

Appendix: Chorus' response to survey questions

[note – we attempted to upload these responses via the Commission's website on the survey form, but responses for Risks M-O did not upload properly so we are submitting this document]

Risk A: Chorus lessens competition by charging anti-competitive prices for layer 1 services that are an input to rival competitors downstream at layer 2. This raises the costs of downstream rivals, making them less competitive

- a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|-----------------------|
| ID | 4 |
| PQ | 5 |
| EoI | 1 |
| Non-discrim | 3 |
| Other | 2 (Commerce Act) |

- b) What role do you see for ID regulation in mitigating this risk?

This risk is already mitigated by our equivalence obligations in the Fibre Deed and the Commerce Act. No additional interventions are required.

ID is not a workable solution:

- *Standard ID occurs 5-6 months after the period to which the information relates; and*
- *Implementing an ID requirement would involve unnecessary cost.*

Targeted information requests are more effective than an annual disclosure requirement.

- c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|-----------------------|
| ID | 4 |
| PQ | 5 |
| EoI | 1 |
| Non-discrim | 3 |
| Other | 2 (Commerce Act) |

- d) What role do you see for PQ regulation in mitigating this risk?

None - as above, this risk is mitigated by our equivalence obligations in the Fibre Deed and the Commerce Act.

Risk B: Local fibre companies (other than Chorus) lessen competition by charging anticompetitive prices for layer 1 services that are an input to rival competitors downstream at layer 2. This raises the costs of downstream rivals, making them less competitive

n/a

Risk C: Chorus lessens competition through non-price terms (including quality) for layer 1 services that are an input to rival competitors downstream at layer 2. This negatively impacts downstream rivals, making them less competitive

- a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|-----------------------|
| ID | 4 |
| PQ | 5 |
| EoI | 1 |
| Non-discrim | 3 |
| Other | 2 (Commerce Act) |

- b) What role do you see for ID regulation in mitigating this risk?

Same as above for Risk A.

- c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|-----------------------|
| ID | 4 |
| PQ | 5 |
| EoI | 1 |
| Non-discrim | 3 |
| Other | 2 (Commerce Act) |

- d) What role do you see for PQ regulation in mitigating this risk?

Same as above for Risk A.

Risk D: Chorus lessens competition through insufficient investment in layer 1 services that are an input to rival competitors downstream at layer 2. This negatively impacts downstream rivals, making them less competitive

- a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|---|
| ID | 4 |
| PQ | 5 |
| EoI | 1 |
| Non-discrim | 3 |
| Other | 2 (Commerce Act; contractual obligations) |

- b) What role do you see for ID regulation in mitigating this risk?

Quality standards consistent with our existing NIPA obligations are more than sufficient to ensure a L1 service that supports RSPs' requirements.

- c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|---|
| ID | 4 |
| PQ | 5 |
| EoI | 1 |
| Non-discrim | 3 |
| Other | 2 (Commerce Act; contractual obligations) |

- d) What role do you see for PQ regulation in mitigating this risk?

Quality standards consistent with our existing NIPA obligations are more than sufficient to ensure a L1 service that supports RSPs' requirements.

Risk E: Local fibre companies (other than Chorus) lessen competition through non-price terms (including quality) for layer 1 services that are an input to rival competitors downstream at layer 2. This negatively impacts downstream rivals, making them less competitive

n/a

Risk F: Local fibre companies (other than Chorus) lessen competition through insufficient investment in layer 1 services that are an input to rival competitors downstream at layer 2. This negatively impacts downstream rivals, making them less competitive

n/a

Risk G: Chorus lessens competition by charging anti-competitive prices for specific layer 2 services where it faces competition (eg, lower speed broadband)

- a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|-----------------------|
| ID | 4 |
| PQ | 5 |
| EoI | 3 |
| Non-discrim | 2 |
| Other | 1 (Commerce Act) |

- b) What role do you see for ID regulation in mitigating this risk?

Existing legal and regulatory tools are available to mitigate the risk of predatory pricing by network operators:

- *Section 36 of the Commerce Act prohibits a firm with substantial market power from pricing below cost for an anti-competitive purpose.*
- *Chorus will be subject to a revenue cap and anchor services regulation which will prevent us from increasing the price of non-competitive services to subsidise competitive services.*

There is no need for any additional ID intervention.

- c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|-----------------------|
| ID | 4 |
| PQ | 5 |
| EoI | 3 |
| Non-discrim | 2 |
| Other | 1 (Commerce Act) |

- d) What role do you see for PQ regulation in mitigating this risk?

As above, existing legal and regulatory tools are available to mitigate this risk; there is no role for PQ regulation.

