

House of Representatives
Supplementary Order Paper

Wednesday, 16 February 2011

Telecommunications (TSO, Broadband, and Other
Matters) Amendment Bill

Proposed amendments

Hon Steven Joyce, in Committee, to move the following amendments:

Amendments to Part 1

Clause 2

To omit this clause and substitute the following clause:

2 Commencement

- (1) This Act, except **subpart 2 of Part 1A** and **sections 23HA to 23S**, comes into force on the day after the date on which it receives the Royal assent.
- (2) **Subpart 2 of Part 1A** and **sections 23HA to 23S** come into force on separation day, but only if an Order in Council has been made under **section 23E**.
- (3) Telecom must publish the date of separation day in the *Gazette* as soon as practicable after it is known.
- (4) **Separation day** has the meaning set out in **section 69B** of the principal Act (as inserted by **section 23H** of this Act).

Clause 4

Subclause (2): definition of **existing residential line**: to omit this definition (lines 25 to 27 on page 6) and substitute the following definition:

“**existing residential line**—

- “(a) means a Telecom residential line (other than a party line or a second line) that was an active connection on 20 December 2001; and
- “(b) to avoid doubt, includes any such line that has been replaced or altered since 20 December 2001.

Clause 17

New section 101(1)(c): to omit “**sections 83(1)(b) or 94B(b)**” (line 13 on page 25) and substitute “**section 83(1)(b) or 94B(1)(b)**”.

New section 101(1)(d): to omit “**section 94B(b)(i)**” (line 14 on page 25) and substitute “**section 94B(1)(b)(i)**”.

New clause 17A

To insert the following clause after clause 17 (after line 8 on page 26):

17A New section 101A inserted

The following section is inserted after section 101:

“101A Review of local service TSO arrangements

“(1) The chief executive of the Ministry must,—

“(a) at the start of 2013, commence a review of the deemed TSO instruments and the provisions of this Act that implement those deeds (including the provisions that relate to funding) (collectively, the **deemed TSO arrangements**), including consideration of the following:

“(i) the operation of the deemed TSO arrangements:

“(ii) changes in the telecommunications sector that have arisen from investments in, and the roll-out of, new and enhanced telecommunications infrastructure and facilities and the impact of those changes on the deemed TSO arrangements:

“(iii) the continued need for, and relevance of, the deemed TSO arrangements:

“(iv) the practicality of adopting universal, rather than provider-specific, arrangements for provision of the services and achievement of the outcomes covered by the deemed TSO arrangements:

“(v) the impact of the funding arrangements for deemed TSO instruments and the calculation of costs in relation to deemed TSO instruments on TSO providers, market competition, and the development generally of the telecommunications industry:

“(vi) alternative arrangements for achieving the purpose set out in section 70(1), including—

“(A) the potential for adopting a contestable TSO model for deemed TSO arrangements and the costs and benefits of those alternatives in comparison with the deemed TSO arrangements; and

“(B) alternative approaches for the funding of deemed TSO instruments and the calculation of costs in relation to deemed TSO instruments, including the costs and benefits

- of those alternative approaches in comparison with the deemed TSO funding arrangements; and
- “(b) report to the Minister for Communications and Information Technology on its findings not later than the end of 2013.
- “(2) In conducting the review and reporting to the Minister, the chief executive of the Ministry must take the following into account:
- “(a) the long-term interests of end-users of telecommunications services:
 - “(b) the long-term interests of those end-users in respect of whom the provision of services covered by the deemed TSO arrangements is commercially non-viable:
 - “(c) the legitimate business interests of TSO providers:
 - “(d) the ability for providers of TSO services to receive a reasonable return on the incremental capital employed in providing the services required under deemed TSO instruments:
 - “(e) the impact on the incentives and capabilities of TSO providers and other telecommunications service providers to invest in new and improved telecommunications facilities and services:
 - “(f) the effects on competition in telecommunications services markets in New Zealand.”

New clause 17B

To insert the following clause before clause 18 (before line 9 on page 26):

17B New subpart 3 inserted relating to multi-unit complexes

The following subpart is inserted after section 155:

“Subpart 3—Access to multi-unit complexes to which fibre-to-the-premises is to be deployed

“155A Overview

- “(1) This subpart provides a statutory right of access to multi-unit complexes that fibre-to-the-premises service providers may use if an access agreement is not negotiated.
- “(2) The statutory rights of access in sections 120 to 127 do not apply to fibre-to-the-premises access networks.

“155B Interpretation

In this subpart, unless the context otherwise requires,—

“**access order** means an order of the District Court referred to in **section 155H**

“**Code** means the Code that has been approved under **section 155J**, and includes any amendment to the Code that is approved under that section

“**consumer**, in relation to a consumer complaints system, includes an owner or occupier

“**consumer complaints system**, in relation to an FTTP service provider, means either of the following:

“(a) an industry-based complaints system that has been established by the telecommunications industry and that has been approved by the Minister for the purposes of resolution of complaints under this subpart and the Code; or

“(b) a consumer complaints system facilitated by Part 4B

“**maintenance** has the same meaning as in section 117

“**multi-unit complex** means—

“(a) a building that contains 2 or more distinct units; or

“(b) a group of buildings that are used communally

“**owner**, in relation to any part of a multi-unit complex, means—

“(a) a person who has a freehold or a leasehold interest in that part of the complex; and

“(b) any body corporate under the Unit Titles Act 1972 or the registered proprietor of the complex to which the unit plan relates; and

“(c) any other person who has a legal right to grant access to the building or to approve the performance of work in the building

“**preliminary notice** means a notice that complies with **section 155E**

“**second notice** means a notice that complies with **section 155G**.

“*Statutory right of access to multi-unit complexes*

“**155C Nature of statutory right of access to multi-unit complexes**

“(1) The right of access conferred by this subpart is that an FTTP service provider may, for the purpose of constructing, erecting, laying, maintaining, or upgrading all or any part of a fibre-to-the-premises access network,—

“(a) enter a multi-unit complex at reasonable times, with or without any person who is, or any thing that is, reasonably necessary; and

“(b) perform work that is reasonably necessary for the purpose of constructing, erecting, laying, maintaining, or

upgrading all or any part of a fibre-to-the premises access network.

- “(2) This right of access applies only—
- “(a) if the service provider has complied with **sections 155D to 155H** in respect of each part of the multi-unit complex accessed under this subpart; and
 - “(b) to authorise the matters referred to in **subsection (1)**.

“**155D Preconditions before statutory right of access to multi-unit complexes may be exercised**

Before an FTTP service provider enters, or performs work in, any part of a multi-unit complex under this subpart, the service provider must first—

- “(a) have agreed to be bound by the Code; and
- “(b) have taken all reasonable steps to negotiate an agreement for entry with the owner in accordance with the Code; and
- “(c) have served a preliminary notice on each owner of that part of the multi-unit complex in accordance with **section 155E**; and
- “(d) have served a second notice in accordance with **section 155G** on each owner of that part of the multi-unit complex who has not opted out in accordance with **section 155F**; and
- “(e) have obtained an access order from the District Court under **section 155H** in respect of each owner of that part of the multi-unit complex who has opted out in accordance with **section 155F**; and
- “(f) be a member of a consumer complaints system that provides for the resolution of complaints about compliance with this subpart and the Code.

“*Process*

“**155E Requirements in respect of preliminary notice**

- “(1) A preliminary notice must—
- “(a) contain the matters specified in **subsection (2)**; and
 - “(b) comply with the Code; and
 - “(c) be served on each person who is known by the service provider to be a current owner; and
 - “(d) be left in a prominent place on the land.
- “(2) The matters that must be included in the first notice are—
- “(a) an explanation of the infrastructure the service provider is seeking to deploy, and the benefits of deployment:

- “(b) what the initial investigation would entail, including initial indications of the areas the service provider may want to access during the investigation, if known:
- “(c) the date and time of the intended investigation:
- “(d) an explanation that if the service provider does not hear from the owner within 20 working days (or any longer period agreed between the service provider and the owner), the owner will be deemed to have consented in principle to the investigation:
- “(e) an explanation that the owner can opt out of the access regime, and details as to reasonable grounds for opting out and the process for doing so:
- “(f) the contact details of the service provider to be used by the owner if the owner wishes to opt out or to negotiate an alternative time or date for the investigation:
- “(g) an explanation that, if the owner opts out on unreasonable grounds, the service provider may apply to the District Court for an access order:
- “(h) an assurance that the service provider has agreed to be bound by the Code and will, when entering the building, comply with the requirements in the Code, and an Internet link to the Code:
- “(i) an explanation that, if the owner or occupier believes that the service provider has breached the Code, the owner or occupier may complain to a consumer complaints system:
- “(j) an explanation of the process of making a complaint.

“155F Opting out of providing access under subpart

- “(1) An owner may opt out of the access regime in this subpart by—
 - “(a) serving an opt-out notice on the service provider within 20 working days of receiving a preliminary notice or a second notice (or any longer period agreed between the service provider and the owner); or
 - “(b) denying access to a service provider.
- “(2) An opt-out notice must be in writing and sent to the contact address given by the service provider.
- “(3) The service provider has no right of access under this subpart after an opt-out happens unless the service provider obtains an access order granted by the District Court.

“155G Requirements in respect of second notice

- “(1) A second notice must—
 - “(a) contain the matters specified in **subsection (2)**; and
 - “(b) comply with the Code; and

- “(c) be served on each person who is known by the service provider to be a current owner, and left in a prominent place on the land,—
 - “(i) no earlier than 10 working days after the earlier of—
 - “(A) the expiration of the 20-working day period referred to in **section 155E(2)(d)** (or any longer period agreed between the service provider and the owner); or
 - “(B) the date of notification by the owner that the owner consents to the deployment as proposed in the preliminary notice; and
 - “(ii) no later than 21 working days before the time proposed in the notice for the start of the deployment.
- “(2) The second notice must give the owner all the key information relating to the proposed deployment, including—
 - “(a) an explanation of the exact details of the proposed deployment, including—
 - “(i) the areas in which it will occur; and
 - “(ii) the nature of the deployment, including whether it will require structural work; and
 - “(iii) the nature of any fixed infrastructure that will be installed in the process:
 - “(b) details of the proposed timing of the deployment and the length of time it is intended to take:
 - “(c) an explanation of ongoing access requirements for repairs and maintenance:
 - “(d) details of any costs to the owner associated with the deployment:
 - “(e) an explanation that the owner can opt out, and details as to reasonable grounds for opting out and the process for doing so:
 - “(f) the contact details of the service provider to be used if the owner wishes to opt out or negotiate an alternative time or date for the deployment:
 - “(g) an explanation that, if the owner opts out on unreasonable grounds, the service provider may apply to the District Court for an access order:
 - “(h) an assurance that the service provider has agreed to be bound by the Code and will, when entering the building, comply with the requirements in the Code, and a link to the Code:
 - “(i) an explanation that, if the owner or occupier believes that the service provider has breached the Code, the

owner or occupier may complain to a consumer complaints system:

- “(j) an explanation of the process of making a complaint.

“155H Access orders from District Court

- “(1) If an owner has opted out, the service provider may apply to the District Court for an access order that authorises the service provider, for the purpose of constructing, erecting, laying, maintaining, or upgrading all or any part of a fibre-to-the-premises access network, to—
- “(a) enter a multi-unit complex at reasonable times, with or without any person who is, or any thing that is, reasonably necessary; and
- “(b) perform work that is reasonably necessary for the purpose of constructing, erecting, laying, maintaining, or upgrading all or any part of a fibre-to the premises access network.
- “(2) The District Court may grant a access order only if the Court is satisfied that the owner has unreasonably opted out.
- “(3) The Court must, in making that decision, consider whether the service provider has taken reasonable steps to negotiate an agreement for entry with the owner before applying to the Court.
- “(4) An access order may be made on any terms and conditions that the District Court thinks fit.
- “(5) Sections 120(2), and 122 to 124 apply with necessary modifications.

“Code

“155I Preparation of Code

- “(1) The Minister must prepare a Code relating to access to multi-unit complexes by FTTP service providers under this subpart or by agreement.
- “(2) The minimum matters that must be included in the Code are—
- “(a) guidance on reasonable processes and time frames for negotiating access with owners; and
- “(b) guidance as to cost sharing between service providers and owners, and processes for agreeing final cost splits; and
- “(c) guidance as to reasonable grounds for opting out; and
- “(d) guidance as to ongoing costs and reasonable conditions of ongoing access.
- “(3) The Code may contain any other provisions that are necessary or desirable.

“(4) The Minister must, before recommending that the Governor-General approve a Code, consult any persons that the Minister reasonably considers may be likely to be representative of the persons to be affected by the Code.

“**155J Approval and status of Code**

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve a Code.

“(2) The order may refer to, but need not contain, the Code, and must be published in the *Gazette*.

“(3) The order and the Code are regulations for the purposes of the Regulations (Disallowance) Act 1989.

“(4) The order, but not the Code, is a regulation for the purposes of the Acts and Regulations Publication Act 1989.

“(5) The Code must be presented to the House of Representatives no later than 16 days after the date on which it is approved.

“(6) If any provision of the Code conflicts with this or any other Act, or with any regulation made under this or any other Act, the Act or regulation prevails.

“(7) The Minister may at any time prepare an amendment to the Code, and **subsections (1) to (6)** apply accordingly.

“(8) The Minister must ensure that the Code, and every amendment to it,—

“(a) is published on an Internet site that is publicly available at all reasonable times; and

“(b) is available for purchase in hard copy, at no more than a reasonable cost, from the head office of the Ministry.

