

[xx] [month] 2024

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

[Draft] Notice to supply information to the Commerce Commission under section 193(2) of the Telecommunications Act 2001 – Compliance statements for the second regulatory period

Background

1. Chorus Limited (**Chorus**) is subject to price-quality regulation under Part 6 of the Telecommunications Act 2001 (the **Act**) in respect of the services specified in regulation 6 of the Telecommunications (Regulated Fibre Service Providers) Regulations 2019.
2. Before the end of the current regulatory period, the Commerce Commission (**Commission**) must make a determination under s 170 of the Act specifying how price-quality regulation applies to Chorus during the next regulatory period (the **PQ determination**). As detailed in the s 170 Determination dated 28 February 2023, the second regulatory period will run for four years from 1 January 2025 until 31 December 2028.²

Purpose of this notice

3. This notice requires Chorus to provide information periodically on its compliance with the price path and quality standards (and any instances of non-compliance) as set out in the PQ determination. Under s 193(2) of the Act, this information is necessary for the Commission to monitor Chorus's compliance with the PQ determination.
4. The notice also requires Chorus to provide information annually for purposes of monitoring its compliance with s 201 of the Act.
5. The Commission requires Chorus, under s 193(2)(a), (b), (c), and (d) of the Act, to provide the information set out in Attachment A of this notice.

Timeframes for responding to this notice

6. Chorus must supply the information that relates to its price path and quality standards that is specified in this notice in accordance with the timeframes specified in clause 9.2 of the PQ determination.
7. Chorus must supply the information that relates to s 201 that is specified in this notice in accordance with the timeframes specified in clause A7.

Exemptions

8. The Commission may, at any time, by way of written notice to Chorus:
 - 8.1 exempt Chorus from any obligation in this notice, on such terms and conditions as the Commission specifies in the notice; and
 - 8.2 amend or revoke any such exemption.

Means of responding to this notice

9. Chorus must provide the Commission with the information required by sending it by email to infrastructure.regulation@comcom.govt.nz (Attention: Manager, Fibre) with the subject line "Chorus – Response to section 193 Notice – Compliance statements for the second regulatory period".

Use of supplied information and confidentiality

10. If 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 Chorus's response, Chorus must:
 - 10.1 provide that information in a separate appendix;
 - 10.2 provide both an unredacted version and a redacted version with the confidential/commercially sensitive information removed;
 - 10.3 clearly mark the information as confidential or commercially sensitive (as applicable) in the unredacted version; and
 - 10.4 for each redaction of information provide reasons why Chorus considers that part or all of the response is confidential or commercially sensitive (as applicable) and why the Commission should not publish or publicly refer to it.
11. If Chorus indicates that the Commission should not publish or publicly refer to part of its response, the Commission will discuss with Chorus before deciding whether to do so.

12. Please note that all responses to this notice received by the Commission, 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 Chorus before releasing any material that Chorus has requested to not be published.

Offences under section 103 of the Commerce Act 1986

13. 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 193 of the Act.
14. Section 103 of the Commerce Act provides that no person shall:
 - 14.1 without reasonable excuse, refuse or fail to comply with a notice under [s 193 of the Act];
 - 14.2 in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
 - 14.3 attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
15. It is an offence to contravene s 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:

Signed by:

Tristan Gilbertson
Telecommunications Commissioner

Attachment A Information required

A1 Under section 193(2)(a), (b), (c) and (d) of the **Act**, **Chorus** must provide the information in clauses A3 to A11 of this Attachment.

A2 In this Attachment, unless the context requires otherwise,—

A2.1 terms used in this notice that are defined in the **Act**, **IM determination** or the **PQ determination** (as applicable) but not in this notice have the same meanings as in the **Act**, **IM determination** or the **PQ determination** (as applicable);

A2.2 a word which denotes the singular also denotes the plural and vice versa;

A2.3 any reference to “includes” means “includes, but is not limited to”; and

A2.4 words or phrases in bold type have the following meanings:

A

Act	means the Telecommunications Act 2001;
annual assessment report	means a report prepared for the purposes of clause 9.1 of the PQ determination that complies with clause A6;

C

Chorus	has the same meaning as defined in the IM determination ;
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Commission	has the same meaning as defined in s 5 of the Act ;
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D

director	has the same meaning as defined in the IM determination ;
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F

fibre network	has the same meaning as defined in s 5 of the Act ;
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FFLAS	has the same meaning as ‘fibre fixed line access services’ as defined in s 5 of the Act ;
forecast allowable revenue	has the same meaning as defined in the PQ determination ;
forecast total FFLAS revenue	has the same meaning as defined in the PQ determination ;
IM determination	<p>I</p> <p>means the <i>Fibre Input Methodologies Determination 2020</i> [2020] NZCC 21, including any amendment in effect at the time of the commencement of the PQ determination;</p>
incentive	includes a promotion, rebate, discount, or financial incentive Chorus provides to a retail service provider;
independent auditor	<p>means a person who—</p> <p>(a) is qualified for appointment as auditor of a company under the Companies Act 1993;</p> <p>(b) has no relationship with, or interest in, Chorus that is likely to involve the person in a conflict of interest;</p>

