

## Report on consultation with Chorus and LFCs relating to clause 6.1(b) of their fibre open access undertakings

### Background and purpose

- The fibre undertakings entered into by Chorus and the LFCs contain an Equivalence (or EOI) obligation in clause 6.1. The wording in the Chorus undertakings is as follows, with equivalent wording in the LFC undertakings:<sup>1</sup>

*“Chorus will ensure that the design and build of the Network (in areas in which Chorus has been selected as a UFB partner) enables Access Seekers to purchase the Input Service on an Equivalence basis on and after 1 January 2020.”*

- Clause 6.1(b) of the Chorus undertakings also requires that (with equivalent wording in the LFC undertakings):

*“Chorus will consult with the Commission in July 2015 on the design and build of the Network for the purpose of informing the Commission as to how Chorus and CFH have agreed to meet the obligation in clause 6.1. Chorus will take into account any feedback received from the Commission.”*

- Although the Chorus undertakings are quoted here, equivalent requirements are in place for the LFCs, the sole material difference being that LFCs are required to ‘take due notice’ of feedback received from the Commission, whereas Chorus is required to ‘take into account’ such feedback.
- The purpose of this paper is: (i) to outline the process used for this consultation, (ii) to detail the conditions to be met to demonstrate that networks will be EOI capable, and (iii) to summarise our findings.

### What Equivalence means

- The Chorus undertakings define Equivalence as follows (with equivalent wording in the LFC undertakings):

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<sup>1</sup> The Deeds can be found online at <http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/broadband-mobile-initiatives/phase-one-broadband-initiatives/?searchterm=open%20access%20undertakings%2A>

*“In this Undertaking “Equivalence” means that if Chorus is required to provide Access Seekers with an Input Service under clause 6.2,<sup>2</sup> it must do so on an equivalence of inputs basis, meaning:*

- (a) Chorus must provide itself and the Access Seekers with the same Input Service;*
- (b) Chorus must deliver that Input Service to itself and the Access Seekers on the same timescales and on the same terms and conditions (including price and service levels);*
- (c) Chorus must deliver the Input Service to itself and the Access Seekers by means of the same systems and processes (including operational support processes);*
- (d) Chorus must provide its own business operations and the Access Seekers with the same Commercial Information about that Input Service, and those same systems and processes; and*
- (e) when providing that Input Service to itself, Chorus must use systems and processes that Access Seekers are able to use in the same way, and with the same degree of reliability and performance.”*

#### **Process followed**

- Meetings were held with representatives from the LFCs during July and August 2015 to review their network and systems designs. Additionally, field site visits were conducted to confirm documented network designs have been deployed.

#### **Checklist**

- The following framework was used for the discussions with the LFCs.<sup>3</sup>
  - (a) Same Input service*
    - Ability to provide capacity:
      - on fibre routes feeding fibre flexibility points (FFPs)
      - In FFPS for RSPs’ splitters (including accessibility)
      - In central offices for co-location and termination (including accessibility)
  - (b) Same terms and conditions:*
    - Ability to report service performance by RSP (including self-supply)
    - Ability to demonstrate price non-discrimination
  - (c) Same systems and processes:*
    - Ability of ordering/inventory/faults systems to allow business to business operation

<sup>2</sup> Clause 6.2 states that the Chorus or the LFC must, from 1 January 2020, “(a) make available the Input Services; and (b) provide all Input Services to the Equivalence standard.”

<sup>3</sup> Note that although the Deeds require consultation on ‘the design and build of the network’, the achievement of EOI as defined in clause 6.3 requires more than this, so we chose to discuss all of the matters in clause 6.3 with the LFCs and Chorus.

- A plan for how equivalence will be managed given there is no requirement for internal ordering or billing.)

