

27 August 2014

Chorus Limited  
Level 10  
State Insurance Tower  
1 Willis Street  
Wellington

Attention: Vanessa Oakley, General Counsel and Company Secretary

Dear Ms Oakley

**Notice to supply information and documents to the Commerce Commission under sections 98(a) and (b) of the Commerce Act 1986 via section 15(f) of the Telecommunications Act 2001**

1. I attach a notice issued under section 98(a) and (b) of the Commerce Act 1986 (Notice) which requires Chorus Limited to supply the information and documents specified in the Notice to the Commerce Commission (Commission). This letter does not form part of the Notice, but is provided to assist you in complying with the Notice.
2. You may wish to seek legal advice about the Notice.

**The Commission**

3. We (the Commission) are a statutory body established under the Commerce Act. The purpose of the Commerce Act is to promote competition in markets for the long-term benefit of consumers within New Zealand.
4. Section 98 of the Commerce Act allows us to require a person to furnish us with information and produce any documents or classes of documents, where we consider this necessary or desirable for the purposes of carrying out our functions and exercising our powers under the Commerce Act.
5. Section 15(f) of the Telecommunications Act 2001 states that the provisions of section 98 of the Commerce Act apply to the Telecommunications Act.
6. We have functions under both the Commerce Act and the Telecommunications Act. One of our functions under Subpart 2A of Part 2 of the Telecommunications Act is to

determine the terms (including the price) on which a designated access service must be supplied to access seekers.

### **The Notice**

7. We are reviewing the price to be paid for the Unbundled Copper Local Loop (UCLL) and Unbundled Bitstream Access (UBA) services provided by Chorus Limited, as defined in subpart 1 of Part 2 of Schedule 1 of the Telecommunications Act. We are required to make a price review determination as soon as practicable in respect of the UCLL service (refer sections 47 and 51 of the Telecommunications Act 2001) and we are required to make reasonable efforts to make a price review determination in respect of the UBA service before the expiry of three years from separation day, which is 30 November 2014 (refer section 78(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011).
8. The Notice seeks information and documents which are desirable for our pricing reviews in relation to the UCLL service and the UBA service.
9. This letter and the Notice will be placed on our website.

### **Response to the Notice**

10. The information and documents in response to this Notice must be delivered to the Commission's Wellington office at Level 6, 44 The Terrace for the attention of Keston Ruxton, or by email to [telco@comcom.govt.nz](mailto:telco@comcom.govt.nz) with the subject "Response to section 98 Notice – UCLL and UBA", by:
  - 10.1 **5pm on 12 September 2014** in respect of the information sought in paragraph 8 of Attachment A;
  - 10.2 **5pm on 19 September 2014** in respect of the information sought in paragraphs 4-7 and 9-13 of Attachment A.
11. Chorus Limited must provide all information and documents in Attachment A to the Notice in electronic format via email, flash drive or to the assigned extranet site.
12. Chorus Limited must supply the requested information and documents under cover of a letter on Chorus Limited's letterhead, signed by a person with the appropriate authority.

### **Compliance with the Notice**

13. It is an offence under section 103 of the Commerce Act to fail to comply with the Notice, or to knowingly give false or misleading information and documents to us.
14. Given our tight timeframe for completion of these pricing reviews, Chorus Limited should contact us as soon as possible if it will be unable to provide all of the requested information and documents by the due date.
15. When contacting us Chorus Limited must set out in writing:

- 15.1 why it is unable to comply with the Notice; or
  - 15.2 why it needs an extension of time to comply with the Notice.
16. If Chorus Limited is unable to provide any of the requested information and documents, and/or any of the requested information and documents are not in its control, it must fully explain the reasons and circumstances in its response to each request concerned.

**Further enquiries**

17. Please direct any enquiries in relation to the Notice to Keston Ruxton at the Commission's Wellington Office, direct dial 04 924 3673 or email: **keston.ruxton@comcom.govt.nz**.

Yours sincerely



Elisabeth Welson  
Commissioner

## Relevant extracts from the Commerce Act 1986

### Section 98

#### Commission may require person to supply information or documents or give evidence

Where the Commission considers it necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act, the Commission may, by notice in writing served on any person, require that person -

- (a) to furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent servant or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
- (b) to produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice; or

...

### Section 101

#### Notices

- (1) Any notice given by the Commission under or for the purposes of this Act shall be sufficiently given if it is in writing under the seal of the Commission or is signed by the chairperson, or by one or more of the members of the Commission, or by any persons purporting to act by direction of the Commission, and is served in accordance with section 102 on the person or persons primarily concerned therewith or on any person or organisation deemed by the Commission to represent the person or persons primarily concerned therewith.