- (c) has not assisted with the preparation of the **annual compliance statement** or provided advice or opinions (other than in relation to audit reports) on the methodologies or processes used in preparing the **annual compliance statement**;
- (d) is neither professionally associated with nor directed by any person who has provided or assisted with the provision of the information specified in subclause (c) above;
- (e) has the necessary expertise to properly prepare an assurance report required by clause A11; but
- (f) need not be the same person as the person who audits **Chorus's** accounts for any other purpose;

ISAE (NZ) 3000

means the *International Standard on Assurance Engagements (New Zealand) 3000 (Revised), Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, 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

other FFLAS income

means income received by **Chorus** in respect of **PQ FFLAS**, excluding income

from **PQ FFLAS** the **price(s)** of which are related to the quantity supplied;

P

price	has the same meaning as defined in the IM determination ;
price path compliance statement	means a written statement in respect of forecast allowable revenue that complies with clause A4;
PQ determination	means the <i>Fibre PQ determination 2024</i> [2024] NZCC [xx], made on [xx];

Q

quantities	has the same meaning as defined in the IM determination ;
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R

regulatory year	has the same meaning as defined in the IM determination ; and
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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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Price path compliance statement

- A3 In accordance with the timeframes specified in clause 9.2 of the **PQ determination**, **Chorus** must provide to the **Commission**—
- (a) a **price path compliance statement**; and
 - (b) schedules reflecting the **prices**, forecast **quantities**, and forecast **other FFLAS income** used in the calculation of **forecast total FFLAS revenue**,

disclosed in an electronic format that is compatible with Microsoft Excel, at the same time as providing the **price path compliance statement**.

- A4 The '**price path compliance statement**' must—
- (a) state—
 - (i) whether **Chorus** has complied with the price path in clause 7.2 of the **PQ determination** for the **regulatory year**; and
 - (ii) the date the statement was prepared; and
 - (b) include—
 - (i) whether the statement is prepared under clause 9.2.2(a) or (b) of the **PQ determination**, a certificate in the form specified in clause A8 of this notice, signed by at least one **director** of **Chorus**;
 - (ii) **Chorus's** calculations of its **forecast total FFLAS revenue** and **forecast allowable revenue** together with supporting information for all components of the calculations; and
 - (iii) if **Chorus** has not complied with the price path,—
 - (A) the reasons for the non-compliance; and
 - (B) any actions **Chorus** took to mitigate any non-compliance and to prevent similar non-compliance in future **regulatory years**.

Annual assessment reports

A5 In accordance with the timeframe specified in clause 9.2 of the **PQ determination**, **Chorus** must provide to the **Commission** the **annual assessment report** in relation to **Chorus'** compliance with clauses 8.1, 8.4, 8.7 and 8.11 of the **PQ determination**.

- A6 The **annual assessment report** must—
- (a) state whether **Chorus** has complied with the assessments described in clauses 8.1 and 8.4 of the **PQ determination** for that **regulatory year**;
 - (b) state whether **Chorus** has complied with the assessments described in clause 8.7 of the **PQ determination** for each month of that **regulatory year**;
 - (c) state whether **Chorus** has complied with the quality standard described in clause 8.11 of the **PQ determination** for that **regulatory year**.

- (d) set out any instance where an **availability POI area** for the **layer 1** or **layer 2** aspect has exceeded the **net unplanned downtime** set out in the **PQ determination**, in setting out any such instances, including;
 - (i) the reason for the exceedance and remedial action taken in response; and
 - (ii) any actions **Chorus** took to mitigate the exceedance and to prevent similar exceedances in future (including for that **availability POI area**).
- (e) set out any instance where a **port** experienced **port utilisation**, upstream or downstream, equal to or exceeding 90% in any five-minute interval in the calendar month, in setting out any such instances, including;
 - (i) the reason for the exceedance and remedial action taken in response; and
 - (ii) any actions **Chorus** took to mitigate the exceedance and to prevent similar exceedances in future.
- (f) set out any instances where **Chorus** has relied on a **force majeure event** for the purposes of clauses 8.1, 8.4, 8.8 and schedule 4(4)(a) of the **PQ determination** and including;
 - (i) the values that have been excluded on the basis of the **force majeure event**; and
 - (ii) the reasons **Chorus** considers a **force majeure event** applies.
- (g) state the date the **annual assessment report** was prepared;
- (h) include a certificate in the form specified in clause A9 of this notice, signed by at least one **director** of **Chorus**;
- (i) be accompanied by an assurance report meeting the requirements in clause A11 of this notice; and
- (j) include any information reasonably necessary to demonstrate whether **Chorus** has complied with clauses 8.1, 8.4, 8.7 and 8.11 of the **PQ determination**, including details of the quality standards calculations as specified in Schedule 4 of the **PQ determination**, together with supporting information for all components of the calculations.