“*Consumer complaints system*

“**155K Compliance with rules and binding settlements**

“(1) A service provider who is a member of a consumer complaints system must comply with the rules of that system that relate to complaints about access to multi-unit complexes.

“(2) On the application of the consumer complaints adjudicator or other person responsible for a consumer complaints system, a District Court may require a member of the system to do either or both of the following:

“(a) comply with the rules of the system that relate to complaints about access to multi-unit complexes;

“(b) comply with a binding settlement determined by the system in response to a complaint about access to multi-unit complexes.

“(3) If a District Court is satisfied that the terms of a binding settlement are manifestly unreasonable, the court’s order under **subsection (2)(b)** may modify the terms of the binding settle-

ment, but only to the extent that the modification results in a binding settlement that could have been made under the consumer complaints system.

- “(4) If an order requiring a member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by a District Court for the payment of a sum of money.
- “(5) A reference in this section to a member includes a reference to a person who was a member of the consumer complaints system at the relevant time but is no longer a member at the time of the application or order.

“155L Offence to fail to comply with District Court order

- “(1) A member or former member of a consumer complaints system who, knowing that the member or former member is subject to an order made under **section 155K**, fails to comply with the order, or fails to comply with the order within the time or in the manner required by the order, commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.
- “(2) Nothing in this section applies to an order or part of an order of a District Court referred to in **section 155K(4)**.”

New clause 18A

To insert the following clause after clause 18 (after line 34 on page 26):

18A New section 157AA inserted

The following section is inserted after the heading to Part 5:

“157AA Minister must review regulatory framework

- “(1) The Minister must, not later than 1 January 2018, commence a review of the policy framework for regulating telecommunications services in New Zealand, taking account of the market structure and technology developments and competitive conditions in the telecommunications industry at the time of the review, including the impact of fibre, copper, wireless, and other telecommunications network investment.
- “(2) The review must—
- “(a) consider whether the existing regulatory framework under the Telecommunications Act 2001 is the most effective means to—
- “(i) promote competition for the long-term benefit of end-users; and
- “(ii) promote the legitimate commercial interests of access providers and access seekers; and
- “(iii) encourage efficient investment for the long-term benefit of end-users, by—

- “(A) providing investors with an expectation of a reasonable return on their investment; and
 - “(B) providing sufficient regulatory stability, transparency, and certainty to enable businesses to make long-term investments; and
 - “(iv) support innovation in telecommunications markets, or deregulation where sufficient competition exists; and
 - “(b) assess whether alternative regulatory frameworks, including (without limitation) generic price control, would be a preferable and more effective means of achieving these outcomes.
- “(3) In carrying out the review, the Minister must take into account—
- “(a) the extent of network coverage of services provided on fibre, copper, wireless, and other telecommunications networks; and
 - “(b) the level of investment in fibre, copper, wireless, and other telecommunications networks, and the ability of access providers to recover that investment within a reasonable period; and
 - “(c) the ability of access providers to achieve, within a reasonable period, reasonable rates of return on their investment in telecommunications networks that adequately reflect the risks assumed by those access providers when the relevant investments were made; and
 - “(d) the level of competition in relevant telecommunications markets; and
 - “(e) the effects of the regulatory framework under the Telecommunications Act 2001 on investment in fibre, copper, wireless, and other telecommunications networks, and on outcomes for end-users; and
 - “(f) the sustainability of the regulatory framework under the Telecommunications Act 2001, given developments in technology and convergence of traditional telecommunications markets; and
 - “(g) the importance of any regulatory intervention being proportionate, having regard to the problems being addressed, the size of the relevant market, and the number and size of the potentially regulated entities; and
 - “(h) any other matters that the Minister considers relevant.”

Clause 19

To omit this clause (lines 1 to 3 on page 27) and substitute the following clause:

19 Further amendments to principal Act

- (1) The principal Act is amended in the manner set out in **Part 1 of Schedule 1** (which relates to telecommunications service obligations).
- (2) The principal Act is amended in the manner set out in **Part 2 of Schedule 1** (which relates to multi-unit complexes to which fibre is to be deployed).
- (3) The principal Act is amended in the manner set out in **Part 3 of Schedule 1** (which relates to wireless works).

New Part 1A

To insert the following new Part after *Part 1* (after line 35 on page 28):

Part 1A**Structural separation of Telecom****Subpart 1—Preparation for separation of Telecom***Approval of asset allocation plan***23A Interpretation of this subpart**

For the purposes of this subpart, the terms defined in **Part 2A** of the principal Act (as substituted by **section 23H** of this Act, were that section in force) and used, but not defined, in this subpart have the same meanings as set out in that Part, with necessary modifications.

23B Preparation of asset allocation plan

- (1) Telecom must prepare an asset allocation plan and submit it to the Minister and the Commission not later than 40 working days after the date on which this section comes into force.
- (2) The asset allocation plan must meet the information requirements in **subsection (3)**.
- (3) The asset allocation plan must—
 - (a) specify how assets and liabilities on the balance sheet of Telecom as at the close of the day before separation day are intended to be allocated between Telecom and Chorus; and
 - (b) specify how each asset and liability to be allocated to Chorus is intended to be transferred or vested on separation day; and
 - (c) specify how each asset will be used to provide telecommunications services to the market; and
 - (d) specify the key terms of all intended sharing arrangements.

23C Decision of Minister concerning approval of asset allocation plan

- (1) The Minister must, as soon as practicable after receiving the asset allocation plan,—
 - (a) decide whether to recommend or decline to recommend the making of an Order in Council approving the plan under **section 23E**; and
 - (b) notify Telecom of the Minister’s decision.
- (2) Before making a decision under **subsection (1)**, the Minister may consult the Commission.
- (3) The Minister may decline to recommend the making of an Order in Council under **section 23E** only if the Minister is not satisfied that the plan meets the information requirements set out in **section 23B(3)**.

23D Variation of asset allocation plan

- (1) If the Minister declines to recommend the making of an Order in Council approving the asset allocation plan,—
 - (a) the Minister must give reasons to Telecom for not recommending approval of the plan; and
 - (b) the Minister must invite Telecom to submit a revised plan; and
 - (c) Telecom must submit any revised plan not later than 15 days after the Minister notifies the Minister’s decision under **section 23C**, or any further time that the Minister may allow.
- (2) **Sections 23B(2) and (3) and 23C** and **subsection (1)** of this section apply, with all necessary modifications, to a revised asset allocation plan as if it were an asset allocation plan.

23E Asset allocation plan approved by Order in Council

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve the asset allocation plan.
- (2) An Order in Council under this section may be made only before separation day.
- (3) An Order in Council under this section must identify, but need not contain, the asset allocation plan.

23F Telecom must make overview of asset allocation plan publicly available

- (1) Telecom must, after approval of the asset allocation plan under **section 23E** but no later than separation day, make an overview of the plan publicly available.

- (2) The overview must outline the classes of assets and liabilities involved in the separation of Telecom and provide sufficient information about the allocation of those assets and liabilities to enable a reasonable person to understand where they will be held after separation day.
- (3) The requirements in **subsections (1) and (2)** do not require Telecom to disclose any confidential commercial information.
- (4) In this section, **publicly available** means available at all reasonable times, free of charge, on an Internet site maintained by or on behalf of Telecom.

23G Demerger application must be in accordance with asset allocation plan

Telecom must ensure that the demerger of Telecom and Chorus under the demerger arrangement is carried out in accordance with, and gives full effect to, the asset allocation plan as approved under **section 23E**.

Approval of Chorus undertakings

23GA Chorus must submit undertakings for approval by Minister

Chorus must submit draft undertakings that comply with **section 69X** of the principal Act (were that section in force) not later than 20 working days after the date on which this section comes into force or any later date that the Minister may allow.

23GB Minister may approve or decline to approve undertakings

- (1) The Minister must, as soon as practicable after receiving the undertakings, by notice in writing to Chorus,—
 - (a) approve the undertakings; or
 - (b) decline to approve the undertakings.
- (2) If the Minister declines to approve the undertakings, the Minister must—
 - (a) give reasons to Chorus for not approving the undertakings; and
 - (b) direct Chorus to prepare and submit amended undertakings.
- (3) Chorus must submit amended undertakings to the Minister not later than 15 working days after the date on which approval of the undertakings was declined, or any later date that the Minister may allow.
- (4) The Minister must notify his or her approval of an undertaking by notice in the *Gazette*.

23GC Approval of amended undertakings

- (1) As soon as practicable after receiving amended undertakings, the Minister must—
 - (a) approve the undertakings by notice in writing to Chorus; or
 - (b) if the Minister considers that the amended undertakings require further amendment, make any amendments to the undertakings that the Minister considers necessary to give better effect to the purpose and requirements in **sections 69U and 69X** of the principal Act.
- (2) Before making any amendments to the undertakings under this section, the Minister must advise Chorus of the Minister's intention to do so and must give Chorus a reasonable opportunity to make submissions on the matter.
- (3) The Minister must give notice in writing to Chorus of the approval of the amended undertakings, accompanied by a copy of the undertakings as approved.
- (4) The Minister must notify his or her approval of an undertaking by notice in the *Gazette*.

23GD Failure to submit undertakings

- (1) The Minister must arrange for undertakings or revised undertakings (as the case may be) to be prepared, and the Minister has all the powers necessary for that purpose, if—
 - (a) Chorus has not submitted the undertakings required under **section 23GA** within the time specified in that section; or
 - (b) Chorus has not given the Minister revised undertakings within the time specified in **section 23GB(3)**.
- (2) **Sections 69X** of the principal Act and **23GC(1), (3), and (4)** apply to undertakings prepared under **subsection (1)** as if the undertakings were amended undertakings submitted by Chorus to the Minister.
- (3) If, as a result of the default of Chorus, the Minister acts under **subsection (1)** the Minister is entitled to be reimbursed for all costs and expenses incurred by the Minister in taking the action.

Subpart 2—New Part 2A substituted

23H New Part 2A substituted

Part 2A is repealed and the following Part substituted:

“Part 2A**“Structural separation of Telecom****“Subpart 1—Preliminary provisions****“69A Purpose of Part**

The purpose of this Part is to provide for matters relating to the structural separation of Telecom to facilitate—

- “(a) the promotion of competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and
- “(b) efficient investment in telecommunications infrastructure and services.

“69B Interpretation

In this Part, unless the context otherwise requires,—

“asset—

- “(a) means property of any kind, whether or not situated in New Zealand, whether tangible or intangible, real or personal, corporeal or incorporeal, and whether or not subject to rights; and
- “(b) includes—
 - “(i) estates or interests in any land, including rights of occupation of land or buildings:
 - “(ii) buildings, vehicles, plant equipment, machinery, fixtures and fittings, and rights in them:
 - “(iii) choses in action and money:
 - “(iv) rights of any kind, and applications, objections, submissions, and appeals in respect of those rights:
 - “(v) intellectual property and applications pending for intellectual property:
 - “(vi) goodwill, and any business undertaking

“Chorus—

- “(a) means ChorusCo; and
- “(b) includes any of its subsidiaries

“ChorusCo means the company that is to be demerged from Telecom on separation day in accordance with the demerger arrangement

“demerger arrangement means an arrangement approved by the court pursuant to Part 15 of the Companies Act 1993 on the application of Telecom involving the distribution of 100% of the ordinary shares held by Telecom Corporation of New Zealand Limited in ChorusCo to the holders of ordinary shares in Telecom Corporation of New Zealand Limited

“**liabilities** means liabilities, debts, charges, duties, and obligations of every description, whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere

“**related party** has the meaning set out in **section 69S**

“**rights** includes all rights, powers, privileges, interests, leases, licences, approvals, consents, designations, permissions, dispensations, authorisations, benefits, defences, immunities, claims, and equities of any kind, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective

“**separation day** means the day on which Telecom Corporation of New Zealand Limited distributes 100% of the ordinary shares it holds in ChorusCo in accordance with the demerger arrangement.

“Subpart 2—Monitoring of shared assets, services,
and systems

“**69C Interpretation**

In this subpart, unless the context otherwise requires,—

“**arms-length** has the meaning set out in **section 69D**

“**executed**, in relation to a sharing arrangement or a material amendment to a sharing arrangement, means signed under the name of the relevant company by a person acting under the company’s authority

“**sharing arrangement**—

- “(a) means an arrangement, agreement, contract, or understanding between Telecom and Chorus for the purpose of providing either or both with access to, or continued use of, a system, asset, or service that is owned or controlled by Telecom at the close of the day before separation day; and
- “(b) includes an arrangement, agreement, contract, or understanding of the kind described in **paragraph (a)** that is conducted with or through a third party; but
- “(c) does not include an arrangement, agreement, contract, or understanding to supply a service—
 - “(i) that is a designated service or a specified service; or
 - “(ii) to which a registered undertaking applies; or
 - “(iii) to which an undertaking under **Part 4AA** applies; or
 - “(iv) to which a deemed TSO instrument applies; or

- “(v) to which an undertaking approved in accordance with **subpart 4** of this Part (undertakings by Chorus) applies; or
- “(vi) that is exempted under **section 69N**.

“69D Meaning of arms-length

Without limiting the ordinary meaning of the expression, **arms-length** includes having relationships, dealings, and transactions that—

- “(a) do not include elements that parties in their respective positions would usually omit; and
 - “(b) do not omit elements that parties in their respective positions would usually include,—
- if the parties were—
- “(c) connected or related only by the transaction or dealing in question; and
 - “(d) acting independently; and
 - “(e) each acting in its own best interests.