Risk H: Local fibre companies (other than Chorus) lessen competition by charging anticompetitive prices for specific layer 2 services where they face competition (eg, lower speed broadband)

No comment from Chorus on other LFC questions

Risk I: Chorus lessens competition by charging anti-competitive prices at layer 2 in areas only subject to information disclosure (ID) regulation, enabled by inappropriate allocation of costs between ID and price-quality (PQ) areas

- a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|---|
| ID | 4 |
| PQ | 5 |
| EoI | 3 |
| Non-discrim | 2 |
| Other | 1 (Commerce Act, cost allocation assessment of Chorus' RAB) |

- b) What role do you see for ID regulation in mitigating this risk?

The Commission's oversight of cost allocation ensures allocations are consistent with workably competitive outcomes. Importantly, cost allocation should be applied ex ante and then not revised after the fact to produce a particular pricing/competitive outcome in a market.

- c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|---|
| ID | 4 |
| PQ | 5 |
| EoI | 3 |
| Non-discrim | 2 |
| Other | 1 (Commerce Act, cost allocation assessment of Chorus' RAB) |

- d) What role do you see for PQ regulation in mitigating this risk?

No role for PQ regulation in mitigating this risk.

Risk J: Chorus lessens competition by charging anti-competitive prices at layer 1 in areas only subject to information disclosure (ID) regulation, enabled by inappropriate allocation of costs between ID and price-quality (PQ) areas

- a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|---|
| ID | 4 |
| PQ | 5 |
| EoI | 2 |
| Non-discrim | 3 |
| Other | 1 (Commerce Act, cost allocation assessment of Chorus' RAB) |

- b) What role do you see for ID regulation in mitigating this risk?

The Commission's oversight of cost allocation ensures allocations are consistent with workably competitive outcomes. Additionally, any information disclosure requirements need to be manageable. Too many individual segment disclosures would risk creating a highly complex and costly set of annual reporting requirements. The Commission should focus on the segment reporting that can deliver the most value.

- c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|---|
| ID | 4 |
| PQ | 5 |
| EoI | 2 |
| Non-discrim | 3 |
| Other | 1 (Commerce Act, cost allocation assessment of Chorus' RAB) |

- d) What role do you see for PQ regulation in mitigating this risk?

No role for PQ regulation in mitigating this risk.

Risk K: Chorus bundles layer 2 products with layer 1 backhaul products, such as Intra Candidate Area Backhaul Service (ICABS), in a way that makes entry into the backhaul market uneconomic (eg, not enough contestable volumes).

- a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|-------------------------------|
| ID | 4 |
| PQ | 5 |
| EoI | 3 |
| Non-discrim | 2 |
| Other | 1 (Commerce Act, Chorus BLR3) |

- b) What role do you see for ID regulation in mitigating this risk?

This risk is mitigated by the Commerce Act and BLR3. No additional disclosure requirement is necessary. Contract terms will in many cases be competitively sensitive and disclosure would increase the risk of coordination by Chorus' competitors.

- c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|------------------------|
| ID | 4 |
| PQ | 5 |
| EoI | 3 |
| Non-discrim | 2 |
| Other | 1 (Commerce Act, BLR3) |

- d) What role do you see for PQ regulation in mitigating this risk?

No role for PQ regulation in mitigating this risk.

Risk L: Chorus bundles layer 2 products between price-quality (PQ) and information disclosure (ID)-only areas that have exclusionary effect on local fibre companies in ID-only areas (eg, prices in PQ areas are lower if you also purchase ID-only area requirements from Chorus)

- a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|-----------------------|
| ID | 3 |
| PQ | 4 |
| EoI | 5 |
| Non-discrim | 2 |
| Other | 1 (GCP; Commerce Act) |

- b) What role do you see for ID regulation in mitigating this risk?

There is no role for ID regulation because our GCP obligation means this risk could not materialise (we can't have differential pricing for our L2 services within PQ areas where we are subject to GCP). Even if this risk could materialise, the Commerce Act prohibits any anti-competitive foreclosure strategies.

- c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|------------------------------|
| ID | 3 |
| PQ | 4 |
| EoI | 5 |
| Non-discrim | 2 |
| Other | 1 (GCP; s36 of Commerce Act) |

- d) What role do you see for PQ regulation in mitigating this risk?

No role for PQ regulation in mitigating this risk.

Risk M: Chorus lessens competition at layer 2 in price-quality (PQ) and/or information disclosure (ID)-only areas by making anti-competitive incentive payments (also referred to as 'retention capex') to attract/retain end-users (price terms)

- a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|----------------------------------|
| ID | 3 |
| PQ | 4 |
| EoI | 5 |
| Non-discrim | 2 |
| Other | 1 (Commerce Act, MAR constraint) |

b) What role do you see for ID regulation in mitigating this risk?