Compliance statement in respect of s 201 of the Act

- A7 **Chorus** must, by 31 January for each **regulatory year** of the **regulatory period** provide the **Commission** with the following information:
- (a) a summary of the **incentives Chorus** has offered, including which regulated FFLAS the **incentives** apply to, the design principles, the criteria for, and structure of the **incentives**;
 - (b) copies of **Chorus** offer documents that set out the details of each of the **incentives** as offered to retail service providers;
 - (c) a summary of the processes Chorus has taken to ensure that its prices charged for **FFLAS**, including any **incentives**, comply with s 201 of the **Act**;
 - (d) state whether **Chorus** has complied with s 201 of the **Act**;
 - (e) If **Chorus** has not complied with s 201 of the **Act**, the reasons for the non-compliance; and
 - (f) a certificate in the form specified in clause A10 of this notice, signed by at least one **director of Chorus**.

Form of director's certificate for price path compliance statement

- A8 The **director's** certificate referenced at clause A4(b)(i) of this notice must take the following form:

I/We, *[insert full name/s]*, being director/s of Chorus Limited certify that, having made all reasonable enquiries, to the best of my/our knowledge and belief, the attached price path compliance statement of Chorus, and related information, prepared for the purposes of the *Fibre Price-Quality Path Determination 2024*, has been prepared in accordance with all the relevant requirements, and all forecasts used in the calculations for forecast total FFLAS revenue and forecast allowable revenue are demonstrably reasonable**[except in the following respects]*.

**[insert description of non-compliance]*

[Signatures of director(s)]

[Date]

*Delete if inapplicable.

Note: Section 103(2) of the Commerce Act 1986 provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it. It is an offence to

contravene section 103(2) and any person who does so is liable on summary conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in any other case.

Form of director's certificate for annual assessment report

A9 The **director's** certificate referenced at clause A6(h) of this notice must take the following form:

I/We, *[insert full name/s]*, being director/s of Chorus Limited certify that, having made all reasonable enquiries, to the best of my/our knowledge and belief, the attached annual compliance statement of Chorus, and related information, prepared for the purposes of the *Fibre Price-Quality Path Determination 2024*, has been prepared in accordance with all the relevant requirements**[except in the following respects]*.

**[insert description of non-compliance]*

[Signatures of director(s)]

[Date]

*Delete if inapplicable.

Note: Section 103(2) of the Commerce Act 1986 provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it. It is an offence to contravene section 103(2) and any person who does so is liable on summary conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in any other case.

Form of director's certificate for s 201 compliance statement

A10 The **director's** certificate referenced at clause A7(f) of this notice must take the following form:

I/We, *[insert full name/s]*, being director/s of Chorus Limited certify that, having made all reasonable enquiries, to the best of my/our knowledge and belief, consider that Chorus Limited has complied with s 201 of the Telecommunications Act **[except in the following respects]*.

**[insert description of non-compliance]*

[Signatures of director(s)]

[Date]

*Delete if inapplicable.

Note: Section 103(2) of the Commerce Act 1986 provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it. It is an offence to contravene section 103(2) and any person who does so is liable on summary conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in any other case.

Independent auditor's report on annual assessment report

- A11 For the purposes of clause A6(i) of this notice, **Chorus** must procure an assurance report by an **independent auditor** in respect of clauses A6 (a), (b), (c) and (j) of the **annual assessment 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—
- (a) is addressed to the **directors** of **Chorus** and to the **Commission** as the intended users of the assurance report;
 - (b) states—
 - (i) that it has been prepared in accordance with **SAE 3100** and **ISAE (NZ) 3000**;
 - (ii) the work done by the **independent auditor**;
 - (iii) the scope and limitations of the assurance engagement;
 - (iv) 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;
 - (v) if appropriate, a description of any significant inherent limitations associated with the evaluation of the compliance activity against the compliance requirements; and
 - (vi) whether, in the **independent auditor's** opinion, as far as appears from an examination, the information used in the preparation of the statements referred to at clauses A6 (a), (b), (c) of the **annual assessment report**, and any information provided in accordance with clause A6(j) has been properly extracted from **Chorus's** accounting and other records, sourced from its financial and non-financial systems; and
 - (c) 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 **PQ determination** in preparing the **annual assessment report**.