“69E Requirements for sharing arrangements

- “(1) Every sharing arrangement must—
 - “(a) be recorded in writing and be executed by Telecom and Chorus; and
 - “(b) be on arms-length terms between Telecom and Chorus; and
 - “(c) not be likely to harm competition in telecommunications markets; and
 - “(d) ensure the protection of confidential commercial and customer information.
- “(2) A separated entity must not enter into a sharing arrangement unless the arrangement meets the requirements in **subsection (1)**.

“69F Commission must be notified of proposed and final sharing arrangements

- “(1) Telecom and Chorus must,—
 - “(a) not later than 10 working days after separation day, provide a copy of all sharing arrangements executed before separation day to the Commission; and
 - “(b) if a sharing arrangement is entered into after separation day,—
 - “(i) not later than 10 working days before the sharing arrangement is executed, notify the Commission of their intention to enter into the sharing

arrangement and provide a copy of the proposed arrangement to the Commission; and

- “(ii) not later than 10 working days after the final sharing arrangement is executed, provide a copy of the arrangement to the Commission.
- “(2) **Subsection (1)** applies to any material amendment to a sharing arrangement as if that amendment were a sharing arrangement.
- “(3) *See* sections 156L(3) and 156M for the maximum penalty of \$1 million (and \$50,000 per day) for breach of this section.

“**69G Obligation to collect and retain information for monitoring purposes**

Telecom and Chorus must each collect and retain information relating to the operation and performance of a sharing arrangement for the purpose of enabling the Commission to monitor compliance with this subpart.

“**69H Commission’s monitoring, investigation, and enforcement powers**

- “(1) The Commission may, by notice in writing, require Telecom and Chorus to prepare and disclose information consisting of, or about, the following:
 - “(a) the terms, execution, or performance of a sharing arrangement;
 - “(b) any report, agreement, or other information relating to the sharing arrangement that the Commission considers necessary for the purpose of monitoring compliance with this subpart.
- “(2) Telecom and Chorus must prepare and disclose the information required within the period specified in the notice.
- “(3) A notice under this section may require either or both of the following:
 - “(a) that all or any of the information be audited by a qualified auditor and that the auditor provide a report directly to the Commission on the matters that the Commission specifies as those that must be addressed in that report;
 - “(b) that all or any of the information be verified by statutory declaration in the form and by the persons required by the Commission.
- “(4) To avoid doubt, nothing in this section limits the application of section 98 of the Commerce Act 1986.
- “(5) *See* sections 156L(3) and 156M for the maximum penalty of \$1 million (and \$50,000 per day) for breach of this section.

“69I Commission may give non-compliance notice

- “(1) This section applies if the Commission considers that Telecom and Chorus are parties to a sharing arrangement that contravenes **section 69E** (a **non-compliance**).
- “(2) The Commission may give written notice to each party (a **non-compliance notice**) setting out—
- “(a) the nature of the non-compliance; and
 - “(b) the 10-day time limit for responses in **section 69J**; and
 - “(c) the 60-day time limit for rectification and enforcement (*see* **section 69K**).

“69J Process for responding to non-compliance notice

- “(1) Each party may, not later than 10 working days after the date of the non-compliance notice or any further time as the Commission may allow, respond in writing to the notice either—
- “(a) by disputing the notice; or
 - “(b) by setting out the reasons for the non-compliance.
- “(2) The Commission must consider each party’s response (if any) before deciding what action to take under **subsection (3)**.
- “(3) The Commission must, not later than 10 working days after the final date for the parties to respond to the non-compliance notice under **subsection (1)**,—
- “(a) retract the non-compliance notice; or
 - “(b) give a revised non-compliance notice; or
 - “(c) confirm the non-compliance notice.
- “(4) If the Commission gives a revised non-compliance notice, or confirms the non-compliance notice, the Commission must—
- “(a) set out the nature of the non-compliance; and
 - “(b) require the parties to rectify the non-compliance.

“69K Commission may decide on appropriate enforcement action if non-compliance persists

- “(1) This section applies if the Commission considers that a non-compliance has not been rectified within 60 working days after the date of a non-compliance notice given under **section 69I**.
- “(2) The Commission may, at any time, do all or any of the following:
- “(a) direct Telecom and Chorus to amend the sharing arrangement in order to rectify the non-compliance within 10 working days of the direction (an **amendment direction**):
 - “(b) apply for an injunction under **section 69M** in respect of the non-compliance or a failure to comply with an amendment direction:

“(c) seek a pecuniary penalty under Part 4A in respect of the non-compliance or a failure to comply with an amendment direction.

“(3) The Commission must give written notice of each decision to each party affected by the decision.

“**69L Application of pecuniary penalty provisions**

“(1) Sections 156L and 156M apply to a party to a sharing arrangement who, without reasonable excuse, fails to rectify a non-compliance, or fails to comply with an amendment direction, in respect of which the Commission decides to take enforcement action under **section 69K(2)(c)**.

“(2) *See* sections 156L(3) and 156M for the maximum penalty of \$10 million (and \$500,000 per day) for breach of this section.

“**69M Injunction may be granted by High Court**

“(1) If the High Court is satisfied that a non-compliance has not been rectified within 60 working days after the date of a non-compliance notice under **section 69I**, the court may, on the application of the Commission, grant an injunction restraining Telecom and Chorus from further performing the sharing arrangement or engaging in any conduct for the purpose of giving effect to that arrangement.

“(2) If the High Court is satisfied that there has been a failure to comply with a direction of the Commission given under **section 69K(2)(a)**, the court may, on the application of the Commission, grant an injunction requiring Telecom and Chorus to comply with the direction of the Commission.

“(3) In any proceeding under this section, the Commission, on the order of the court, may obtain discovery and administer interrogatories.

“(4) The court may at any time rescind or vary an order made under this section.

“**69N Minister may grant exemption from application of subpart**

“(1) The Minister may, by notice in the *Gazette*, exempt a sharing arrangement or class of sharing arrangements from the application of this subpart, if the Minister is satisfied that—

“(a) any potential harm to competition in telecommunications markets would be likely to be trivial or inconsequential; and

“(b) commercial information or customer confidential information would not be disclosed.

- “(2) The Minister must consult the Commission before granting an exemption under this section.
- “(3) The exemption takes effect from the date specified in the exemption (which may not be earlier than the date of the *Gazette* notice).
- “(4) The Minister may grant the exemption on any terms and conditions that the Minister thinks fit.
- “(5) The Minister may, in like manner, vary or revoke such an exemption.
- “(6) An exemption under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but not for the purposes of the Acts and Regulations Publication Act 1989.
- “(7) Telecom and Chorus must ensure that all exemptions granted under this section are available at all reasonable times, free of charge, on the Internet sites maintained by or on behalf of Telecom and Chorus.

“Subpart 3—Line of business restrictions

“**69O No participation in supply of retail services**

- “(1) Chorus, or any related party of Chorus, must not participate in the supply of a telecommunications service to an end-user of the service.
- “(2) *See* sections 156L(3) and 156M for the maximum penalty of \$10 million (and \$500,000 per day) for breach of this section.

“**69P Register of non-retail users**

- “(1) The Commission must maintain a register of users that are not end-users.
- “(2) If the name of the user appears on the register maintained by the Commission under this section, it is conclusive evidence of the fact that a user is not an end-user for the purposes of **section 69O**.
- “(3) Chorus or any user of telecommunications services may make a written application to the Commission (in a form required by the Commission, if any) for a name of a user to be entered on the register.
- “(4) The Commission must give public notice of the application as soon as practicable after receiving it.
- “(5) The Commission must, within 15 working days of receiving the application, enter the name of the user on the register if the Commission is satisfied that the user’s dominant purpose is to provide telecommunications services to end-users, or other customers, that are not related parties of the user.

- “(6) A user’s dominant purpose is deemed to be the purpose in **subsection (5)** if more than 75% of the revenue from telecommunications services provided by the user is derived from the provision of services to end-users, or other customers, that are not related parties of the user.
- “(7) At separation day, the register must include all of Chorus’s existing unbundled copper local loop customers and unbundled bitstream access customers as at separation day, as notified to the Commission by Chorus before separation day.
- “(8) The Commission must, at all reasonable times, make the register available for inspection on the Commission’s Internet site in an electronic form that is publicly accessible.

“**69Q Variations to, and removals from, register**

- “(1) The Commission may, at any time,—
 - “(a) review and correct the register maintained under **section 69P**; and
 - “(b) remove the names of users from the register if—
 - “(i) the Commission ceases to be satisfied of the matters in **section 69P(5)**; or
 - “(ii) the Commission is satisfied that the user is insolvent or has ceased business.
- “(2) However, the Commission must give Chorus and the user—
 - “(a) notice of its intention to remove the user from the register, and a reasonable opportunity to comment before removing a name from the register; and
 - “(b) notice that the name has been removed, as soon as practicable after removal.
- “(3) Chorus is not in breach of **section 69O** to the extent that it continues to supply a service to a user within the 6-month period following the removal of the user’s name from the register.

“**69R Enforcement of breaches of section 69O**

Sections 69T (injunctions) and 156B (enforcement actions) apply to Chorus, and any related party of Chorus, that, without reasonable excuse, participates in the supply of a telecommunications service in breach of **section 69O**.

“**69S Application of line of business restrictions to related parties of Chorus**

- “(1) The test for related parties is the same as the test in section 79 for when 2 or more bodies are to be treated as 1 person (and applies to parties that are not body corporates in the same way as it does for body corporates).

- “(2) Any sharing of assets, services, and systems between Chorus and Telecom must be disregarded for the purposes of applying **subsection (1)** to the extent that it is provided for in a sharing arrangement of which a copy has been provided to the Commission under **section 69F(1)(a) or (b)(ii)**.
- “(3) Without limiting **section 69O**, Chorus is deemed to participate in the supply of a telecommunications service to an end-user of the service if a related party of Chorus participates in the supply of a telecommunications service to an end-user of a service.
- “(4) The order of responsibility for remedying breaches is, to the extent practical, that the breach must be remedied first by the party whose activity resulted in the breach.

“Compare: 1998 No 88 s 21

“69T Injunctions may be granted by High Court for certain contraventions

- “(1) The High Court may, on the application of the Commission, grant an injunction restraining a person from engaging in a breach of **section 69O**.
- “(2) The High Court may, at any time, rescind or vary an injunction granted under this section.

“Subpart 4—Undertakings by Chorus

“69U Purpose of subpart

The purpose of this subpart is to promote competition in telecommunication markets for the long-term benefit of end-users of telecommunications services in New Zealand by requiring transparency, non-discrimination, and equivalence of supply in relation to certain telecommunications services.

“69V Overview

- “(1) This subpart imposes obligations on Chorus to give undertakings—
 - “(a) to supply wholesale services using its copper access network (called relevant services in this subpart) on a non-discrimination basis; and
 - “(b) to supply a subset of those services, which Chorus consumes and which it supplies to its competitors, (called relevant regulated services in this subpart) on an equivalence basis.
- “(2) This section is intended only as a guide to the general scheme and effect of this subpart.

“69W Interpretation

In this subpart, unless the context otherwise requires,—

“**equivalence**, in relation to the supply of a relevant regulated service, means equivalence of supply of the service and access to Chorus’s network so that third-party access seekers are treated in the same, or an equivalent, way to Chorus’s own business operations, including in relation to pricing, procedures, operational support, and supply of information and other relevant matters

“**legacy access network** means that part of Chorus’s copper access network that connects the end user’s building to the handover point in—

“(a) Chorus’s local exchange or distribution cabinet (or equivalent facility); or

“(b) Chorus’s data switch or equivalent facility

“**local access and calling service** means the designated access service described in subpart 1 of Part 2 of Schedule 1 as local access and calling service offered by means of a fixed telecommunications network

“**non-discrimination**, in relation to the supply of a relevant service, means that Chorus must not treat access seekers differently except to the extent that a particular difference in treatment is objectively justifiable and does not harm competition in any telecommunications market

“**relevant regulated services** means the following designated access services:

“(a) Chorus’s unbundled copper local loop network service:

“(b) Chorus’s unbundled copper local loop network co-location service:

“(c) Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange):

“(d) Chorus’s unbundled copper local loop network backhaul (telephone exchange to interconnect point)

“**relevant services** means wholesale telecommunications services that are provided using, or that provide access to the unbundled elements of, the legacy access network

“**UBA service** means the designated access described in subpart 1 of Part 2 of Schedule 1 as unbundled bitstream access service.

“69X Requirements for undertakings by Chorus relating to supply of certain wholesale telecommunications services

Chorus must give undertakings that—

“(a) require Chorus to achieve non-discrimination in relation to the supply of relevant services; and

- “(b) set out rules and principles that Chorus will apply to ensure that non-discrimination is achieved in relation to the supply of relevant services; and
- “(c) require Chorus to achieve equivalence of supply in relation to relevant regulated services; and
- “(d) require Chorus to develop, in consultation with the Commission and key industry stakeholders, key performance indicators for systems and processes for relevant regulated services by which it may be judged whether Chorus is achieving equivalence of supply in relation to those services; and
- “(e) require Chorus to develop, in consultation with the Commission and key industry stakeholders, key performance indicators by which it may be judged whether Chorus is achieving non-discrimination in relation to the supply of the UBA service; and
- “(f) require Chorus to—
 - “(i) conduct quarterly reviews of performance as measured against the key performance indicators referred to in **paragraphs (d) and (e)**; and
 - “(ii) make all information relating to those reviews available to the Commission to support the Commission’s assessment of compliance with the undertakings; and
 - “(iii) publish quarterly reports on its performance as measured against the key performance indicators referred to in **paragraphs (d) and (e)**; and
 - “(iv) internally audit the controls and processes behind the key performance indicator reporting; and
- “(g) require Chorus to carry out quarterly customer surveys of its performance in relation to relevant regulated services; and
- “(h) require Chorus to—
 - “(i) implement a policy of control of commercial information provided by access seekers for relevant services and relevant regulated services, in consultation with the Commission; and
 - “(ii) internally audit the effectiveness of that policy, at the end of each of the first two 6-month periods following separation day and then annually after that; and
- “(i) require Chorus to supply the UBA service in a bundle with the local access and calling service; and
- “(j) require the directors of Chorus to certify that Chorus has complied with the undertakings.

