

30 September 2021

## **SEEKING STAKEHOLDER VIEWS ON ADDITIONAL INFORMATION PUBLISHED RELATING TO INCENTIVE PAYMENTS**

Tēnā koutou,

We have published additional information relating to Chorus' expenditure allowance for PQP1. This information primarily relates to Chorus' proposal to include expenditure allowances for incentive payments during Chorus' first price quality path (PQP1). We are seeking views from stakeholders on this information as part of our process for making the final price quality (PQ) decisions to be published in December 2021.

Incentive payments are payments made to retail service providers (RSPs) to incentivise acquisition of new customers to Chorus' fibre network and to upgrade existing customers. These incentive payments (also called customer retention costs) are capitalised as customer retention assets by Chorus.

### **Summary of information published today**

To assist our decision-making for our final PQ decisions on expenditure allowances, we sought the following additional information on incentive payments from Chorus:

- Information relating to the incentive payments Chorus intends to offer including guiding design principles, structure of the different incentive payments, and forecast number of incentives; and
- Information demonstrating the steps Chorus has or will take to ensure that any incentive payments it offers comply with Chorus' regulatory obligations - the geographically consistent pricing requirement under s 201 and its non-discrimination obligations.

We have published the request for information along with Chorus' response to our request. We have also published a context note from Chorus to the Commission on Chorus' customer incentive expenditure. This was provided as a preliminary response to our information request.

Additionally, we received four letters from stakeholders outside of the consultation period for our PQ draft decisions. These letters relate to each stakeholder's view on our draft decisions relating to incentive payments. In this instance, we have decided to consider the points raised in the letters when making our final PQ decisions. In doing so, we also consider it appropriate to give other stakeholders the opportunity to provide their views.

However, it is important that stakeholders comply with submission timeframes and we may decline to consider late submissions of this type in future.

We have also published a document that was part of Chorus' submission to our PQ draft decisions. The document provides an updated expenditure summary from Chorus. The majority of the information contained in this document was available in Chorus' published submission document.<sup>1</sup> However, this document was accidentally omitted when we published submissions on our PQ draft decisions. We consider it appropriate to make this document available to stakeholders and to invite views on how this information should be considered in our final PQ decisions.

### **Why we requested the additional information from Chorus and how we intend to use it**

In our PQ draft decisions, we indicated that we would exclude incentive payments from Chorus' base capex and baseline connection capex allowances.<sup>2</sup> We suggested Chorus could make an individual capex application for any proposed incentive capex during PQP1. We received several submissions on this decision, including from Chorus and other stakeholders, indicating their preference to provide this allowance as base capex and baseline connection capex.

To make our final decision on incentive payments, and to give due consideration to previous submissions on incentive payments, we considered it important to seek additional information from Chorus. We indicated in Attachment G of our draft decisions preliminary thresholds Chorus must meet prior to our assessment of any incentive payment expenditure as well as our indicative approach to assessing incentive payments.<sup>3</sup> The information request we issued to Chorus sought information to help us address the preliminary thresholds questions.

We invite stakeholders' view on Chorus' response to our request for information and the additional material in this targeted consultation. Specifically, we are interested in stakeholders' view on:

- Whether the information provided by Chorus on incentive payments raises any compliance issues with respect to the geographically consistent pricing requirement under s 201 and whether any costs Chorus may incur in making incentive payments to obtain contracts with RSPs meet the definition of "capex" as defined in the fibre input methodologies.<sup>4</sup>
- Any general views on the consultation material published today and how we should incorporate the additional material in our final PQ decisions on Chorus' expenditure allowances.

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<sup>1</sup> Chorus submission, "Submission on price-quality path draft decision 8 July 2021 – public version".

<sup>2</sup> Commerce Commission, "Chorus' price-quality path from 1 January 2022 – Draft decision Reasons Paper".

<sup>3</sup> Commerce Commission, "Chorus' price-quality path from 1 January 2022 – Draft decision Reasons Paper".

<sup>4</sup> Fibre Input Methodologies Determination 2020 [2020] NZCC 21.

We have also published our s 201 guidance today.<sup>5</sup> We encourage stakeholders to consider this guidance in the preparation of responses to this consultation.

The information we have published along with any submissions from stakeholders will help us reach our final decisions on Chorus' expenditure allowances for PQP1 including the appropriate treatment of incentive payments in Chorus' price quality path.

### **Process for providing views**

We encourage stakeholders to consider the additional consultation material and provide views to help shape our final decision due in December 2021.

Submissions can be made through the submission portal available on our website at: <https://comcom.govt.nz/file-upload-form-folder/file-upload-form/> The project page will direct you to a form with instructions on how to upload your submission. Your submission should be provided as an electronic file in an accessible form.

We invite submissions on the matters discussed in this open letter or on other issues related to the additional published material by 5pm on Thursday, 14 October 2021.

We request stakeholder limit their submissions to areas contained in this letter and the documents we have published for consultation. Submissions outside the scope of this consultation will not be considered in our final PQ decisions.

### *Confidentiality*

The protection of confidential information is something the Commission takes seriously. To continue to protect confidential submissions, we require you to upload your submission via the form on the project page. The process requires you to provide (if necessary) both a confidential and non-confidential/public version of your submission and to clearly identify the confidential and non-confidential/public versions.

When including commercially sensitive or confidential information in your submission, we offer the following guidance:

- Please provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website.
- The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
- Please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we do not publish unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult with the party that provided the information before any disclosure is made.

We thank stakeholders for their engagement in this process and look forward to receiving your submissions.

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<sup>5</sup> Commerce Commission, "Geographically consistent pricing – guidance on our approach to section 201 of the Telecommunications Act".

Please contact us via [telcofibre@comcom.govt.nz](mailto:telcofibre@comcom.govt.nz) if you have any questions regarding this consultation.

Ngā mihi nui

**Tristan Gilbertson**  
Telecommunications Commissioner