

28 April 2015
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 to the Commerce Commission under section 98(a) of the Commerce Act 1986

1. I enclose with this letter a Notice issued under section 98(a) of the Commerce Act 1986 (the Act).
2. The Notice requires Chorus Limited to provide information responding to the Notice to our Wellington office at 44 The Terrace, PO Box 2351, Wellington 6140, marked for the attention of Stephen Hudson, or by email to telco@comcom.govt.nz, with the subject "Response to section 98 Notice – UCLL and UBA", by **5pm on 13 May 2015**.
3. This letter does not form part of the Notice, but is provided to assist Chorus Limited in complying with the Notice.
4. Chorus Limited may wish to seek legal advice about the Notice.

The Proceedings to which the Notice relates

5. The Commerce Commission is a statutory body established under the Act. The Commerce Commission also performs functions under the Telecommunications Act 2001 (Telecommunications Act). One of its functions under the Telecommunications Act is to make pricing review determinations under section 51.
6. 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 in accordance with the Final Pricing Principle (FPP) of the UCLL and UBA services.

7. We released draft determinations for the UCLL and UBA services on 2 December 2014, and have received submissions and cross-submissions from interested parties. We held a conference on the submissions and cross-submissions on 15-17 April 2015.
8. The purpose of this Notice is to obtain information to assist us in reviewing the submissions and cross-submissions on the draft determinations for the UCLL and UBA services and to make the price review determinations.

The Commission's power to issue the Notice

9. Sections 98(a) of the Act allows the Commission to require a person to supply it with information where we consider it necessary or desirable for the purpose of carrying out our functions and exercising our powers under the Act.
10. Section 15(f) of the Telecommunications Act states that the provisions of section 98 of the Act apply to the Telecommunications Act.
11. We consider it desirable for Chorus Limited to provide us with the information specified in the attached Notice to assist us in making the price review determinations.

How to provide information and documents in response to the Notice

12. Chorus Limited is required to provide the responsive information under cover of a letter on company letterhead signed by a person with the appropriate authority. The letter should be marked for the attention of Stephen Hudson.
13. The Notice describes the format in which Chorus Limited must provide the documents.

No requirement to provide legally privileged documents

14. In complying with the Notice, Chorus Limited is not required to provide information which is legally privileged.

Failing to comply with the Notice is a criminal offence

15. It is an offence under section 103 of the Act to fail to comply with the Notice, or to knowingly give false or misleading information to us.

What to do if you need an extension of time to comply with the Notice

16. If Chorus Limited is unable to comply with the Notice by 13 May 2015 it will need to write to us as soon as possible setting out in writing how much additional time it needs to comply with the Notice and why it needs the additional time.

What to do if you are unable to provide all of the required information and documents

17. Chorus Limited must also advise us in writing if it is unable to provide all of the required information (for example, because the information does not exist or is no longer in its control).

Further information

18. Copies of relevant sections of the Act are attached for your information.

Enquiries

19. If you have any questions about the Notice, please contact Stephen Hudson on direct dial 04 924 3831 or by email at stephen.hudson@comcom.govt.nz.

Yours sincerely



Stephen Gale
Telecommunications Commissioner

RELEVANT SECTIONS OF 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 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
- (c) to appear before the Commission at a time and place specified in the notice to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice.

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 Chair, 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 of this Act 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.
- (2) All documents purporting to be signed by or on behalf of the Commission or to be sealed with the seal of the Commission shall, in all courts and in all proceedings under this Act, be deemed to have been so signed or sealed with due authority unless the contrary is proved.

Section 103 – Offences

- (1) No person shall –
 - (a) without reasonable excuse, refuse or fail to comply with a notice under sections 53B(1)(c), 53N, 53ZD, and 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
 - (c) resist, obstruct, or delay an employee of the Commission acting pursuant to a warrant issued under section 98A.

- (2) No person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
- (3) No person, having been required to appear before the Commission pursuant to section 98(c), shall –
 - (a) without reasonable excuse, refuse or fail to appear before the Commission to give evidence; or
 - (b) refuse to take an oath or make an affirmation as a witness; or
 - (c) refuse to answer any question; or
 - (d) refuse to produce to the Commission any book or document that that person is required to produce.
- (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

- (1) No proceedings, civil or criminal, shall lie against the Commission for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that the Commission acted without reasonable care or in bad faith.
- (2) No proceedings, civil or criminal, lie against any member of the Commission, or any officer or employee of the Commission, or any member of a committee of the Commission, for anything that person may do or say or fail to do or say in the course of the operations of the Commission, unless it is shown that the person acted in bad faith.
- (3) Nothing in subsections (1) and (2) applies in respect of proceedings for—
 - (a) an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
 - (b) the offence of conspiring to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
 - (c) the offence of attempting to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961.
- (3A) Section 59(3) of the Crown Entities Act 2004 (which provides that a statutory entity may bring an action against a member for breach of an individual duty) does not apply, unless it is shown by the Commission that the person acted in bad faith.
- (3B) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.
- (3C) This section contains an exception to section 121 of the Crown Entities Act 2004.
- (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) of this section 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 of this Act.
 - (7) No court or other person shall be entitled to require any member of the Commission, or any employee of the Commission or any other person present at any meeting of the Commission, to divulge or communicate any information furnished or obtained, documents produced, obtained or tendered, or evidence given, in connection with the operations of the Commission.
 - (8) Nothing in subsection (7) of this section applies in respect of—
 - (a) any proceedings referred to in subsection (3) or subsection (6) of this section; or
 - (b) any proceedings to which the Commission is a party.
 - (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 THE TELECOMMUNICATIONS ACT 2001

Section 10 - Performance of Commission's functions

- (1) Subject to subsection (2) and sections 15 and 17,—
 - (a) the Telecommunications Commissioner and no fewer than 2 other members of the Commission must—
 - (i) make every determination in respect of a designated multinet network service under section 39; and
 - (ii) make every pricing review determination under section 51; and
 - (iii) make every liability allocation determination under section 87; and
 - (iv) make every TSO cost calculation determination under section 94J;

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:

- (a) *[Repealed]*
- (b) section 13 (termination of appointment of members):
- (c) *[Repealed]*
- (d) section 15 (except as provided in section 10(4) of this Act) (meetings of Commission):
- (e) *[Repealed]*
- (f) section 98 (Commission may require person to supply information or documents or give evidence):
- (g) subject to section 16, sections 98A and 98G (Commission's powers of search and seizure):
- (h) section 99 (powers of Commission to take evidence):
- (ha) sections 99B(a) and 99C to 99P (assistance to overseas regulators), as if—
 - (i) references in those sections to competition law functions, or functions in relation to competition law, were references to functions relating to the regulation of telecommunications; and
 - (ii) references in those sections to the Minister were references to the Minister responsible for telecommunications:
- (i) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
- (j) section 100A (Commission may state case for opinion of High Court):
- (k) sections 101 (notices) and 102 (service of notices):
- (l) section 103 (offences):
- (m) section 104 (determinations of Commission):
- (n) *[Repealed]*
- (o) section 106 (proceedings privileged):
- (p) section 106A (judicial notice):
- (q) section 109 (Commission may prescribe forms).