“69XA Implementation of Chorus undertakings

- “(1) On and from separation day, the undertakings approved by the Minister on or before separation day under **sections 23GB to 23GD of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011** take effect as if they were a deed that is—
- “(a) properly executed by, and binding on, Chorus; and
 - “(b) given in favour of the Crown.
- “(2) The undertakings approved by the Minister after separation day under **sections 23GB to 23GD** of that Act take effect in accordance with **subsection (1)** but with effect from the date of approval.

“69XB Chorus must publish Chorus undertakings

- “(1) As soon as practicable after the date on which an undertaking takes effect under **section 69XA**, Chorus must publish the undertaking.
- “(2) **Section 156AM** applies with necessary modifications.

“69XC Variation of Chorus undertakings

Sections 156AN and 156AO apply with necessary modifications to undertakings under this subpart.

“69XD Termination of Chorus undertakings

Section 156AQ applies with necessary modifications to undertakings under this subpart.

“69XE Enforcement of Chorus undertakings

- “(1) **Sections 156AS to 156AU** apply with necessary modifications to undertakings under this subpart.
- “(2) *See sections 156L(3) and 156M* for the maximum penalty of \$10 million (and \$500,000 per day) for failure to comply with undertakings).

“Subpart 5—Miscellaneous

“Public Works Act 1981

“69XF Application of Public Works Act 1981

- “(1) Despite section 4(4) of the Finance Act 1990 and section 24(4) of the State-Owned Enterprises Act 1986, nothing in sections 40 to 42 of the Public Works Act 1981 applies to the transfer of affected land from Telecom to Chorus.
- “(2) However, after that transfer, sections 40 and 41 of the Public Works Act 1981 apply to that land as if Chorus were the Crown

and the transfer of the land from the Crown to Telecom and from Telecom to Chorus had not taken place.

- “(3) If, in relation to affected land that has been transferred by Telecom to Chorus, an offer made by Chorus under section 40(2) of the Public Works Act 1981 is not accepted within the time specified in **subsection (4)** and the parties have not agreed on other terms for the sale of the land, Chorus may sell or otherwise dispose of the land to any person and on such terms and conditions as it thinks fit.
- “(4) The time referred to in **subsection (3)** is the later of the following:
- “(a) 40 working days after the offer is made or such further period as Chorus considers reasonable:
- “(b) if an application has been made to the Land Valuation Tribunal pursuant to section 40(2A) of the Public Works Act 1981, 20 working days after the determination of the Tribunal.
- “(5) In this section,—
- “**affected land** means any land that, immediately before it was transferred by the Crown to Telecom pursuant to section 4(4) of the Finance Act 1990, was held by the Crown under the Public Works Act 1981 for a public work
- “**land** has the same meaning as in section 2 of the Public Works Act 1981
- “**working day** has the same meaning as in section 2 of the Public Works Act 1981.

“Resource Management Act 1991 issues

“**69XG Requiring authority status under Resource Management Act 1991**

- “(1) Chorus is approved as a requiring authority, as a network utility operator, under the Resource Management Act 1991 for the following purposes:
- “(a) constructing or operating, or proposing to construct or operate, a network for the purpose of telecommunication as defined in section 5 of this Act; and
- “(b) constructing or operating, or proposing to construct or operate, a network for the purpose of radiocommunications as defined in section 2(1) of the Radiocommunications Act 1989.
- “(2) Part 8 of the Resource Management Act 1991 applies with necessary modifications as if the approval had been given under section 167 of that Act.

“69XH Designations under Resource Management Act 1991

- “(1) The Minister may, before separation day, by notice in the *Gazette*, issue 2 lists comprising all or any of the designations (within the meaning of section 166 of the Resource Management Act 1991) for which Telecom is responsible, as follows:
- “(a) designations that are to be transferred to Chorus;
 - “(b) designations that are to be additionally granted back to Telecom.
- “(2) On separation day,—
- “(a) all the rights and responsibilities of Telecom in relation to the designations listed in a *Gazette* notice under **subsection (1)(a)**, as they existed immediately before separation day, are transferred to Chorus for the purposes of section 180 of the Resource Management Act 1991; and
 - “(b) the designations listed in a *Gazette* notice under **subsection (1)(b)**, as they existed immediately before separation day, are (in addition to being transferred to Chorus) granted back to Telecom, with the effect that, subject to **subsection (3)**, Telecom continues to have the same rights and responsibilities as Chorus in relation to the designations.
- “(3) For the purposes of section 177 of the Resource Management Act 1991,—
- “(a) the designations transferred to Chorus under **subsection (2)(a)** are treated as earlier designations; and
 - “(b) the additional designations granted to Telecom under **subsection (2)(b)** are treated as later designations.
- “(4) Part 8 of the Resource Management Act 1991 applies with necessary modifications as if the designations had been transferred or made under that Part.

“Restrictive covenants

“69XI Certain restrictive covenants

- “(1) This section applies to any restrictive covenant that is registered in favour of land—
- “(a) of which Telecom was a registered proprietor immediately before separation day; and
 - “(b) that is transferred from Telecom to Chorus on separation day.
- “(2) Despite the transfer of land to Chorus, Telecom is entitled to enforce the covenant against the persons bound by the covenant as if Telecom were an owner or occupier of the land.
- “(3) This section does not limit the rights to enforce the covenant of Chorus, Chorus’s successors in title, and persons claiming through Chorus or Chorus’s successors in title.

- “(4) The Registrar-General may enter in the register relating to the burdened land, the benefited land, or both, a notification of the effect of this section as if it were an instrument.

“Government Superannuation Fund Act 1956

“**69XJ Protection of existing members of Government Superannuation Fund**

- “(1) The Government Superannuation Fund Act 1956 continues to apply to the persons referred to in **subsection (2)** in all respects as if service with Chorus were Government service.
- “(2) The persons are every person who, immediately before separation day,—
- “(a) is employed by Telecom; and
 - “(b) is deemed to be employed in the Government service under section 2A of the Government Superannuation Fund Act 1956; and
 - “(c) is a contributor to the Government Superannuation Fund under Part 2 or 2A of that Act.
- “(3) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of Chorus is the controlling authority.

“Subpart 6—Taxation consequences of structural separation

“**69XK Interpretation in this subpart**

In this subpart, unless the context requires otherwise,—

“**appointed day** means,—

- “(a) for a purpose specified in a proposal approved by Order in Council made under **section 69XY**, a day specified in that proposal for that purpose:
- “(b) if there is no relevant day under **paragraph (a)**, the day on which the vesting of the designated assets and liabilities, and the demerger distribution, take effect

“**Chorus company** means a member of the group of companies comprising ChorusCo and the companies that are, or will be, its subsidiaries immediately following the demerger distribution and the vesting of the designated assets and liabilities

“**demerger distribution** means a distribution, or an entitlement to a distribution, to each holder of ordinary shares in Telecom Corporation of New Zealand Limited, where the distribution or entitlement—

- “(a) arises under the demerger arrangement; and
- “(b) comprises—

- “(i) an amount determined by reference to the value of a holder’s entitlement to ordinary shares in ChorusCo:
- “(ii) ordinary shares in ChorusCo to which the holder is entitled, or proceeds from the disposal of that holder’s entitlement to ordinary shares in ChorusCo

“**designated assets and liabilities** means assets and liabilities, or parts of assets and liabilities, as the case may be, specified in an Order in Council made under **section 69XY**, and **designated assets** and **designated liabilities** have corresponding meanings

“**income year** has the same meaning as in the Income Tax Act 2007

“**Inland Revenue Acts** has the same meaning as in the Tax Administration Act 1994

“**Telecom company** means a member of the group of companies comprising Telecom Corporation of New Zealand Limited and the companies that are, or will be, its subsidiaries immediately following the demerger distribution and the vesting of the designated assets and liabilities

“**vest** means the transfer of the designated assets and liabilities from a Telecom company to a Chorus company on the appointed day

“**vesting year** means the income year that includes the appointed day for the vesting of the designated assets and liabilities.

“69XL Purpose

The purpose of this subpart is to ensure that—

- “(a) the vesting of the designated assets and liabilities in Chorus does not give rise to tax consequences under the Inland Revenue Acts for Telecom or Chorus that would not have arisen if they were the same person:
- “(b) no tax consequences arise under the Inland Revenue Acts on the appointed day for any shareholder of Telecom Corporation of New Zealand Limited or Chorus from the demerger distribution that would not have arisen if the vesting of the designated assets and liabilities and the demerger distribution had not occurred.

“69XM Depreciation

- “(1) For the purposes of the Income Tax Act 2007, for a designated asset (the **asset**) that is depreciable property,—

- “(a) the relevant Telecom company has a deduction for an amount of depreciation loss for the period beginning on the first day of the vesting year and ending on the day before the appointed day:
 - “(b) the relevant Telecom company does not derive depreciation recovery income and does not have a deduction for an amount of depreciation loss under sections EE 44 to EE 52 of the Income Tax Act 2007 as a result of the vesting of the asset:
 - “(c) the relevant Chorus company must calculate, on and after the appointed day, depreciation recovery income and deductions for amounts of depreciation loss as if, in respect of the period up to and including the appointed day, it and the Telecom company were the same person.
- “(2) In this section, **depreciable property**, **depreciation loss**, and **depreciation recovery income** have the same meaning as in the Income Tax Act 2007.

“**69XN Tax effect of distribution of ChorusCo shares**

- “(1) For the purposes of the Income Tax Act 2007, the following transactions do not give rise to, and are ignored for the purposes of calculating, the available subscribed capital of a Chorus company or a Telecom company:
- “(a) the vesting of the designated assets and liabilities:
 - “(b) the demerger distribution:
 - “(c) a transaction necessary for carrying into effect the vesting of the designated assets and liabilities, or the demerger distribution, if, for that transaction, there is no party other than Chorus companies and Telecom companies.
- “(2) The demerger distribution on the appointed day—
- “(a) is not a dividend or other kind of assessable income for the purposes of the Income Tax Act 2007:
 - “(b) is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968:
 - “(c) is, for any relevant Telecom company, a disposition for the cost price of the share, for the purposes of the Income Tax Act 2007.
- “(3) For the purposes of the Income Tax Act 2007, a person who receives a demerger distribution by virtue of holding a Telecom Corporation of New Zealand Limited share is treated as—
- “(a) acquiring the relevant ChorusCo share at the same time and for the same purposes as the Telecom Corporation of New Zealand Limited share that gives rise to that person’s entitlement to the demerger distribution:

- “(b) having paid the amount given by **subsection (4)** for the acquisition of the ChorusCo share:
- “(c) having paid the amount given by **subsection (5)** for the acquisition of the Telecom Corporation of New Zealand Limited share.
- “(4) For the purposes of **subsection (3)(b)**, the amount paid for the acquisition is calculated using the following formula:
- $$\frac{\text{pre-calculation amount paid}}{\text{combined mv}} \times \text{Chorus mv}$$
- “(5) For the purposes of **subsection (3)(c)**, the amount paid for the acquisition is calculated using the following formula:
- $$\frac{\text{pre-calculation amount paid}}{\text{combined mv}} \times \text{Telecom mv}$$
- “(6) In the formulas in **subsections (4) and (5)**,—
- “(a) **pre-calculation amount paid** is the person’s expenditure or loss incurred in acquiring the Telecom Corporation of New Zealand Limited share, ignoring this section:
- “(b) **Chorus mv** is the volume weighted average price of ChorusCo shares calculated in the manner prescribed in a proposal approved by Order in Council under **section 69XY**, or if none is prescribed, the volume weighted average price of ChorusCo shares as traded on the NZSX over the first 5 trading days commencing on the date of listing of Chorus:
- “(c) **Telecom mv** is the volume weighted average price of Telecom Corporation of New Zealand Limited shares calculated in the manner prescribed in a proposal approved by Order in Council under **section 69XY**, or if none is prescribed, the volume weighted average price of Telecom Corporation of New Zealand Limited shares as traded on the NZSX over the first 5 trading days commencing on the date of listing of ChorusCo:
- “(d) **combined mv** is the total volume weighted average prices of ChorusCo shares and Telecom Corporation of New Zealand Limited shares calculated in the manner prescribed in a proposal approved by Order in Council under **section 69XY**, or if none is prescribed, the total of the volume weighted average prices of ChorusCo shares and Telecom Corporation of New Zealand Limited shares determined in accordance with **paragraphs (b) and (c)**.
- “(7) **Subsection (8)** applies where—

- “(a) an arrangement entered into on or before the appointed day would, but for the demerger distribution, be a returning share transfer or share-lending arrangement in respect of which the original share is a Telecom Corporation of New Zealand Limited share; and
 - “(b) if, under the relevant arrangement in respect of the Telecom Corporation of New Zealand Limited share, the share user is required to transfer a Telecom Corporation of New Zealand Limited share and a ChorusCo share to the share supplier.
- “(8) If **subsection (7)** applies,—
- “(a) the relevant ChorusCo share is treated as part of the relevant Telecom Corporation of New Zealand Limited share for the purposes of the definitions of identical share, original share, returning share transfer, and share-lending arrangement in the Income Tax Act 2007:
 - “(b) **subsection (3)** applies to the share supplier as if the share supplier were the person referred to in that subsection.
- “(9) In this section, **available subscribed capital, dividend, identical share, original share, returning share transfer, share-lending arrangement, share supplier, and share user** have the same meanings as in the Income Tax Act 2007.