....

### Section 103 (relevant provisions)

#### Offences

- (1) No person shall –
  - (a) without reasonable excuse, refuse or fail to comply with a notice under ... [section] 98; or
  - (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

...

- (2) No person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it.

...

- (4) Any person who contravenes subsection (1) or subsection (2) or subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 in the case of an individual, or \$30,000 in the case of a body corporate.
- (5) Proceedings for an offence against subsection (4) may be commenced within 6 months after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.



## Section 106

### Proceedings privileged

- ....(4) A person shall not be excused from complying with any requirement to furnish information, produce documents, or give evidence under this Act, or, on appearing before the Commission, from answering any question or producing any document, on the ground that to do so might tend to incriminate that person.
- (5) A statement made by a person in answer to a question put by or before the Commission shall not in criminal proceedings or in proceedings for pecuniary penalties of this Act, be admissible against that person.
- (6) Nothing in subsection (5) applies in respect of—
- (a) proceedings on a charge of perjury against the maker of the statement; or
  - (b) proceedings on a charge of an offence against section 103.
- ...
- (9) Anything said, or any information furnished, or any document produced or tendered, or any evidence given by any person to the Commission, shall be privileged in the same manner as if that statement, information, document, or evidence were made, furnished, produced, or given in proceedings in a court.
- (10) For the purposes of clause 3 of Part 2 of Schedule 1 to the Defamation Act 1992, any statement, document, determination, clearance, authorisation, or decision made by the Commission in the exercise or intended exercise of any of its functions or powers shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

## **Relevant extracts from telecommunications legislation**

### **Telecommunications Act 2001**

#### **Section 15**

##### ***Application of Commerce Act 1986 and Crown Entities Act 2004***

The following provisions of the Commerce Act 1986 apply with any necessary modifications:

...

- (f) section 98 (Commission may require person to supply information or documents or give evidence):

...

- (k) sections 101 (notices) and 102 (service of notices):

- (l) section 103 (offences):

...

### **Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011**

#### **Section 78**

...

(3) The Commission must make reasonable efforts to complete the pricing review determination before the expiry of 3 years from separation day.



## Notice to supply information and documents to the Commerce Commission Sections 98(a) and (b) Commerce Act 1986

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### To:

Chorus Limited  
Level 10  
State Insurance Tower  
1 Willis Street  
Wellington

Attention: Vanessa Oakley, General Counsel and Company Secretary

### Purpose of the Notice

1. We (the Commerce Commission) are reviewing the price to be paid for the Unbundled Copper Local Loop (UCLL) and Unbundled Bitstream Access (UBA) services provided by Chorus Limited, as defined in subpart 1 of Part 2 of Schedule 1 of the Telecommunications Act 2001 (Telecommunications Act). We are required to make a price review determination as soon as practicable in respect of the UCLL service (refer sections 47 and 51 of the Telecommunications Act 2001) and we are required to make reasonable efforts to make a price review determination in respect of the UBA service before the expiry of three years from separation day, which is 30 November 2014 (refer section 78(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011).
2. The purpose of this Notice is to obtain information and documents relevant to our price review determinations for the UCLL and UBA services.
3. The Notice is issued under sections 98(a) and (b) of the Commerce Act, and section 15(f) of the Telecommunications Act.
4. We consider it is desirable for Chorus Limited to provide us with the information and documents specified in **Attachment A** to this Notice to assist us in making the price review determinations.

### Date and place of response

5. The information and documents in response to this Notice must be delivered to the Commission's Wellington office at Level 6, 44 The Terrace for the attention of Keston Ruxton, or by email to [telco@comcom.govt.nz](mailto:telco@comcom.govt.nz) with the subject "Response to section 98 Notice – UCLL and UBA", by:

- 5.1 **5pm on 12 September 2014** in respect of the information sought in paragraph 8 of Attachment A;
- 5.2 **5pm on 19 September 2014** in respect of the information sought in paragraphs 4-7 and 9-13 of Attachment A.
- 6. Chorus Limited must provide all information and documents in Attachment A in electronic format, via email, flash drive or to the assigned extranet site.
- 7. Chorus Limited must label and identify all information and documentation, and explain which information relates to which paragraph of this Notice.
- 8. Chorus Limited must supply the requested information and documents under cover of a letter on Chorus Limited's letterhead, signed by a person with the appropriate authority.

