

21 June 2021

Patrick Strange and Elaine Campbell
Chairman and Chief Corporate Officer / General Counsel
Chorus New Zealand Limited

BY EMAIL

Dear Patrick and Elaine

DETERMINING CHORUS' FIRST FIBRE PRICE-QUALITY PATH: PROCESS UPDATE

1. I refer to the letter of 20 May 2021 from Elaine Campbell to Andrew Riseley, and the letter of 4 June 2021 from Patrick Strange to our Chair, Anna Rawlings.¹
2. Anna and Andrew have asked me to respond to both letters together, given they raise the same issues. However, Anna and Andrew, as well as the members of Fibre Division, have reviewed this letter and endorse its contents.
3. The purpose of this letter is to provide more context around the Commission's process for determining Chorus' initial regulatory asset base (**RAB**), and to respond to the concerns raised regarding the implications for Chorus and investors, and the legality, of the Commission's proposed process to base PQP1 allowable revenue on a draft initial PQ RAB and to finalise the initial RAB in 2022.

The significance of the initial RAB decision

4. As we have stressed throughout our process, the Commission is committed to ensuring that its fibre decisions deliver the best long-term outcomes for New Zealand consumers, consistent with the purposes of Part 6 of the Telecommunications Act.
5. We recognise that our decisions have real world consequences for Chorus and other regulated parties. We have therefore been willing and open to engaging on matters of concern, including the timing of our decisions, throughout our decision-making process. We appreciate Chorus raising its concerns about the significance of the final initial RAB decision and the potential implications of the timing of this decision on its business.

¹ We acknowledge receipt of the letter of 18 June 2021 from Patrick Strange to our Chair, Anna Rawlings and myself to which we will respond separately in due course.

6. We acknowledge that it is important to provide certainty for Chorus and other interested persons, such as investors, as soon as possible. We therefore agree that the initial RAB should be finalised as soon as possible. However, as noted in your letter of 20 May 2021, determining the initial RAB is a challenging process and it is important that we get this right, given its enduring effect on Chorus' future price-quality (PQ) determinations. Accordingly, providing earlier certainty cannot be at the expense of ensuring that our decisions appropriately meet the purposes of Part 6.

Chorus' concerns that our proposed approach may be unlawful and results in an unacceptable level of commercial uncertainty

7. The Commission disagrees that its two-stage approach to setting the initial RAB may be unlawful in any of the respects set out in the letters.

8. In this regard, we note:

- 8.1 We do not consider that s 177 requires us to determine the final initial RAB by the implementation date. The PQ determination to be issued later this year will incorporate an estimate of the initial PQ RAB value, to enable the setting of Chorus' first price-quality path (PQP1). This will necessarily be a transitional initial PQ RAB value since it must be based in part on forecasts. In addition, we may not be able to fully complete our review of Chorus' proposed initial PQ RAB by the end of the year, such that we would be able reach a view on the final initial RAB. However, as described further below, we will endeavour to complete as much as possible and intend to amend our process to confine the scope of matters that may be revisited between the transitional and final initial PQ RABs.

- 8.2 While the proposed IM amendments would allow for some initial RAB matters to be finalised in 2021, and others to be finalised in 2022, we have not predetermined the extent to which matters are determined at each stage. We note that the proposed IM amendments would not preclude us from finalising any aspects of the initial RAB in 2021. The Commission has an open mind as to alternatives to the transitional initial PQ RAB, and amending the IMs to provide for a wash-up, although we are not currently aware of any feasible alternatives.

9. We agree with Chorus that the transitional initial PQ RAB value used in the PQ determination should be informed by submissions. We intend to amend our process to accommodate this as described further below.

Changes to our process for determining the initial RAB

10. Having considered your letters, and the points raised by stakeholders on the topic of the process for determining the initial RAB in response to our consultation on Chorus' initial RAB proposal, we have decided to make some changes to certain aspects of that process.
11. We agree that it is preferable to provide as much certainty as possible on the initial RAB and that this can be achieved by finalising as many matters as possible in our PQP1 determination, and narrowing the scope of the matters that may be subject to change between the transitional initial PQ RAB value used at that point, and the final initial RAB value to be determined in 2022. We will therefore seek to confine the

scope of matters that may be revisited between the transitional and final initial PQ RABs as far as possible.

12. We also acknowledge that there is value in taking account of submissions on the draft initial RAB before setting a value for the transitional initial PQ RAB used as an input to PQP1. We will therefore invite and consider submissions on a draft of the initial PQ RAB (due to be published in August 2021) before making a final decision on the transitional initial PQ RAB value for PQP1.
13. To allow for these changes to our process we intend to shift the date of our final PQP1 determination to mid-December 2021.
14. The changes to our process and the reasons for the changes will be set out in more detail in our process update paper, which we expect to publish within the next week, following further deliberations on the submissions that we have received from stakeholders to our consultation on Chorus' initial RAB proposal.

Conclusion

15. Please note that, in the interests of transparency, we intend to publish your letters and this reply alongside our forthcoming process update.
16. We look forward to continuing to work with Chorus and other stakeholders constructively as we complete the last parts of our process to implement the new fibre regulation.

Your sincerely

A handwritten signature in black ink, appearing to read 'Tristan Gilbertson', followed by a period.

Tristan Gilbertson
Telecommunications Commissioner