“**69XO Goods and Services Tax Act 1985**

- “(1) The vesting of the designated assets and liabilities is treated as being a taxable supply on the appointed day that is charged with tax at the rate of 0% for the purposes of the Goods and Services Tax Act 1985.
- “(2) For the purpose of calculating, under the Goods and Services Tax Act 1985, the amount of tax payable, or input tax deductible, on or after the appointed day by a Chorus company in respect of, or in relation to, a designated asset or a designated liability, the Chorus company and the relevant Telecom company are treated as if they were the same person in respect of the period up to and including the appointed day, subject to **subsection (1)**.
- “(3) If it is necessary for a tax invoice, a credit note, or a debit note (the **document**) to be issued by or to a Telecom company in respect of a supply made by or to a Telecom company before the appointed day, the document may be issued by or to a Chorus company if the supply was in respect of or in relation to designated assets and liabilities. The Chorus company and the Telecom company are treated as if, in relation to that supply, they were the same person for the purposes of any re-

quirement in the Goods and Services Tax Act 1985 that the Telecom company holds, has previously been issued with, or has issued to a person, a tax invoice, a debit note, or a credit note for the supply.

- “(4) In this section, **credit note, debit note, input tax, supply, tax, and tax invoice** have the same meanings as in the Goods and Services Tax Act 1985.

“**69XP Prepayments**

- “(1) For the purposes of the Income Tax Act 2007,—
- “(a) for the vesting year, the relevant Telecom company is treated as having an unexpired amount of expenditure under section EA 3 of that Act (the **unexpired portion**) for expenditure connected with the designated assets and liabilities, calculated by applying section EA 3(4) to (7) of that Act as if the day before the appointed day were the end of an income year:
 - “(b) the relevant Telecom company has, for the vesting year, income under section CH 2 of that Act for the unexpired portion described in **paragraph (a)**:
 - “(c) for an income year starting after the appointed day, the relevant Telecom company is not allowed a deduction for the unexpired portion under section DB 50 of that Act, and no part of the unexpired portion is income under section CH 2 of that Act:
 - “(d) the relevant Chorus company has, for the vesting year, a deduction for the unexpired portion described in **paragraph (a)** under section DB 50 of that Act:
 - “(e) for the vesting year and any subsequent income year, section EA 3 of that Act applies to the relevant Chorus company as if that member had been allowed a deduction under that Act for expenditure to which **paragraph (a)** applies.
- “(2) In this section, **expenditure** means expenditure that the relevant Telecom company has been allowed a deduction for under the Income Tax Act 2007 or an earlier Act, and that was not incurred on the items described in section EA 3(2) of that Act.

“**69XQ Expenditure or loss incurred, and amounts derived**

A Chorus company and the relevant Telecom company are treated as the same person for the period prior to and including the appointed day for the purpose of determining the following, under the Income Tax Act 2007:

- “(a) whether a deduction is allowed for an amount of expenditure or loss incurred by the Chorus company in connection with the designated assets or liabilities:

- “(b) the amount of any deduction of the Chorus company in connection with the designated assets or liabilities:
- “(c) whether an amount derived by the Chorus company in connection with the designated assets or liabilities is income:
- “(d) the amount of any income of the Chorus company in connection with the designated assets or liabilities.

“69XR Bad debts

Sections CG 3 and DB 31 of the Income Tax Act 2007 apply to a relevant Chorus company in respect of any obligation that is owed to the relevant Telecom company immediately before the appointed day and that vests in the Chorus company, as if the Telecom company and the Chorus company were the same person in respect of the period up to and including the appointed day.

“69XS Unpaid employment expenditure

Sections DC 11(2) and (3) and EA 4(6) of the Income Tax Act 2007 apply to any amount of employment income (as that term is defined in the Income Tax Act 2007) that a Chorus company assumes the obligation to pay in connection with the vesting. For the purposes of those sections, the Chorus company is treated as **person B**, and the relevant Telecom company that incurred the obligation to pay is treated as **person A**.

“69XT Vesting of designated assets and liabilities

The vesting of the designated assets and liabilities in a Chorus company—

- “(a) does not give rise to a dutiable gift for the purposes of the Estate and Gift Duties Act 1968:
- “(b) does not give rise to a dividend, or, except as provided in this Act, other assessable income, for the purposes of the Income Tax Act 2007:
- “(c) does not, except as provided in this Act, give rise to a deduction for the purposes of the Income Tax Act 2007.

“69XU Revenue account property

- “(1) For the purposes of the Income Tax Act 2007, for a designated asset or liability that is revenue account property (the **property**), the property is treated as being disposed of by the relevant Telecom company and acquired by the relevant Chorus company for an amount equal to the property’s tax book value.
- “(2) In this section, **tax book value** means,—

- “(a) for the property, if it is trading stock or an excepted financial arrangement acquired by the relevant Telecom company before the vesting year, the opening value of the property under section DB 49 of the Income Tax Act 2007 for that Telecom company for the vesting year:
- “(b) for the property, if **paragraph (a)** does not apply, the amount of expenditure or loss for which the relevant Telecom company is allowed a deduction in the vesting year as a result of the disposal.
- “(3) In this section, **excepted financial arrangement, revenue account property, and trading stock** have the same meaning as in the Income Tax Act 2007.

“69XV Leased assets

For the purposes of the Income Tax Act 2007, for expenditure that a Telecom company incurs as a lessee under a lease that relates to a designated asset and to which section EJ 10 of the Income Tax Act 2007 applies,—

- “(a) the Telecom company must calculate an amount to be allocated to the vesting year under section EJ 10(3) and (4) of that Act as if the day before the appointed day were the end of the vesting year:
- “(b) the relevant Chorus company must calculate an amount to be allocated to the vesting year under section EJ 10(3) and (4) of that Act as if the appointed day were the start of the vesting year:
- “(c) section EJ 10 of that Act applies to the Chorus company for income years after the vesting year as if, in respect of the period up to and including the appointed day, the Telecom company and the Chorus company were the same person.

“69XW Finance leases: financial arrangements rules

- “(1) For the purposes of the financial arrangements rules as defined in section EW 1(2) of the Income Tax Act 2007, for a finance lease that a Telecom company is party to immediately before the appointed day and vests in Chorus company on the appointed day,—
 - “(a) if the finance lease is an asset of the Telecom company, the Chorus company is treated as paying to the Telecom company an amount of consideration for the finance lease that is equal to the tax book value of the finance lease on the relevant day:
 - “(b) if the finance lease is a liability of the Telecom company, the Telecom company is treated as paying to the Chorus company an amount of consideration for the fi-

nance lease that is equal to the tax book value of the finance lease on the relevant day:

- “(c) the Telecom company must calculate, on the relevant day, a base price adjustment under section EW 31 of the Income Tax Act 2007:
 - “(d) if the Chorus company calculates, on or after the relevant day, a base price adjustment under section EW 31 of that Act, that base price adjustment must be calculated as if, in respect of the period up to and including the relevant day, it and the Telecom company were the same person:
 - “(e) sections EW 38, EW 42, and GB 21 of that Act do not apply for the vesting.
- “(2) In this section,—
- “(a) **tax book value** means, for the relevant day and a finance lease, the value for tax purposes of the finance lease on the relevant day determined consistently with the method used in subpart EW of the Income Tax Act 2007 to calculate and allocate income and expenditure under the finance lease as if the day immediately preceding the relevant day were the last day of an income year:
 - “(b) **finance lease** has the same meaning as in the Income Tax Act 2007.

“**69XX Approved issuer levy and administrative status**

- “(1) For the purposes of the Income Tax Act 2007 and the Stamp and Cheque Duties Act 1971, a transaction or class of transactions registered as a registered security or as registered securities by a Telecom company on or prior to the appointed day is treated as also being registered as a registered security or as registered securities, as the case may be, by the relevant Chorus company. The relevant Chorus company is treated as an approved issuer in respect of the registered security or registered securities, as the case may be.
- “(2) The relevant Telecom company and the relevant Chorus company are treated as the same person, for the period prior to and including the appointed day, for the purposes of the making, giving, or receiving of any election, notice, certificate, and filing provided for under the Inland Revenue Acts.
- “(3) A Telecom company and the relevant Chorus company are treated as the same person for the purposes of receiving the benefit of—
 - “(a) a provisional rate, as defined in section EE 67 of the Income Tax Act 2007:
 - “(b) a special rate, as defined in section EE 67 of that Act.

“(4) In this section, **registered security** has the same meaning as in the Income Tax Act 2007.

“**69XY Proposal approved for tax purposes by Order in Council**

“(1) The Governor-General may from time to time, by Order in Council made on the advice of the Minister of Revenue, approve a proposal signed by or on behalf of Telecom Corporation of New Zealand Limited and ChorusCo.

“(2) The proposal may provide for 1 or more of the following matters:

“(a) specify a day and a purpose relevant to **sections 69XM to 69XX** for the purposes of the definition of **appointed day** in **section 69XK**:

“(b) specify a list of assets and liabilities in accordance with **subsections (3) and (4)** for the purpose of the definition of **designated assets and liabilities** in **section 69XK**:

“(c) prescribe the manner in which the volume weighted average price is to be calculated for the purposes of **section 69XN(6)**:

“(d) amend an earlier proposal with effect from the date on which the earlier proposal took effect or from a later date, if appropriate.

“(3) A list of assets and liabilities may be in the form of references to ledgers or registers maintained by a Telecom company or a Chorus company, or be in any other form, and be accompanied by any other information, that is reasonable and appropriate.

“(4) A designated asset or designated liability may consist of part only of an asset or liability.

“(5) An Order in Council under this section must identify, but need not contain, the proposal.

“Subpart 7—Commerce Act 1986 authorisations in respect of Ultra-fast Broadband Initiative

“**69XZ Interpretation for this subpart**

In this subpart, unless the context otherwise requires,—

“**Crown** includes Crown Fibre Holdings Limited

“**fibre optic network assets** means ducting, fibre optic cabling, and related electronic equipment, together with other related equipment, that is used in connection with telecommunication over a fibre based network

“**Telecom** includes Chorus and a successor to Telecom or Chorus

“**telecommunications network company** means a company that owns or operates a network

“**UFB initiative** means the competitive tender programme, known as the Ultra-fast Broadband Initiative, to develop fibre-to-the-premises broadband networks connecting 75% of New Zealand households, with the support of \$1.5 billion of Crown investment funding

“**UFB partner** means a successful tenderer in the UFB initiative.

“**69XZA Restrictive trade practices authorisations in respect of Telecom participation in Ultra-fast Broadband Initiative**

“(1) The following are authorised:

“(a) any contract, arrangement, or understanding between the Crown and Telecom that is necessary to give effect to the selection of Telecom as a UFB partner in a particular region or regions; and

“(b) any contract, arrangement, or understanding between the Crown, Telecom, and a UFB partner in a particular region or regions, under which Telecom transfers fibre optic network assets to a local fibre company owned by the Crown and the UFB partner.

“(2) The authorisations apply to any contract, arrangement, or understanding that is entered into before or after the date on which this section comes into force as if the authorisations were in force at the time of entry.

“(3) The authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 58(1), (2), (5), and (6) of the Commerce Act 1986.

“(4) Sections 65 and 91 to 97 of the Commerce Act 1986 do not apply to the authorisations.

“(5) The effect of the authorisations is the same as that stated in section 58A(1) and (2) of the Commerce Act 1986.

“**69XZB Business acquisition authorisations in respect of Telecom participation in Ultra-fast Broadband initiative**

“(1) The following are authorised:

“(a) any acquisition by Telecom of the fibre optic network assets or undertaking of any telecommunications network company as part of an arrangement with the Crown under the UFB initiative; and

“(b) any acquisition by Telecom of the shares of any telecommunications network company (whether on a minority or an equal basis or otherwise) as part of an

- arrangement with the Crown or a UFB partner (or both) under the UFB initiative; and
- “(c) any acquisition by the Crown of shares in, or assets of, Telecom pursuant to the selection of Telecom as a UFB partner in a particular region or regions.
- “(2) The authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 67(3)(b) of the Commerce Act 1986 on the date of commencement of this subpart.
- “(3) Sections 91 to 97 of the Commerce Act 1986 do not apply to the authorisations.
- “(4) The effect of the authorisations is the same as that stated in section 69 of the Commerce Act 1986.”

Subpart 3—Consequential amendments, saving, transitional provisions, and miscellaneous matters

Consequential amendments relating to TSO obligations

23HA Interpretation

- (1) The definition of **net cost** in section 5 is amended by repealing **paragraph (b)** and substituting the following paragraphs:
- “(b) in relation to a deemed TSO instrument that requires the supply of a service to end-users, means the unavoidable net incremental cost to an efficient service provider of providing the service required by the TSO instrument to all end-users connected to existing residential lines; and
- “(c) in relation to a deemed TSO instrument that requires the supply of a wholesale service that is an input to a service supplied to end-users, means the unavoidable net incremental cost to an efficient service provider of providing the service required by the TSO instrument to another service provider for the purpose of making a retail service available to all end-users connected to existing residential lines”.
- (2) Section 5 is amended by inserting the following definition after the definition of **net cost**:
- “**net revenue** means the range of direct and indirect revenues and associated benefits derived from providing telecommunications services to all end-users connected to existing residential lines, less the costs of providing those services to those end-users”.