If the hypothetical concern is that incentive payments could foreclose FWA competitors, this risk is unlikely to arise because:

- *The MAR will constrain our ability and incentive to adopt an anti-competitive pricing strategy;*
- *Non-discrim prevents us from offering incentives only to RSPs that have FWA offers - our offers have to be available to all RPSs on the same terms;*
- *Assuming we had the ability and/or incentive to offer "anti-competitive" incentive payments this risk is mitigated by section 36 of the Commerce Act.*

The proposed ID solution is unnecessary and unworkable – it would involve the disclosure of commercially sensitive information to our network competitors.

c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|----------------------------------|
| ID | 3 |
| PQ | 4 |
| EoI | 5 |
| Non-discrim | 2 |
| Other | 1 (Commerce Act, MAR constraint) |

d) What role do you see for PQ regulation in mitigating this risk?

A PQ solution is unnecessary at this stage of the development of Part 6. Part 2 of the Commerce Act is the appropriate tool to address any concerns about anti-competitive incentive payments.

Risk N: Chorus lessens competition at layer 2 in price-quality (PQ) and/or information disclosure (ID)-only areas by imposing anti-competitive conditions attached to the incentive payments (also referred to as 'retention capex') (non-price terms)

a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|----------------------------------|
| ID | 3 |
| PQ | 4 |
| EoI | 5 |
| Non-discrim | 2 |
| Other | 1 (Commerce Act, MAR constraint) |

b) What role do you see for ID regulation in mitigating this risk?

Same as above for risk M.

c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|----------------------------------|
| ID | 3 |
| PQ | 4 |
| EoI | 5 |
| Non-discrim | 2 |
| Other | 1 (Commerce Act, MAR constraint) |

d) What role do you see for PQ regulation in mitigating this risk?

Same as above for Risk M.

Risk O: Chorus prevents other local fibre companies (LFCs) from expanding their network (limiting growth opportunities for LFCs within their own areas and preventing entry into Chorus' price-quality regulated areas) by undercharging for laying new network/connections (for example, cross-subsidising the network expansion and recovering the costs elsewhere)

a) How useful do you think information disclosure (ID) regulation is to mitigate this risk, relative to other tools, such as price-quality (PQ) regulation, equivalence of inputs (EOI) or non-discrimination (ND) obligations?

| Item | Chorus ranking |
|-------------|-----------------------|
| ID | 4 |
| PQ | 5 |
| EoI | 2 |
| Non-discrim | 3 |
| Other | 1 (Commerce Act) |

b) What role do you see for ID regulation in mitigating this risk?

No role for ID in mitigating this risk. Chorus has no incentive to undercharge for network build because we wouldn't be able to recover the value of our investment. Even if we were incentivised to undercharge for network build, section 36 of the Commerce Act prohibits predatory pricing.

c) How useful do you think PQ regulation in the first regulatory period is to mitigate this risk, relative to other tools such as ID regulation, EOI or ND obligations?

| Item | Chorus ranking |
|-------------|-----------------------|
| ID | 4 |
| PQ | 5 |
| EoI | 2 |
| Non-discrim | 3 |
| Other | 1 (Commerce Act) |

d) What role do you see for PQ regulation in mitigating this risk?

No role for PQ regulation in mitigating this risk.

Please rank your top five risks in order of most to least material in the next three years (materiality combines the likelihood of conduct occurring and the impact in terms of lessening of competition). Please do not give the same ranking to more than one risk.

n/a

Help us improve our collective understanding of how the requirement in section 201 of the Telecommunications Act 2001 on geographically consistent pricing impacts on competition in telecommunication markets

a) Is there a role for information disclosure regulation (supplemented by summary and analysis) to help interested stakeholders understand these impacts?

No. While we agree with the Commission that the GCP obligation is problematic because it can lead to inefficient outcomes, the disclosure of competitively sensitive information to our network competitors (highlighting low cost areas and therefore giving our competitors the opportunity to cherry pick low cost to serve customers) is not a workable solution.

GCP is a legislative requirement – any review of GCP would need to take place separately to the Commission’s determination of ID and PQ requirements. It would not be efficient to require Chorus to annually disclose information on the impact of GCP when this information can be gathered in a targeted way when (if) the GCP legislative requirement is reviewed.

b) If yes, what information and forms of summary and analysis would help you to understand potential competition impacts of geographically consistent pricing?

Are there any other key risks or opportunities to promote competition? If so, which ones? Please only include those that can be mitigated or realised with information disclosure or price-quality regulation, and rank them relative to the other risks

n/a