

Order of the Commerce Commission under section 100 of the Commerce Act 1986, as applied by section 15(i) of the Telecommunications Act 2001

Background

1. The Commerce Commission (**Commission**) is in the process of developing the price-quality regulation that will apply to Chorus Limited (**Chorus**) during the period 1 January 2022 to 31 December 2024 following the legislative changes to the Telecommunications Act 2001 (**Act**) in 2018.
2. As part of this process the Commission required Chorus to supply material on its base capital expenditure, connection capex baseline expenditure, and operating expenditure.
3. When Chorus submitted the material to the Commission, it identified the information that it considered should not be published on the grounds that it was confidential.
4. The Commission published a public version of Chorus' information on its website on 12 February 2021 with the information that it had determined to be confidential redacted.
5. This section 100 order provides for the protection of Chorus' confidential information where the Commission makes a confidential version of Chorus' information available to interested persons' external advisers as part of its consultation processes.

General conditions for access to a confidential version of Chorus' information

6. Where an interested person appoints external adviser(s) other than external legal adviser(s), it must nominate a person who has a current certificate to practice as a barrister and solicitor of the High Court of New Zealand as its nominated counsel.
7. Nominated counsels will be required to sign a Deed of Undertaking in the form set out in Schedule 1.
8. External advisers will be required to sign a Deed of Undertaking in the form set out in Schedule 2.
9. The Commission will identify all nominated counsel and external advisers who have signed a Deed of Undertaking in the form set out in Schedule 1 or Schedule 2 (as

relevant) and have been provided with a confidential version of Chorus' information, by publishing the names of such persons in the form set out in Schedule 3 on its website.

The Order

Scope of the Order

10. Pursuant to section 100 of the Commerce Act 1986, the Commission prohibits the publication, communication or giving in evidence of the information marked as confidential contained within the documents listed in Schedule 4 (**the Information**).
11. Public versions of the documents listed in Schedule 4 are available on the Commission's website at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/fibre-price-quality-path-and-information-disclosure?target=documents> under the heading "Consultation on Chorus' expenditure proposal published".

Application of the Order

12. Subject to clauses 13, 14 and 15, this order applies to the Information except where it is already in the public domain or comes into the public domain otherwise than through a breach of this or any similar or related order.
13. This order does not apply to Chorus or any of its employees, agents, officers or contractors.
14. This order does not apply to the Commission or any of its employees, agents, officers or contractors.
15. This order does not apply to the communication of the Information to Chorus, the Commission, or any person listed in Schedule 3 as published on the Commission's website at the time of the communication.
16. The Commission may, at any time, vary or revoke this order.
17. This order takes effect from the date it was made and unless the Commission revokes it earlier has effect until the Commission issues a determination under section 170 of the Act specifying how price-quality regulation applies to Chorus.

DATED this 1st day of March 2021



Tristan Gilbertson
Telecommunications Commissioner

SCHEDULE 1

DEED OF UNDERTAKING FOR NOMINATED COUNSEL

1. This Deed of Undertaking (**Deed**) is given in relation to the section 100 order (**Order**) made by the Commerce Commission (**Commission**) on 1 March 2021 relating to the Commission's process to develop the price-quality regulation that will apply to Chorus Limited (**Chorus**) during the period 1 January 2022 to 31 December 2024 (**Proceeding**).
2. I acknowledge that I have been provided with a copy of the Order and have read and understood its terms.
3. I, _____, of _____ hereby irrevocably undertake to the Commission and to Chorus:
 - 3.1 to notify the Commission and Chorus as soon as reasonably practicable of any change in my employment circumstances or role that may be relevant to my continuing access to the information marked as confidential contained within the documents listed in Schedule 4 of the Order (**Information**);
 - 3.2 to comply with the Order;
 - 3.3 not to use or refer to the Information in any way except in relation to the Proceeding;
 - 3.4 not to make notes, summaries, copies, or records in any other form, of the Information except as is reasonably necessary for purposes of preparing advice and/or submissions in respect of the Proceeding;
 - 3.5 subject to clause 4 of this Deed, to destroy all copies of the Information in any form, within ten working days of being requested to do so by the Commission or after the expiry of the Order, whichever occurs first;
 - 3.6 subject to clause 4 of this Deed, to provide the Commission and Chorus with written confirmation that I have destroyed the Information in a secure and confidential manner, within fifteen working days of being requested to do so by the Commission or after the expiry of the Order, whichever occurs first;
 - 3.7 to supervise compliance by my nominating party with the requirements of the Order;
 - 3.8 to advise the external adviser of my nominating party of their obligations under the Order and their Deed of Undertaking, including in particular when there are discussions between any personnel of my nominating party and the external adviser in relation to the Proceeding; and