23HB Deemed TSO instrument

- (1) Section 71(2)(b)(i) is amended by omitting “; and”.
- (2) Section 71(2)(b) is amended by repealing subparagraph (ii).

23HC TSO provider under TSO instrument without specified amount may request TSO cost calculation determination

Section 93 is amended by adding the following subsection:

- “(3) A TSO provider under a deemed TSO instrument who gives notice under **subsection (1)** must, at the time of giving that notice to the Commission, serve a copy of the notice on every other TSO provider under a deemed TSO instrument.”

23HD New sections 94CA and 94CB inserted

The following sections are inserted after **section 94C**:

“94CA Calculations of net revenue and auditor’s report must be given to Commission

- “(1) This section applies to a TSO provider under a deemed TSO instrument that requires the TSO provider to provide a telecommunications service to end-users and who is served with a copy of a notice under **section 93(3)**.
- “(2) Not later than 60 days after the end of each financial year, a TSO provider to whom this section applies must provide to the Commission—
- “(a) calculations of the net revenue of the TSO provider for the financial year; and
 - “(b) a report prepared by a qualified auditor that includes a statement of whether the calculations comply with—
 - “(i) any prescribed requirements relating to those calculations; and
 - “(ii) any requirements of the Commission.

“94CB Considerations for determining net revenue

- “(1) In calculating net revenue under **section 94CA** and calculating net revenue for the purposes of a draft TSO cost calculation determination under **section 94D** and a final TSO cost calculation determination under **section 94H**, the provision of a reasonable return on the incremental capital employed in providing telecommunications services to end-users must be taken into account.
- “(2) In calculating the net revenue for the purposes of a draft TSO cost calculation determination under **section 94D** and a final TSO cost calculation determination under **section 94H**, the Commission—
- “(a) may choose not to include profits from any new telecommunications services that involve significant capital investment and that offer capabilities not available from established telecommunications services; and

- “(b) must not include any losses from telecommunications services other than services that the TSO instrument requires the TSO provider to provide; and
- “(c) must consider the purpose set out in section 18.
- “(3) In calculating net revenue under **section 94CA**, the TSO provider must comply with any requirements of the Commission relating to the application of **subsection (2)(a) to (c)**.
- “(4) In this section, **established telecommunications services** and **new telecommunications services** have the same meanings as in **section 94C**.”

23HE Matters to be included in draft TSO cost calculation determination

Section 94E is amended by inserting the following paragraph after **paragraph (a)**:

- “(ab) if the TSO instrument does not contain a specified amount and is a deemed TSO instrument, the net revenue of all providers under deemed TSO instruments, excluding the provider whose net cost is set out in **paragraph (a)**, and all material information that—
 - “(i) relates to the calculation of the net revenue; and
 - “(ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of any TSO provider; and”.

23HF Matters to be included in final TSO cost calculation determination

- (1) **Section 94I(1)** is amended by inserting the following paragraph after **paragraph (a)**:
 - “(ab) if the TSO instrument does not contain a specified amount and is a deemed TSO instrument, the net revenue for the financial year of all providers under deemed TSO instruments, excluding the provider whose net cost is set out under **paragraph (a)**, and all material information that—
 - “(i) relates to the calculation of the net revenue; and
 - “(ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of any TSO provider; and”.
- (2) **Section 94I(1)(d)(i)** is amended by inserting “and is not a deemed instrument” after “that does not contain a specified amount”.
- (3) **Section 94I(1)(d)** is amended by inserting the following subparagraph after **subparagraph (i)**:

- “(ia) in the case of a TSO instrument that does not contain a specified amount and is a deemed TSO instrument, by subtracting the amount of the reduction (if any) referred to in **paragraph (c)** and the net revenue referred to in **paragraph (ab)** from the net cost referred to in **paragraph (a)**; and”.

23HG Regulations

- (1) **Section 101(1)** is amended by inserting the following paragraph after **paragraph (d)**:
“(da) prescribe requirements to which **section 94CA(2)(b)(i)** applies.”
- (2) **Section 101(1)(e)** is amended by inserting the following subparagraph after **subparagraph (iii)**:
“(iia) calculating the net revenue under **section 94CA**.”.

23HH Application of section 156B

Section 156A is amended by inserting the following paragraphs after **paragraph (lb)**:

- “(lba) fails, without reasonable excuse, to comply with **section 94CA**;
- “(lbb) knowingly provides false or misleading information under **section 94CA**.”.

Consequential amendments relating to new Part 2A and general matters

23I Overview

Section 4 is amended by repealing paragraph (ea) and substituting the following paragraph:

- “(ea) provisions concerning the structural separation of Telecom are set out in **Part 2A**; and”.

23J Section 69ZB repealed

Section 69ZB is repealed.

23K Miscellaneous provisions relating to Commission’s information disclosure requirements

Section 69ZD(1) is amended by omitting “69ZB or”.

23L Declaration made or revoked by notice in *Gazette*: Amendments relating to network operator status

- (1) Section 105(1) is repealed and the following subsections substituted:

- “(1) A declaration is made by notice in the *Gazette*, except that Chorus and Telecom are declared to be network operators by this Act.
- “(1A) A declaration may be revoked by notice in the *Gazette* (including the declarations relating to Chorus and Telecom).”
- (2) The definition of **network operator** in section 5 is consequentially amended by omitting “Telecom and”.

23M Application of section 156B

- (1) Section 156A is amended by inserting the following paragraphs after paragraph (f):
- “(fa) fails, without reasonable excuse, to comply with **section 69F**;
- “(fb) fails, without reasonable excuse, to comply with a notice under **section 69H**.”
- (2) Section 156A(g) is amended by omitting “69ZB(7).”
- (3) Section 156A is amended by adding the following subsection as subsection (2):
- “(2) Section 156B also applies as provided in—
- “(a) **section 69L**;
- “(b) **section 69R**.”

23N Pecuniary penalty

- (1) Section 156L(1)(a) is amended by omitting “a separation undertaking” and substituting “an undertaking”.
- (2) Section 156L(3) is amended by repealing paragraph (b) and substituting the following paragraphs:
- “(b) \$10 million for a breach referred to in **section 69L**; and
- “(ba) \$10 million for a breach referred to in **section 69R**;
- and
- “(bb) \$1 million for a breach referred to in **section 156A(fa)**;
- and
- “(bc) \$1 million for a breach referred to in **section 156A(fb)**;
- and ”.

23O Further pecuniary penalty for continuing breach

- (1) Section 156M(1) is amended by inserting the following paragraphs after paragraph (a):
- “(aa) \$500,000 for a breach referred to in **section 69L**; and
- “(ab) \$500,000 for a breach referred to in **section 69R**; and
- “(ac) \$50,000 for a breach referred to in **section 156A(fa) or (fb)**; and”.
- (2) Section 156M(1)(b) is amended by omitting “69ZB(7), 69ZC(4) or 69ZF(2)” and substituting “69ZC(4) or 69ZF(2)”.

23P Interpretation

Section 156N is amended by repealing paragraph (b) of the definition of **party** and substituting the following paragraph:

“(b) includes, in the case of an undertaking under **Part 2A** or **4AA**, any service provider (within the meaning of section 5) who is affected by a breach of the undertaking.”

23Q Interpretation

Paragraph (e) of the definition of **enforceable matter** in section 156N is amended by omitting “a separation undertaking” and substituting “an undertaking”.

23R Complaints of breach of enforceable matter

(1) Section 156O(1) is amended by repealing **paragraph (b)** and substituting the following paragraph:

“(b) in the case of an undertaking under **Part 2A** or **4AA**, a party.”

(2) Section 156O(4)(a) is amended by omitting **subparagraph (ii)** and substituting the following subparagraph:

“(ii) in the case of a complaint by a party relating to an undertaking under **Part 2A**, the purpose set out in **section 69U**; and”.

(3) Section 156O(5) is amended by omitting “a separation undertaking” and substituting “an undertaking”.

23RA Enforcement by High Court

Section 156P(2)(b) is amended by omitting “a separation undertaking under Part 2A” and substituting “an undertaking under **Part 2A**”.

23S Schedule 1 amended

Schedule 1 is amended in the manner set out in **Schedule 2A** of this Act.

*Transitional provision relating to TSO obligations***23T TSO provider cannot request TSO cost calculation determination under section 93 for financial year in which separation day occurs**

(1) Despite **section 93**, a TSO provider under a TSO instrument that does not contain a specified amount may not notify the Commission that it wishes to invoke the procedure in **sections 94B to 94I** for the preparation of a TSO cost calculation determination for the financial year in which separation day occurs.

- (2) To avoid doubt, for the financial year in which separation day occurs, the TSO charges for a TSO instrument that does not contain a specified amount are deemed to be zero as provided in **section 94A**.

Transitional provision relating to shared asset arrangements

23U Minister may grant exemptions in relation to shared asset arrangements

The Minister may grant an exemption under **section 69N** of the principal Act (as inserted by **section 23H** of this Act) as if those sections were in force.

Saving and transitional provisions relating to designated access services

23V Standard terms determinations continue to apply

- (1) Each standard terms determination referred to in the first column of the following table remains in force and continues to apply as if the determination were a determination made by the Commission for the designated access service set out in the second column of that table opposite that determination:

Standard terms determination	Designated access service
Standard terms determination for Telecom's unbundled bitstream access, 12 December 2007	Chorus's unbundled bitstream access
Standard terms determination for Telecom's unbundled bitstream access backhaul service, 27 June 2008	Chorus's unbundled bitstream access backhaul
Standard terms determination for Telecom's unbundled copper local loop network service, 7 November 2007	Chorus's unbundled copper local loop network
Standard terms determination for the designated services of Telecom's unbundled copper local loop network service (Sub-loop UCLL), Telcom's unbundled copper local loop network co-location service (Sub-loop Co-location) and Telecom's unbundled copper local loop network backhaul service (Sub-loop backhaul), 18 June 2009 (the Sub-loop services standard terms determination)	

Standard terms determination

Standard terms determination for Telecom's unbundled copper local loop network co-location service, 7 November 2007
Sub-loop services standard terms determination

Sub-loop services standard terms determination

Standard terms determination for Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point) service, 27 June 2008

Designated access service

Chorus's unbundled copper local loop network co-location

Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)

Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

- (2) Part 2 of the principal Act applies to each standard terms determination accordingly.
- (3) **Subsections (1) and (2)** are subject to **sections 23W to 23ZD**.

23W General provision concerning reviews of standard terms determinations for purpose of implementing amendments to Schedule 1 of principal Act

- (1) The Commission may review any standard terms determination referred to in **section 23V** under section 30R for the purpose of making any changes to the determination that the Commission considers necessary to implement the amendments made by this Act to Schedule 1 of the principal Act—
- (a) before the relevant amendments come into force or take effect; and
 - (b) as if the relevant amendments were in force or had taken effect.
- (2) However,—
- (a) the Commission must make reasonable efforts to conduct a review of certain determinations—
 - (i) before separation day, as referred to in **section 23X**; and
 - (ii) before the expiry of 1 year from separation day, as referred to in **section 23ZB**; and
 - (b) the Commission may not make a replacement determination under section 30R(2); and
 - (c) any variation of, addition to, or deletion of terms in a determination for the purpose of implementing an amendment made by this Act to the principal Act may not come into force or take effect until the relevant amendment comes into force or takes effect; and

- (d) on conducting any review of the standard terms determination for Telecom's unbundled copper local loop network service dated 7 November 2007 and the subloop services standard terms determination, the Commission's powers under section 30R are subject to **section 23X(2)**.

23X Commission must complete reviews of standard terms determinations for certain designated access services before separation day

- (1) The Commission must make reasonable efforts to do the following before separation day:
 - (a) review each of the standard terms determinations referred to in the first column of the table in **subsection (3)** for the purpose of making any changes that may be necessary in order for the determination to apply to the designated access service set out opposite that determination in the second column of that table from the close of the day before separation day; and
 - (b) review the standard terms determination for Telecom's unbundled copper local loop network dated 7 November 2007 (in this section, the **unbundled copper local loop network determination**) and the subloop services standard terms determination for the purpose of making any changes to those determinations that may be necessary for the purpose of implementing **clause 4A** of subpart 1 of Part 1 of Schedule 1; and
 - (c) give public notice of the results of each review.
- (2) However, no variation of, addition to, or deletion of terms in the unbundled copper local loop network determination or the subloop services standard terms determination that relates to the implementation of **clause 4A** of subpart 1 of Part 1 of Schedule 1 may take effect before the expiry of 3 years from separation day.
- (3) The table referred to in **subsection (1)** is—

Standard terms determination

Standard terms determination for Telecom's unbundled bitstream access, 12 December 2007

Designated access service

Chorus's unbundled bitstream access (excluding the initial and the final pricing principles applicable after the expiry of 3 years from separation day)

**Standard terms
determination**

Standard terms determination for Telecom's unbundled copper local loop network co-location service, 7 November 2007

Standard terms determination for Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point) service, 27 June 2008

Designated access service

Chorus's unbundled copper local loop network co-location

Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

23Y Commission must make standard terms determination for Chorus's unbundled copper low frequency service before separation day

- (1) The Commission must make reasonable efforts to make a standard terms determination under section 30M for Chorus's unbundled copper low frequency service before separation day.
- (2) The standard terms determination must—
 - (a) be made in accordance with the procedure and requirements set out in sections 30D to 30Q; and
 - (b) apply from the close of the day before separation day.

