

7 February 2014

Chorus Limited  
Level 9  
North Tower  
Datacom House  
68-86 Jervois Quay  
Wellington 6011

Attention: Mark Ratcliffe, Chief Executive Officer

Dear Mr Ratcliffe

**Notice to supply information and documents to the Commerce Commission under sections 98(a) and (b) of the Commerce Act 1986 via section 15(f) of the Telecommunications Act 2001**

1. I attach a notice issued under section 98(a) and (b) of the Commerce Act 1986 (Notice) which requires Chorus Limited to supply the information and documents specified in the Notice to the Commerce Commission (Commission). This letter does not form part of the Notice, but is provided to assist you in complying with the Notice.
2. You may wish to seek legal advice about the Notice.

**The Commission**

3. We (the Commission) are a statutory body established under the Commerce Act. The purpose of the Commerce Act is to promote competition in markets for the long-term benefit of consumers within New Zealand.
4. Section 98 of the Commerce Act allows us to require a person to furnish us with information and produce any documents or classes of documents, where we consider this necessary or desirable for the purposes of carrying out our functions and exercising our powers under the Commerce Act.
5. Section 15(f) of the Telecommunications Act 2001 states that the provisions of section 98 of the Commerce Act apply to the Telecommunications Act.
6. We have functions under both the Commerce Act and the Telecommunications Act. One of our functions under Subpart 2A of Part 2 of the Telecommunications Act is to determine the terms (including the price) on which a designated access service must be supplied to access seekers.

### **The Notice**

7. We completed a benchmarking pricing review of the Unbundled Bitstream Access (UBA) service provided by Chorus Limited in which we set initial prices for the UBA service on 5 November 2013. We received five applications under section 42 of the Telecommunications Act for a pricing review of those initial prices. We are therefore required to review the price to be paid for the UBA service by calculating the price in accordance with the final pricing principle – total service long-run incremental cost (TSLRIC), as defined in subpart 1 of Part 1 of Schedule 1 of the Act.
8. We are required to make reasonable efforts to determine the price before the expiry of three years from separation day, which is 30 November 2014 (refer s78(3) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011).
9. The Notice seeks information and documents which are necessary and desirable for our pricing review.
10. This letter and the Notice will be placed on our website.

### **Response to the Notice**

11. The information and documents in response to this Notice must be delivered to the Commission's Wellington office at Level 6, 44 The Terrace for the attention of Keston Ruxton, or by email to [telco@comcom.govt.nz](mailto:telco@comcom.govt.nz) with the subject "Response to section 98 Notice – UBA", by 5pm on Friday 7 March 2014.
12. Chorus Limited must provide all information and documents in clauses 2 - 4 of Attachment A to the Notice in electronic .csv format via email or on a flash drive. The information and documents in clause 5 of Attachment A to the Notice must be provided in pdf format via email or flash drive.
13. Chorus Limited must supply the requested information and documents under cover of a letter on Chorus Limited's letterhead, signed by a person with the appropriate authority.

### **Compliance with this Notice**

14. It is an offence under section 103 of the Commerce Act to fail to comply with the Notice, or to knowingly give false or misleading information and documents to us.
15. Chorus Limited should contact us as soon as possible (and no later than seven working days before the compliance date) if it will be unable to provide all of the requested information and documents by the due date.
16. When contacting us Chorus Limited must set out in writing:
  - 16.1 why it is unable to comply with the Notice; or
  - 16.2 why it needs an extension of time to comply with the Notice.

17. If Chorus Limited is unable to provide any of the requested information and documents, and/or any of the requested information and documents are not in its control, it must fully explain the reasons and circumstances in its response to each request concerned.

**Retention of documents**

18. Chorus Limited, its agents, employees, officers and directors, should retain all relevant hard copy and electronic/digital records that may be relevant to the Commission's UBA FPP price review determinations.
19. Any routine or otherwise planned document and/or information destruction should also be suspended or cancelled until after the completion of the FPP price review determination.

**Further enquiries**

20. Please direct any enquiries in relation to the Notice to Keston Ruxton at the Commission's Wellington Office, direct dial 04 924 3673 or email:  
**keston.ruxton@comcom.govt.nz.**

Yours sincerely



Elisabeth Welson  
Commissioner

## Relevant extracts from 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

...

### 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.

....

### Section 103 (relevant provisions)

#### Offences

- (1) No person shall –
  - (a) without reasonable excuse, refuse or fail to comply with a notice under ... section 98 of this Act; 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
- (2) No person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
- ... (4) Any person who contravenes subsections (1), (2) or (3) of this section 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

- ....(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.
- (.....
- (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 telecommunications legislation**

### **Telecommunications Act 2001**

#### **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:

...

(f) section 98 (Commission may require person to supply information or documents or give evidence):

...

(k) sections 101 (notices) and 102 (service of notices):

(l) section 103 (offences):

### **Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011**

#### **Section 78**

...

(3)The Commission must make reasonable efforts to complete the pricing review determination before the expiry of 3 years from separation day.