- 3.9 to immediately notify the Commission and Chorus of any breach of the Order or this Deed.
4. Clauses 3.5 and 3.6 do not apply if the Commission and Chorus both expressly waive these obligations in writing.
 5. I acknowledge and understand that a failure to comply with the Order is a criminal offence and that I may be liable to prosecution under section 100(4) of the Commerce Act 1986 if I fail to comply with the requirements of the Order.
 6. I acknowledge that I continue to be bound by this Deed after the Order ceases to have effect unless expressly released by the Commission and Chorus in writing.
 7. I confirm that I hold a current practising certificate as a barrister and solicitor of the High Court of New Zealand.
 8. This Deed is governed by the laws of New Zealand.
 9. I submit to the exclusive jurisdiction of the courts of New Zealand in relation to any matters arising under this Deed.
 10. Any failure to enforce any provision of the Deed shall not constitute a waiver of that provision nor of any other provision of this Deed.

DATED this ____ day of _____ 2021

Signature

Witnessed by:

Signature

Name

City, town or locality of residence

Occupation or description

SCHEDULE 2

DEED OF UNDERTAKING FOR EXTERNAL ADVISERS

1. This Deed of Undertaking (**Deed**) is given in relation to the section 100 order (**Order**) made by the Commerce Commission (**Commission**) on 1 March 2021 relating to the Commission's process to develop the price-quality regulation that will apply to Chorus Limited (**Chorus**) during the period 1 January 2022 to 31 December 2024 (**Proceeding**).
2. I acknowledge that I have been provided with a copy of the Order and have read and understood its terms.
3. I, _____, of _____ hereby irrevocably undertake to the Commission and to Chorus:
 - 3.1 to notify the Commission and Chorus as soon as reasonably practicable of any change in my employment circumstances or role that may be relevant to my continuing access to the information marked as confidential contained within the documents listed in Schedule 4 of the Order (**Information**);
 - 3.2 to comply with the Order;
 - 3.3 not to use or refer to the Information in any way except in relation to the Proceeding;
 - 3.4 not to make notes, summaries, copies, or records in any other form, of the Information except as is reasonably necessary for purposes of preparing advice and/or submissions in respect of the Proceeding;
 - 3.5 subject to clause 4 of this Deed, to destroy all copies of the Information in any form, within ten working days of being requested to do so by the Commission or after the expiry of the Order, whichever occurs first;
 - 3.6 subject to clause 4 of this Deed, to provide the Commission and Chorus with written confirmation that I have destroyed the Information in a secure and confidential manner, within fifteen working days of being requested to do so by the Commission or after the expiry of the Order, whichever occurs first; and
 - 3.7 to immediately notify the Commission and Chorus of any breach of the Order or this Deed.
4. Clauses 3.5 and 3.6 do not apply if the Commission and Chorus both expressly waive these obligations in writing.

5. I acknowledge and understand that a failure to comply with the Order is a criminal offence and that I may be liable to prosecution under section 100(4) of the Commerce Act 1986 if I fail to comply with the requirements of the Order.
6. I acknowledge that I continue to be bound by this Deed after the Order ceases to have effect unless expressly released by the Commission and Chorus in writing.
7. This Deed is governed by the laws of New Zealand.
8. I submit to the exclusive jurisdiction of the courts of New Zealand in relation to any matters arising under this Deed.
9. Any failure to enforce any provision of the Deed shall not constitute a waiver of that provision nor of any other provision of this Deed.

DATED this ____ day of _____ 2021

Signature

Witnessed by:

Signature

Name

City, town or locality of residence

Occupation or description

SCHEDULE 3**PERSONS WHO HAVE BEEN PROVIDED WITH A CONFIDENTIAL
VERSION OF CHORUS' INFORMATION**

Nominating Party	Nominated Counsel	External Adviser

SCHEDULE 4

DOCUMENTS COVERED BY THE SECTION 100 ORDER

1. Chorus - Our Fibre Plans – 12 February 2021
2. Chorus – Our Fibre Assets - 10 February 2021
3. Chorus – RT01 Forecast Expenditure – 10 February 2021
4. Chorus - RT02 Cost escalation – 10 February 2021
5. Chorus - RT03 Cost allocation – 10 February 2021
6. Chorus - RT04 Connections capex and adjustment – 10 February 2021
7. Chorus - Modelling and cost allocation report – 16 December 2020
8. Chorus – Report from the Independent Verifier – 10 February 2021
9. Chorus – Cover Letter – 10 February 2021
10. Chorus - Short form responses – 10 February 2021
11. Chorus - Forecasting Information – 16 December 2020
12. Chorus - Regulatory Information – 16 December 2020
13. Chorus - A31 - Opex to capex quantitative analysis – 16 December 2020
14. Chorus - Service Level agreement extracts from service company contracts – 16 December 2020