A11 For the purposes of clause A10.3 of this notice, **Chorus** must procure an assurance report by an **independent auditor** in respect of the **wash-up information report** that is prepared in accordance with **SAE 3100** and **ISAE (NZ) 3000**, signed by the **independent auditor** (either in their own name or that of their firm), and that—

A11.1 is addressed to the **directors** of **Chorus** and to the **Commission** as the intended users of the assurance report;

A11.2 states—

- (a) that it has been prepared in accordance with **SAE 3100** and **ISAE (NZ) 3000**;
- (b) the work done by the **independent auditor**;
- (c) the scope and limitations of the assurance engagement;
- (d) the existence of any relationship (other than that of auditor) which the **independent auditor** has with, or any interests which the **independent auditor** has in, **Chorus** or any of its subsidiaries;
- (e) If appropriate, a description of any significant inherent limitations associated with the evaluation of the compliance activity against the compliance requirements;
- (f) whether, in the **independent auditor's** opinion, as far as appears from an examination, the information used in the preparation of the **wash-up information report** has been properly extracted from **Chorus's** accounting and other records, sourced from its financial and non-financial systems; and

A11.3 states whether (and if not, the respects in which it has not), in the **independent auditor's** opinion, **Chorus** has complied, in all material respects, with the **IM determination**, **PQP1 determination** and this notice in preparing the **wash-up information report**.