Dated at Wellington 27 August 2014

Signed by:



Elisabeth Welson  
Commissioner



## Attachment A

1. For the purposes of this Notice, the following terms have the following meanings:
  - 1.1 **Active line** means a single instance of a UCLL, UBA, UCLF or SLU service being purchased at the time of record.
  - 1.2 **Chorus** means Chorus Limited, its interconnected bodies corporate (as defined in section 2(7) of the Commerce Act), business units or joint ventures, and any current or former agents, employees, officers and directors thereof.
  - 1.3 **Prior Notice** means the notices to supply information and documents to the Commerce Commission pursuant to sections 98(a) and (b) of the Commerce Act issued by the Commission to Chorus on 7 February 2014, 17 April 2014 and 8 August 2014.
  - 1.4 **RSP** means a Retail Service Provider that resells Chorus' wholesale broadband and/or telephony services to retail customers.
  - 1.5 **Service Company** means an organisation and its sub-contractors providing field services to Chorus and includes Downer EDI Engineering, Transfield Services and Visionstream.
  - 1.6 **SLU** means the Sub-loop Unbundled Copper Local Loop.
  - 1.7 **UCLF** means Unbundled Copper Low Frequency.
  - 1.8 **UCLL** means the Unbundled Copper Local Loop.
2. For all information requested please provide:
  - 2.1 a file (in .csv format) listing the name of each file provided, the information contained within the file, the date the information was queried and the date the file was prepared. Where different dates apply to pieces of information within the same file, these should be recorded in separate rows. Please also indicate the extent to which confidentiality is claimed in respect of the content of each file.
  - 2.2 a glossary of terms used in Chorus' response to this notice.
  - 2.3 a file (in .csv format) identifying any overlaps between the information provided in response to this Notice, and the information provided in response to one or more of the Prior Notices.
3. The Commission requires the following information.

**Information and documents requested***Information on historic connections and transfers*

4. Please input the information sought in paragraphs 5-8 below on the template provided in relation to each RSP identified. Please use a copy of the 'Additional RSP' sheet for any further RSPs.
5. Please supply the following information for each RSP for each month in the period from December 2012 to July 2014 inclusive relating to the UCLF service:
  - 5.1 The number of active UCLF lines, that are not purchased with UBA, as at the end of each month;
  - 5.2 The number of new connections to the UCLF service that occurred during each month, categorised by:
    - 5.2.1 New connections requiring a site visit;
    - 5.2.2 New connections requiring no site visit; and
    - 5.2.3 New connections charged at the bulk rate;
  - 5.3 The number of transfers relating to the UCLF service that occurred during each month, categorised by:
    - 5.3.1 Transfers charged at the individual rate; and
    - 5.3.2 Transfers charged at the bulk rate.
6. Please supply the following information for each RSP for each month in the period from December 2012 through to July 2014 inclusive relating to the UCLL service:
  - 6.1 The number of active UCLL lines, as at the end of each month, categorised by:
    - 6.1.1 Lines charged at the urban rate;
    - 6.1.2 Lines charged at the non-urban rate;
    - 6.1.3 Lines charged at the geographically averaged rate;
  - 6.2 The number of new connections to the UCLL service for each RSP that occurred during each month, categorised by:
    - 6.2.1 New connections requiring a site visit;
    - 6.2.2 New connections requiring no site visit;
    - 6.2.3 New connections charged at the bulk rate;

6.3 The number of transfers relating to the UCLL service for each RSP that occurred during each month, categorised by:

6.3.1 Transfers charged at the individual rate; and

6.3.2 Transfers charged at the bulk rate.

7. Please supply the number of active SLU lines, as at the end of each month, for each RSP for each month from December 2012 through to July 2014 inclusive, categorised by:

7.1.1 Lines charged at the urban rate;

7.1.2 Lines charged at the non-urban rate;

7.1.3 Lines charged at the geographically averaged rate.

*Information relevant to service transaction charges*

8. Please provide the following information

8.1 Detailed statements of works for all services that Service Companies provide to Chorus in the course of provisioning, maintenance, network design and build, or any other such service for Chorus. (This request may be satisfied by providing a current and complete copy of Chorus document ND0235, in .pdf format.)

8.2 For each service specified in the response to paragraph 8.1 above please provide, in .csv format, a table detailing the following:

8.2.1 The current agreed charge payable to each Service Company, by Chorus customer service area (CSA).

8.2.2 For each charge specified in response to paragraph 8.2.1 above, please provide the major input costs that comprise each charge, including:

(a) The skilled labour rate;

(b) The time budgeted to complete the task;

(c) Cost of materials, including:

(i) Chorus consigned materials;

(ii) Service Company sourced and supplied materials;

(d) Transport costs; and

(e) Any other relevant costs.