Further transitional provisions relating to Chorus's unbundled bitstream access service

23Z Certain clauses of standard terms determination do not apply to Chorus's unbundled bitstream access service

Despite **section 23V(1)**, the following clauses of Schedule 2 of the standard terms determination for Telecom's unbundled bitstream access service dated 12 December 2007 do not apply to Chorus's unbundled bitstream access service from the close of the day before separation day:

- (a) clause 4 (adjustment to basic UBA monthly (with POTS) charge):
- (b) clause 5 (adjustment to enhanced UBA monthly (with POTS) charge):
- (c) clause 6 (adjustment to enhanced UBA service (without POTS) charges).

23ZA Certain provisions of Part 2 and Schedule 3 of principal Act do not apply in relation to Chorus's unbundled bitstream access service

Despite **section 23V(2)**, the following provisions of the principal Act do not apply in relation to Chorus's unbundled bit-

stream access service for the period starting on separation day and ending 3 years after separation day:

- (a) section 30R (review of standard terms determination), except as provided in **sections 23X and 23ZB**;
- (b) section 30V (application for residual terms determination);
- (c) section 59 (reconsideration of determination);
- (d) clause 1(1) and (5) of Schedule 3 (Commission's investigation).

23ZB Review of standard terms determination for unbundled bitstream access service before expiry of 1 year from separation day

- (1) The Commission must make reasonable efforts to do the following before the expiry of 1 year from separation day:
 - (a) review the standard terms determination for Chorus's unbundled bitstream access service under section 30R for the purpose of making any changes that may be necessary in order to implement the initial and final pricing principles applicable after the expiry of 3 years from separation day; and
 - (b) give public notice of the result of the review.
- (2) To avoid doubt, no variation of, addition to, or deletion of terms specified in the standard terms determination as a result of the Commission's review in accordance with **subsection (1)** may take effect before the expiry of 3 years from separation day.

23ZC Party to standard terms determination for Chorus's unbundled bitstream access service may apply for pricing review

- (1) A party to the standard terms determination for Chorus's unbundled bitstream access service may apply for a pricing review under section 42 as if the review under **section 23ZB(1)(a)** were a determination made under section 30M regarding the price payable for the service.
- (2) The pricing review application must be made in accordance with section 43, except that section 43(b)(ii) (which relates to the time within which an application under section 42 must be made) does not apply and the application must be given to the Commission not later than 25 working days after the Commission gives public notice of the review in accordance with **23ZB(1)(b)**.

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

**23ZD Chorus's unbundled bitstream access prices
grandfathered**

- (1) This clause applies if an access seeker purchases a UBA Service before separation day.
- (2) Chorus must, for the period starting on separation day and ending 3 years after separation day, provide each service component identified in items 2.1 to 2.8 of Schedule 2 of the standard terms determination for Telecom's unbundled bitstream access service dated 12 December 2007 at whichever of the following is the lower:
- (a) the price that applies under the determination for 1 April 2011;
- (b) the price set out in the standard terms determination on the day before separation day.
- (3) From the end of the period referred to in **subsection (2)**, the initial pricing principle or the final pricing principle (whichever applies) for Chorus's unbundled bitstream access service applies to unbundled bitstream access services purchased by access seekers before separation day.
- (4) In this clause, **UBA Service** has the meaning set out in clause 1 of the standard terms determination for Telecom's unbundled bitstream access service dated 12 December 2007.

Miscellaneous

23ZE Operational separation undertakings cease to have effect

The separation undertakings given by Telecom in favour of the Crown for the purposes of Part 2A (before its repeal and substitution by this Act) cease to have legal effect from the close of the day before separation day.

New clause 33

To add the following clause after clause 32 (after line 31 on page 44):

33 Restrictive trade practices authorisations in respect of Telecom and Vodafone participation in Rural Broadband Initiative

- (1) The following are authorised:
- (a) the joint Telecom/Vodafone proposal made on 12 November 2010 in response to the Rural Broadband Initiative request for proposals issued on 26 August 2010; and

- (b) any agreement that is entered into between the Crown and Telecom, or the Crown and Vodafone, to provide funding to Telecom or Vodafone in accordance with the Rural Broadband Initiative.
- (2) In this section, unless the context otherwise requires,—
Crown includes Crown Fibre Holdings Limited
Rural Broadband Initiative means the programme to develop enhanced broadband infrastructure in non-urban areas of New Zealand with the support of Crown grant funding
Vodafone means Vodafone New Zealand Limited and its subsidiaries.
- (3) The authorisations apply to any contract, arrangement, or understanding that is entered into before the date on which this section comes into force as if the authorisation were in force at the time of entry.
- (4) The authorisations do not apply to a contract, arrangement, or understanding that is entered into later than 6 months after the date on which this section comes into force.
- (5) The authorisations must be treated as if they were authorisations granted by the Commerce Commission under section 58(1), (2), (5), and (6) of the Commerce Act 1986.
- (6) Sections 65 and 91 to 97 of the Commerce Act 1986 do not apply to the authorisations.
- (7) The effect of the authorisations is the same as that stated in section 58A(1) and (2) of the Commerce Act 1986.

Schedule 1

Heading to Schedule 1: to omit this heading (lines 2 to 4 on page 45) and substitute the following headings:

Further amendments to principal Act

Part 1

**Amendments relating to telecommunications
service obligations**

New Parts 2 and 3: to add the following Parts (after line 18 on page 45):

Part 2

**Amendments relating to multi-unit complexes to
which fibre is to be deployed**

New section 118A

Insert after section 118:

“118A Notices under this subpart

- “(1) Any notice that is required to be given to any person under this subpart must be in writing.

New section 118A—*continued*

“(2) To avoid doubt, **subsection (1)** does not apply to notices given in any proceedings in a court.”

Section 156

Repeal.

Section 156T(1)(b)

Omit “either” and substitute “any”.

Add “; or” and also:

“(iii) the provisions are necessary to implement policy relating to the deployment of FTTP networks.”

Part 3**Amendments relating to wireless works****Section 5**

Insert in its appropriate alphabetical order:

“**wireless works** means any works relating to the provision of any wireless or mobile telecommunications services”.

Heading above section 135

Insert “*or wireless works*” after “*lines*”.

Heading to section 135

Insert “**or wireless works**” after “**lines**”.

Section 135(1)(a)

Insert “or wireless works” after “lines”.

Section 135(1)(c)

Insert “or wireless works” after “lines” in each place where it appears.

Section 147A(1)

Insert “wireless works,” after “cabinets,” in each place where it appears.

Section 147B(2)

Insert “wireless works,” after “cabinets,”.

Section 147B(4)

Insert “wireless works,” after “cabinets,” in each place where it appears.

Heading to section 148

Insert “or wireless works” after “line”.

Section 148(1)

Omit “line or” and substitute “line, wireless works, or other”.

Section 148(2)

Omit “works” and substitute “wireless works or other works”.

Section 153(1)

Omit “line or” and substitute “line, wireless works, or other”.

New Schedule 2A

To insert the following schedule after *Schedule 2* (after line 15 on page 46):

Schedule 2A **s 23S**
Amendments to Schedule 1 of principal Act

Clause 1

Definition of **local loop network**: omit and substitute:

“**local loop network** means that part of Chorus’s copper network that connects the end-user’s building (or, where relevant, the building’s distribution frame) to the handover point in Chorus’s local telephone exchange or distribution cabinet (or equivalent facility)”.

Insert in their appropriate alphabetical order:

“**Chorus’s local telephone exchange** means a local telephone exchange (or equivalent facility) where Chorus’s local loop network terminates, whether that local telephone exchange is owned and operated by Chorus or by any other person

“**geographically averaged price** means a price that is calculated as an average of all geographically non-averaged prices for a designated service throughout the geographical extent of New Zealand”.

New clauses 4A and 4B

Insert after clause 4:

“4A Application of pricing principles for Chorus’s unbundled copper local loop network and Chorus’s unbundled bitstream access

In applying the initial pricing principle or the final pricing principle for the following designated services, the Commission must determine a geographically averaged price:

“(a) Chorus’s unbundled bitstream access service:

“(b) Chorus’s unbundled copper local loop network service.

New clauses 4A and 4B—continued

“4B Application of pricing principles for designated access services

In applying an applicable initial pricing principle or an applicable final pricing principle, the Commission must ensure that an access provider of a designated service does not recover costs that the access provider is recovering in the price of a designated or specified service provided under a determination prepared under section 27 or 30M or a designated or specified service provided on commercial terms.”

Subpart 1 of Part 2

Heading to item headed **Interconnection with Telecom’s fixed PSTN**: omit “**Telecom’s**” and substitute “**a**”.

Item relating to *Description of service*: omit “Telecom’s” and substitute “a”.

Item relating to *Access provider*: omit and substitute the following item:

Access provider: A person who operates a fixed PSTN

Subpart 1 of Part 2

Item headed **Interconnection with fixed PSTN other than Telecom’s**: omit.

Subpart 1 of Part 2

Heading to item headed **Retail services offered by means of Telecom’s fixed telecommunications network**: omit “**Telecom’s**” and substitute “**a**”.

Item relating to *Description of service*: omit and substitute:

Description of service applicable before the expiry of 3 years from separation day: A non-price-capped retail service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets:

- (a) all markets in which Telecom faces limited, or is likely to face lessened, competition for that service:
- (b) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened,

Subpart 1 of Part 2—continued

competition for that service as determined by the Commission

<i>Description of service applicable after the expiry of 3 years from separation day:</i>	A non-price-capped retail service, other than a local and access calling service, offered by Telecom to end-users by means of a fixed telecommunications network in the following markets: (a) all markets in which Telecom faces limited, or is likely to face lessened, competition for that service: (b) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for that service as determined by the Commission
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Subpart 1 of Part 2

Item headed **Residential local access and calling service offered by means of Telecom’s fixed telecommunications network**: omit and substitute:

Local access and calling service offered by means of a fixed telecommunications network

<i>Description of service applicable before the expiry of 3 years from separation day:</i>	A price-capped residential local access and calling service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets: (a) all markets in which Telecom faces limited, or is likely to face lessened, competition for the service: (b) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for price-capped residential local access and calling service as determined by the Commission
<i>Description of service applicable after the expiry of 3 years from separation day:</i>	A local access and calling service offered by Telecom to end-users by means of a fixed telecommunications network in the following markets: (a) all markets in which Telecom faces limited, or is likely to face lessened, competition for the service: (b) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for the service as determined by the Commission
<i>Conditions applicable before the expiry of 3 years from separation day:</i>	That either— (a) Telecom faces limited, or is likely to face lessened, competition in a market for a price-capped residential local access and calling service offered by Telecom to end-users; or (b) Telecom does not face limited, or is not likely to face lessened, competition for a price-capped residential local access and calling service offered by Telecom to end-users, and the Commission has decided to require a local access and calling service to be wholesaled

Subpart 1 of Part 2—continued

<i>Conditions applicable after the expiry of 3 years from separation day:</i>	That either—
	(a) Telecom faces limited, or is likely to face lessened, competition in a market for a local access and calling service offered by Telecom to end-users; or
	(b) Telecom does not face limited, or is not likely to face lessened, competition for a local access and calling service offered by Telecom to end-users, and the Commission has decided to require a local access and calling service to be wholesaled
<i>Access provider:</i>	Telecom
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle applicable before the expiry of 3 years from separation day:</i>	Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus 2%
<i>Initial pricing principle applicable after the expiry of 3 years from separation day:</i>	For a price-capped residential local access and calling service, either—
	(a) Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus 2%; or
	(b) if a person is also purchasing Chorus's unbundled bit-stream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service
	For a non-price-capped local access and calling service, either—
	(a) retail price less a discount benchmarked against discounts in comparable countries that apply retail price minus avoided costs saved pricing in respect of these services, in the case of a service offered by Telecom in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; or
	(b) retail price less a discount benchmarked against discounts in comparable countries that apply retail price minus actual costs saved pricing in respect of these services, in the case of a service offered by Telecom in markets in which Telecom does not face limited, or lessened, competition for that service; or
	(c) if a person is also purchasing Chorus's unbundled bit-stream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the

Subpart 1 of Part 2—continued

- final pricing principle for Chorus's unbundled copper low frequency service; or
- (d) if a person is also purchasing Chorus's unbundled bit-stream access service in relation to the relevant subscriber line, the price in paragraph (b) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service
- Final pricing principle applicable before the expiry of 3 years from separation day:* Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus actual costs saved
- Final pricing principle applicable after the expiry of 3 years from separation day:* For a price-capped local access and calling service, either—
- (a) Telecom's standard price for its price-capped residential local access and calling service offered to end-users by means of a fixed telecommunications network in the relevant market, minus actual costs saved; or
- (b) if a person is also purchasing Chorus's unbundled bit-stream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service
- For a non-price-capped local access and calling service, either—
- (a) average or best retail price minus a discount comprising avoided costs saved pricing, in the case of a service offered by Telecom in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; or
- (b) average or best retail price minus a discount comprising actual costs saved, in the case of a service offered by Telecom in markets in which Telecom does not face limited, or is not likely to face lessened, competition for that service; or
- (c) if a person is also purchasing Chorus's unbundled bit-stream access service in relation to the relevant subscriber line, the price in paragraph (a) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the final pricing principle for Chorus's unbundled copper low frequency service; or
- (d) if a person is also purchasing Chorus's unbundled bit-stream access service in relation to the relevant subscriber line, the price in paragraph (b) minus the price for Chorus's full unbundled copper local loop network plus the relevant price (if any) in either paragraph (b) of the initial pricing principle or paragraph (b) of the

Subpart 1 of Part 2—*continued*

final pricing principle for Chorus’s unbundled copper
low frequency service

*Requirement re-
ferred to in sec-
tion 45 or fi-
nal pricing prin-
ciple:*

Nil

*Additional mat-
ters that must be
considered re-
garding applica-
tion of section
18:*

Nil

Subpart 1 of Part 2

Heading to item headed **Bundle of retail services offered by means of Telecom’s fixed telecommunications network**: omit “**Telecom’s**” and substitute “**a**”.