(d) *Same commercial information:*

- A plan for how commercial information will be managed to ensure that this requirement can be demonstrated to have been met

(e) *Same reliability and performance:*

- Ability to report service performance by RSP (including self-supply)

### Summary of Findings

- Chorus (and the other LFCs) are required by their Undertakings to “consult with the Commission in July 2015 on the design and build of the Network for the purpose of informing the Commission as to how Chorus [or the LFC] and CFH have agreed to meet the obligation in clause 6.1.”
- As a result of consultation with the LFCs, we consider that the design and build of Chorus’s and Enable’s networks currently meet the ‘*same input service*’ requirement of the Equivalence obligation, or are likely to be able to meet the ‘*same input service*’ requirement of the Equivalence obligation on and after 1 January 2020 and that their support systems are likely to meet the other requirements of the Equivalence obligation on or after 1 January 2020.<sup>4</sup>
- However, although physical access to the Layer 1 networks of Northpower and Ultrafast Fibre would currently be compliant with the definition of Equivalence as set out in the Deeds, in our view, Ultrafast Fibre and Northpower had, as at July 2015, not yet demonstrated an ability to meet such requirements as ‘*same systems and processes*’, ‘*same commercial information*’ and being able to demonstrate ‘*same reliability and performance*’. These are all primarily systems requirements, and the cost of building EOI-capable systems is no higher than the cost of building similar systems with no regard to EOI.
- Chorus has experience in the practical systems implications of EOI requirements in the New Zealand context, and is in the process of re-building its systems so that they are independent of Spark and capable of operation in a fibre environment. Chorus is therefore uniquely qualified to advise the LFCs on how to design systems that are EOI capable. Chorus has indicated that it is willing to help LFCs by providing them with the benefit of their learnings from implementing EOI-capable systems if LFCs are interested.

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<sup>4</sup> Note that there remain some parts of these support systems which had not yet been specified at the time of consultation, and these are noted as ‘unknown’ in the following analysis. Our discussions indicated that both Chorus and Enable understood the factors that would influence the ability of these systems to meet the Equivalence standard.

- We will continue to monitor this situation as LFCs design and deploy their billing and ordering systems in an effort to ensure that they will be EOI capable on and after 1 January 2020.

## Findings

### Summary Table

		Northpower	Ultrafast Fibre	Enable	Chorus
<i>Same Input service</i>	Ability to provide capacity on fibre routes feeding fibre flexibility points (FFPs)	<b>Satisfactory.</b>	<b>Satisfactory.</b>	<b>Satisfactory.</b>	<b>Satisfactory.</b>
	Ability to provide capacity in FFPs for RSPs' splitters (including accessibility)	<b>Satisfactory.</b>	<b>Satisfactory.</b>	<b>Satisfactory.</b>	<b>Satisfactory.<sup>5</sup></b>
	Ability to provide capacity in central offices for co-location and termination (including accessibility)	<b>Satisfactory.</b>	<b>Satisfactory.</b>	<b>Satisfactory.</b>	<b>Satisfactory.</b>

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<sup>5</sup> We note that Chorus intends to keep one fibre for its own use and use a second fibre for access seeker provision.

		<b>Northpower</b>	<b>Ultrafast Fibre</b>	<b>Enable</b>	<b>Chorus</b>
<i>Same terms and conditions</i>	Ability to report service performance by RSP (including self-supply)	<b>Satisfactory.</b>	<b>Unknown.<sup>6</sup></b>	<b>Unknown.</b>	<b>Satisfactory.</b>
	Ability to demonstrate price non-discrimination	<b>Unknown.</b>	<b>Unknown.</b>	<b>Unknown.</b>	<b>Unknown.</b>
<i>Same systems and processes</i>	Ability of ordering/inventory/faults systems to allow B to B operation	<b>Unknown.</b>	<b>Unknown.</b>	<b>Unknown.</b>	<b>Satisfactory.</b>
	A plan for how equivalence will be managed given the carve-out in clause 3.4 (a)	<b>Unknown.</b>	<b>Unknown.</b>	<b>Unknown.</b>	<b>Satisfactory.</b>

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<sup>6</sup> 'Unknown' means that the party had not built the defining part of its system stack at the time of consultation.

		<b>Northpower</b>	<b>Ultrafast Fibre</b>	<b>Enable</b>	<b>Chorus</b>
<i>Same commercial information</i>	A plan for how commercial information will be managed to ensure that this requirement can be demonstrated to have been met	<b>Unknown.</b>	<b>Unknown.</b>	<b>Unknown.</b>	<b>Satisfactory.</b>
<i>Same reliability and performance</i>	Ability to report service performance by RSP (including self-supply)	<b>Satisfactory.</b>	<b>Unknown.</b>	<b>Unknown.</b>	<b>Satisfactory.</b>