- 8.2.3 Any market indices used by Chorus to adjust the charges for services specified in the response to paragraph 8.1 above, to account for movements in fuel, materials, labour or other such costs, and any relevant weighting given to the application of such adjustments to the respective major input costs identified in Chorus' response to paragraph 8.2.2 above.
- 8.2.4 For the financial years ending 30 June 2013 and 30 June 2014, the total number of transactions for each service specified in the response to paragraph 8.1 above that is directly attributable to:
- (a) services regulated according to a standard terms determination made under the Telecommunications Act 2001;
  - (b) unregulated (commercial) services; and
  - (c) Chorus' shared network services and functions.
- 8.3 The value of any payments by Chorus to Service Companies towards meeting their overhead costs for the financial years ending 30 June 2013 and 30 June 2014. In addition, please highlight where these overhead costs were reported in Chorus' responses to paragraph 6.19 of the section 98 notice to Chorus dated 17 April 2014.
- 8.4 A table in .CSV format that specifies, in relation to each service listed in the Table headed "1 UCLL MPF Service Transaction Charges" in Schedule 2 to the UCLL STD:
- 8.4.1 the directly applicable Service Company service or services, as specified in the response to paragraph 8.1 above, undertaken by Service Companies to complete each UCLL MPF service transaction;
  - 8.4.2 the number of Service Company service transactions claimed by Service Companies in relation to each UCLL MPF service transaction charge for the financial years ending 30 June 2013 and 30 June 2014.
- In each case, exclude any additional coincidental commercial service (i.e. "while-you-are-here") transactions that may have occurred.
- 8.5 A table in .CSV format that specifies, in relation to each service listed in the Table headed "1 Sub-Loop UCLL Service Transaction Charges" in Schedule 2 to the Sub-loop UCLL (SLU) STD:
- 8.5.1 the directly applicable Service Company service or services, as specified in the response to paragraph 8.1 above, undertaken by Service Companies to complete each Sub-loop UCLL (SLU) service transaction;



- 8.5.2 the number of Service Company service transactions claimed by Service Companies in relation to each Sub-loop UCLL (SLU) service transaction charge for the financial years ending 30 June 2013 and 30 June 2014.

In each case, exclude any additional coincidental commercial services (i.e. “while-you-are-here”) transactions that may have occurred.

- 8.6 A table in .CSV format that specifies, in relation to each service listed in the Table headed “1 UBA Service Transaction Charges” in Schedule 2 to the Unbundled Bitstream Access Service (UBA) STD, plus the service described as “2.13 Handover fibre space rental charge” in the Table headed “2 UBA Service Recurring Charges”:

- 8.6.1 the directly applicable Service Company service or services, as specified in the response to paragraph 8.1 above, undertaken by Service Companies to complete each UBA service transaction;
- 8.6.2 the number of Service Company service transactions claimed by Service Companies in relation to each UBA Service Transaction charge for the financial years ending 30 June 2013 and 30 June 2014.

In each case, exclude any additional coincidental commercial services (i.e. “while-you-are-here”) transactions that may have occurred.

#### *Financial information*

- 9. For each of the financial years ending 30 June 2013 and 30 June 2014 please quantify the revenue Chorus earned from:
  - 9.1 pole and other aerial infrastructure;
  - 9.2 trenches and other underground infrastructure; and
  - 9.3 other infrastructure.
- 10. For each of the revenue categories listed in paragraphs 9.1 to 9.3 above, please:
  - 10.1 identify where the revenue is accounted for in Chorus’ income statements (for example ‘Infrastructure’, ‘Value added services’);
  - 10.2 provide the product descriptions, terms and conditions, and pricing information applicable to the revenue.
- 11. For the following Chorus revenue categories identified in its annual reports: “field services”, “value added network services”, and “other”, and for the financial years ending 30 June 2013 and 30 June 2014, please provide:



- 11.1 a classification of the revenue depending on whether it relates to expenses shared with a service regulated according to a standard terms determination made under the Telecommunications Act 2001 or not; and
  - 11.2 The product names, descriptions and pricing information applicable to the revenue.
- 12. Please update Chorus' responses to paragraphs 6.19.1, 6.19.2, 6.19.3 and 6.19.4, of the section 98 notice to Chorus dated 17 April 2014, providing in each case the specified information for the financial year ending 30 June 2014.
- 13. Please quantify the following direct costs associated with all of the products and services, excluding UCLL, SLU and UBA, that Chorus provides:
  - 13.1 A list of direct costs and which service they relate to. (Direct costs are identifiable as capital and operating expenditure solely incurred by those services, or projects that are solely related to those services.)
  - 13.2 For each cost identified in response to paragraph 13.1 above, the direct capital and operating expenditure incurred for the financial years ending 30 June 2013 and 30 June 2014.
  - 13.3 A reference to where in Chorus' response to paragraph 12 above they appear.