

30 May 2023

To: [REDACTED]

By email only: [REDACTED]

Tēnā koutou

Response to Chorus Limited's request for exemption from public disclosure requirements under the Fibre Information Disclosure Determination 2021

1. We write in response to Chorus Limited's (**Chorus**) letter dated 13 April 2023 requesting that the Commerce Commission (**the Commission**) provide an exemption from publicly disclosing certain areas of information required by various clauses of the Fibre Information Disclosure Determination 2021 (**the ID Determination**)¹.
2. The Commission grants Chorus a conditional exemption with respect to confidential information within the Schedule 24(i) report.
3. However, the Commission declines Chorus' request for exemption from public disclosure of information with respect to the Schedule 10a and Schedule 12 reports.
4. Our full response is below, including an outline of the background to Chorus' exemption request, and the basis for our decision.

Background

5. Chorus is required under various clauses of the ID Determination to disclose information on its performance, no later than five months after the end of the disclosure year.² Descriptions of the three information areas for which Chorus is seeking exemption are below.

a. Under clause 2.3.2 of the ID Determination, Chorus is required to:

- i. Publicly disclose the Report on PQ FFLAS Asset Register (Report on Price-Quality Fibre Fixed Line Access Services Asset Register) as set out in

¹ [Fibre Information Disclosure Determination 2021 \(Consolidated\)](#) (28 July 2022)

² Disclosure year means, for Chorus, the 12-month period ending on 31 December of the year the disclosure relates to or, if the term 'disclosure year' is combined with a year (for example 'disclosure year 2022'), the 12-month period ending on 31 December of that year).

Schedule 10a (within which, information regarding forecast cost of assets to be replaced in the next five years, is classified as Commission-only); and

- ii. Provide to the Commission, the Report on ID-only FFLAS Asset Register as set out in Schedule 10b (all of which is classified as Commission-only).
 - iii. Chorus requested that the ‘% forecast to be replaced in the next 5 years’ be exempted from the public disclosure requirement and classified as Commission-only, because providing both the volume of assets per category, and the percentage of each category forecast to be replaced, would undermine its negotiating position with commercial suppliers.
- b. Under clause 2.3.1(19) of the ID Determination, Chorus is required to publicly disclose the Report on Forecast Capacity and Utilisation as set out in Schedule 12, except that for disclosure year 2022, Chorus is only required to disclose ‘current year’ and ‘3-year forecast’ information from this report.
- i. Chorus requested that the ‘3 year forecasts’ and the ‘5 year forecasts’ be exempted from the public disclosure requirement and classified as Commission-only, because detailing its forecasted uptake in other Local Fibre Company (LFC) areas would highlight its plans in very small non-ultra-fast Broadband (UFB) areas.
- c. Under clause 2.3.5 of the ID Determination, Chorus is required to publicly disclose a Report on Pricing in Schedule 24. Under clause 2.3.6 of the ID Determination, Chorus may withhold or redact from each copy of Schedule 24 publicly disclosed, information relating to numbers of connections and ENNI/ co-location connection, and incentive clawback payments (ie, this information is classified as Commission-only).
- i. Chorus requested that ‘List prices’ and ‘Total Revenues’ be exempted from the public disclosure requirement and classified as Commission-only, because publicly disclosing such granular inputs would unreasonably prejudice its position in the market by providing its competitors with an anticompetitive and unfair advantage.

The exemption request

- 6. On 13 April, the Commission received a letter from Chorus requesting exemption from public disclosure of three areas of information as required by the ID Determination. Descriptions of each of these information areas is included in paragraph 5 above.
- 7. With respect to Schedule 10b, we notified Chorus that this schedule is not currently required to be publicly disclosed, and the exemption request relating to this schedule was retracted.

8. With respect to Schedule 12, we note that for the 2022 disclosure year Chorus is only required to disclose ‘current year’ information, and ‘3-year forecast’ information from the Schedule 12 report (it is not required to disclose ‘5-year forecast’ information until after disclosure year 2024).³

Legal framework

9. Under clause 2.10.1(1) of the ID Determination, the Commission has the power to provide exemptions from any requirement of the ID Determination, for a period and on such terms and conditions as the Commission specifies.

Decision to decline exemptions relating to Schedule 10a and Schedule 12

10. Having considered Chorus’ request, and the information it has provided to the Commission in support of this request, we have decided:
- a. to decline the exemption request with respect to the Schedule 10a report; and
 - b. to decline the exemption request with respect to the Schedule 12 report.

Reasons for declining exemptions

11. Regarding both Schedule 10a and Schedule 12, our conclusion is that the information in question is not likely to be prejudicial to Chorus’ commercial position, and the public disclosure of this information therefore promotes the purpose of information disclosure.
- a. We consider that the ‘% forecast to be replaced in the next 5 years’ information within the Schedule 10a report is not confidential, because ‘Asset Age Profile’ disclosure (also within Schedule 10a) would likely allow for a similar estimate of ‘forecast costs to be replaced in the next 5 years’. Additionally, the five-year forecast percentage is on an annual rolling basis, which would impact the effectiveness of any forecast cost estimates that a supplier may be able to make because of the uncertainty of when assets may be replaced within any five-year period.
 - b. We consider that the ‘3 year forecasts’ information within the Schedule 12 report is unlikely to give Chorus’ competitors insight into its bidding plans. This is because the disclosure breakdown is by POI (points of interconnect) area which are relatively large geographic areas.

Decision to grant conditional exemption relating to Schedule 24(i)

12. Having considered Chorus’ request, and the information it has provided to the Commission in support of this request, we have decided:

³ Clause 2.3.1(19) of the ID Determination.

- a. to grant an exemption from the requirement to publicly disclose total revenue information at the individual service level in the Schedule 24(i) report, on the condition that:
 - i. Chorus discloses in the Schedule 24(i) report, aggregated total revenue amounts for each service category; and
 - ii. Chorus provides to the Commission a copy of the Schedule 24(i) report completed in compliance with the original disclosure requirements under the ID Determination.

13. This exemption will apply for all disclosure years until the next ID Determination amendment.

Reasons for granting exemption

14. We agree that the current disclosure requirements would allow average monthly connection volumes to be derived at a granular service level, using the disclosed list prices and total revenues information.
15. The public disclosure of this information (average monthly connection volumes), at an individual service level, and particularly at an ID-only area level, may allow interested parties, including competitive service providers, to assess on a monthly basis the relative market share performance of Chorus, and the performance of its fibre product offerings in other LFC ID-only areas.⁴
16. We note that we do not need to exempt both the list price and the total revenues information to prevent the average monthly connection volumes from being derived (only one of these inputs would need to be removed to have this effect).
17. We consider that granting this exemption would be in line with the purpose of ID regulation, as interested persons will still be able to look to Chorus' average revenue per unit (ARPU) and list prices for individual services, to determine effective revenue per unit and whether efficiency gains are being passed on to end-users.

Further information

18. This exemption may be revoked or amended by the Commission at any time in accordance with clause 2.10.1(2) of the ID Determination.
19. A copy of this exemption response notice will be published on the Commission's website.

⁴ ID-only areas, in respect of a regulated provider, is defined as meaning FFLAS (fixed fibre line access services) areas which are subject to Information disclosure regulation in regulations made under s226 of Part 6 of the Telecommunications Act 2001 (the Act), but not subject to price-quality regulation in regulations made under s226 of the Act.

20. If you have any questions regarding this matter, please contact Ali Scholes at infrastructure.regulation@comcom.govt.nz.

Ngā mihi nui



Tristan Gilbertson
Telecommunications Commissioner