Item relating to *Description of service*: omit and substitute:

Description of service:

A bundle of retail services offered by Telecom to end-users by means of a fixed telecommunications network in the following markets:

- (a) all markets in which Telecom faces limited, or is likely to face lessened, competition for that bundle of retail services:
- (b) all, some, or no markets in which Telecom does not face limited, or is not likely to face lessened, competition for that bundle of retail services as determined by the Commission

Item relating to *Conditions*: omit “its fixed telecommunications network” and substitute “a telecommunications network”.

Subpart 1 of Part 2

Heading to item headed **Retail services offered by means of Telecom’s fixed telecommunications network as part of bundle of retail services**: omit “**Telecom’s**” and substitute “**a**”.

Subpart 1 of Part 2—continued

Item relating to *Description of service*: omit and substitute:

Description of service:

A retail service that—

- (a) is, or has previously been, offered separately by Telecom to end-users by means of a fixed telecommunications network; and
- (b) is offered by Telecom to end-users as part of a bundle of retail services—
 - (i) in markets in which Telecom faces limited, or is likely to face lessened, competition for that service; and
 - (ii) if the effect of the bundled price is likely to significantly reduce the ability of an efficient rival to contest the market

Subpart 1 of Part 2

Items headed **Telecom’s unbundled bitstream access, Telecom’s unbundled bitstream access backhaul, Telecom’s unbundled copper local loop network, Telecom’s unbundled copper local loop network co-location, Telecom’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange), and Telecom’s unbundled copper local loop network backhaul (telephone exchange to interconnect point)**: omit and substitute:

Chorus’s unbundled bitstream access

Description of service: of

A digital subscriber line enabled service (and its associated functions, including the associated functions of operational support systems) that enables access to, and interconnection with, that part of a fixed PDN that connects the end-user’s building (or, where relevant, the building’s distribution frame) to a first data switch (or equivalent facility), other than a digital subscriber line access multiplexer (**DSLAM**)

To avoid doubt, unless otherwise requested by the access seeker, the supply of this service must not be conditional on a requirement that the access seeker, end-users, or any other person must purchase any other service from the access provider

Conditions:

That either—

- (a) Chorus faces limited, or is likely to face lessened, competition in a relevant market; or
- (b) Chorus does not face limited, or is not likely to face lessened, competition in a relevant market, and the Commission has decided to require Chorus’s unbundled bitstream access to be wholesaled in that market

Subpart 1 of Part 2—continued

<i>Access provider:</i>	Chorus
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6 and the additional limit that Chorus is only required to provide access to the trunk side of the first data switch or equivalent facility (for which purpose a DSLAM is not an equivalent facility)
<i>Initial pricing principle applicable before the expiry of 3 years from separation day:</i>	<p>Retail price (as imputed by the Commission, having regard to the price of any other digital subscriber line enabled service, including the imputed price of any such service offered as part of a bundle of retail services) minus a discount benchmarked against discounts in comparable countries that apply retail price minus avoided costs saved pricing in respect of the service</p> <p>Plus, if no person is also purchasing a local access and calling service from Telecom in relation to the relevant subscriber line, all or any of the costs of Chorus's local loop network that would usually be recovered by Telecom from an end-user of its local access and calling service, as determined by benchmarking against comparable countries (unless the Commission considers that the price already takes into account all of the relevant costs)</p>
<i>Initial pricing principle applicable after the expiry of 3 years from separation day:</i>	The price for Chorus's unbundled copper local loop network plus benchmarking additional costs incurred in providing the unbundled bitstream access service against prices in comparable countries that use a forward-looking cost-based pricing method
<i>Final pricing principle applicable before the expiry of 3 years from separation day:</i>	<p>Either—</p> <p>(a) retail price (as imputed by the Commission, having regard to the price of any other digital subscriber line enabled service, including the imputed price of any such service offered as part of a bundle of retail services) minus a discount comprising avoided costs saved, in a case where Chorus faces limited, or is likely to face lessened, competition in a relevant market; or</p> <p>(b) retail price (as imputed by the Commission, having regard to the price of any other digital subscriber line enabled service, including the imputed price of any such service offered as part of a bundle of retail services) minus a discount comprising actual costs saved, in a case where Chorus does not face limited, or lessened, competition in a relevant market</p> <p>Plus, in either case, if no person is also purchasing a local access and calling service from Telecom in relation to the relevant subscriber line, all or any of the costs of Chorus's local loop network that would usually be recovered by Telecom from an end-user of its local access and calling service, as determined by identifying the relevant costs (unless the Commission considers that the price already takes into account all of the relevant costs)</p>

Subpart 1 of Part 2—continued

Final pricing principle applicable after the expiry of 3 years from separation day: The price for Chorus’s unbundled copper local loop network plus TSLRIC of additional costs incurred in providing the unbundled bitstream access service

Requirement referred to in section 45 or final pricing principle: Nil

Additional matters that must be considered regarding application of section 18: The Commission must consider relativity between this service and Chorus’s unbundled copper local loop network service (to the extent that terms and conditions have been determined for that service)

Chorus’s unbundled bitstream access backhaul

Description of service: A service (and its associated functions, including the associated functions of operational support systems) that provides transmission capability (whether the transmission capacity is copper, fibre, or anything else) between the trunk side of a first data (or equivalent facility), other than a DSLAM, that is connected to the end-user’s building (or, where relevant, the building’s distribution frame) and the access seeker’s nearest available point of interconnection

Conditions: That either—

- (a) Chorus faces limited, or is likely to face lessened, competition in a market for transmission capacity between the first data switch (or equivalent facility) and the access seeker’s nearest available point of interconnection; or
- (b) Chorus does not face limited, or is not likely to face lessened, competition in a market for transmission capacity between the first data switch (or equivalent facility) and the access seeker’s nearest available point of interconnection, and the Commission has decided to require Chorus’s unbundled bitstream access to be wholesaled in that market

Access provider: Chorus

Access seeker: A service provider who seeks access to the service

Access principles: The standard access principles set out in clause 5

Limits on access principles: The limits set out in clause 6

Initial pricing principle: Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method

Final pricing principle: TSLRIC

Subpart 1 of Part 2—continued

Requirement referred to in section 45 or final pricing principle: Nil

Additional matters that must be considered regarding application of section 18: Nil

Chorus's unbundled copper local loop network

Description of service: of A service (and its associated functions, including the associated functions of operational support systems) that enables access to, and interconnection with, Chorus's copper local loop network (including any relevant line in Chorus's local telephone exchange or distribution cabinet)

Conditions: Nil

Access provider: Chorus

Access seeker: A service provider who seeks access to the service, except, until 3 years after separation day, Telecom

Access principles: The standard access principles set out in clause 5

Limits on access principles: The limits set out in clause 6

Initial pricing principle: Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method

Final pricing principle: TSLRIC

Requirement referred to in section 45 or final pricing principle: Nil

Additional matters that must be considered regarding application of section 18: The Commission must consider relativity between this service and Chorus's unbundled bitstream access service (to the extent that the terms and conditions have been determined for that service)

Subpart 1 of Part 2—continued

Chorus's unbundled copper local loop network co-location

<i>Description of service:</i>	<p>A service (and its associated functions, including the associated functions of operational support systems) that provides co-location facilities for an access seeker's equipment, and access to the handover point, at Chorus's local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of providing access to, and interconnection with,—</p> <p>(a) Chorus's unbundled copper local loop network (including any necessary supporting equipment); and</p> <p>(b) Chorus's unbundled copper low frequency service (including any necessary supporting equipment)</p> <p>To avoid doubt, the same instance of this service can be used to support both Chorus's unbundled copper local loop network and Chorus's unbundled copper low frequency service</p> <p>To avoid doubt, access seeker equipment includes the equipment of any person other than the access seeker (including any line) if that equipment is being used to support the provision of backhaul for the access seeker</p> <p>To avoid doubt, this service includes access to, and the use of, space in, on, or around Chorus's local telephone exchange or distribution cabinet (or equivalent facility) for the purposes of installing and maintaining the access seeker's equipment</p>
<i>Conditions:</i>	Nil
<i>Access provider:</i>	Chorus
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6 and the additional limit of the interests of other service providers who are co-located in the relevant facilities
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method
<i>Final pricing principle:</i>	TSLRIC
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil

Subpart 1 of Part 2—continued

Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)

<i>Description of service:</i>	A service (and its associated functions, including the associated functions of operational support systems) that provides transmission capacity in a network (whether the transmission capacity is copper, fibre, or anything else) between the handover point in Chorus’s distribution cabinet (or equivalent facility) and the handover point in Chorus’s local telephone exchange for the purposes of providing access to, and interconnection with, Chorus’s unbundled copper local loop network (including any necessary supporting equipment)
<i>Conditions:</i>	Nil
<i>Access provider:</i>	Chorus
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method
<i>Final pricing principle:</i>	TSLRIC
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil

Chorus’s unbundled copper local loop network backhaul (telephone exchange to interconnect point)

<i>Description of service:</i>	<p>A service (and its associated functions, including the associated functions of operational support systems) that provides transmission capacity in a network (whether the transmission capacity is copper, fibre, or anything else) between the handover point in Chorus’s local telephone exchange and the access seeker’s nearest available point of interconnection for the purposes of providing access to, and interconnection with,—</p> <p>(a) Chorus’s unbundled copper local loop network (including any necessary supporting equipment); and</p> <p>(b) Chorus’s unbundled copper low frequency service (including any necessary supporting equipment)</p> <p>To avoid doubt, the same instance of this service can be used to support both Chorus’s unbundled copper local loop network and Chorus’s unbundled copper low frequency service</p>
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Subpart 1 of Part 2—continued

<i>Conditions:</i>	That either— (a) Chorus faces limited, or is likely to face lessened, competition in a market for transmission capacity between Chorus’s local telephone exchange and the access seeker’s nearest available point of interconnection; or (b) Chorus does not face limited, or is not likely to face lessened, competition in a market for transmission capacity between Chorus’s local telephone exchange and the access seeker’s nearest available point of interconnection, and the Commission has decided to require Chorus’s unbundled copper local loop network backhaul (telephone exchange to interconnect point) to be wholesaled in that market
<i>Access provider:</i>	Chorus
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method
<i>Final pricing principle:</i>	TSLRIC
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil

Subpart 1 of Part 2: new item

Add:

Chorus’s unbundled copper low frequency service

<i>Description of service:</i>	<i>of</i> A service (and its associated functions, including the associated functions of operational support systems) that enables access to, and interconnection with, the low frequency (being the frequency band between 300 and 3400 Hz) in Chorus’s copper local loop network (including any relevant line in Chorus’s local telephone exchange or distribution cabinet) that connects the end-user’s building (or, where relevant, the building’s distribution frame) to the handover point in Chorus’s local telephone exchange
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Subpart 1 of Part 2: new item—continued

<i>Conditions:</i>	Chorus's unbundled copper low frequency service is only available where Chorus's local loop that connects the end-user's building (or, where relevant, the building's distribution frame) to the handover point in Chorus's local telephone exchange remains in place To avoid doubt, there is no obligation on Chorus that Chorus's copper network that connects a cabinet (or equivalent facility) and Chorus's local telephone exchange remain in place or be maintained if that part of Chorus's copper network is only being used to provide Chorus's unbundled copper low frequency services
<i>Access provider:</i>	Chorus
<i>Access seeker:</i>	A service provider who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Either— (a) the geographically averaged price for Chorus's full unbundled copper local loop network; or (b) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the cost of any additional elements of Chorus's local loop network that are not recovered in the price for Chorus's unbundled bitstream access service
<i>Final pricing principle:</i>	Either— (a) the geographically averaged price for Chorus's full unbundled copper local loop network; or (b) if a person is also purchasing Chorus's unbundled bitstream access service in relation to the relevant subscriber line, the TSLRIC of any additional elements of Chorus's local loop network that are not recovered by the price for Chorus's unbundled bitstream access service
<i>Requirement referred to in section 45 or final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil

Explanatory note

The Bill as introduced identified that some additional legislative amendments may be required in support of the Government's initiatives, depending on the forthcoming results from the Ultra-fast Broadband Initiative and Rural Broad-

band Initiative competitive tender process. The Bill as introduced flagged that a Supplementary Order Paper would deal with various issues that would arise in the following areas:

- access rights to multi-unit complexes, private land, and the road reserve when constructing or maintaining telecommunications networks;
- amendments to enable the structural separation of Telecom NZ in the event that Telecom is selected as a preferred supplier under the UFB Initiative and that it accordingly decides to proceed with a demerger of its access network business;
- other amendments to support the implementation of the Government's telecommunications policy programme.

This Supplementary Order Paper contains some indicative amendments in these areas, which reflect the Government's proposals on these issues based on the current available information. It is anticipated that the indicative amendments will, however, require refinement as the process continues.

Access rights to multi-unit complexes, private land, and the road reserve when constructing or maintaining telecommunications networks

New clause 17B inserts a *new subpart 3* of Part 4 into the Telecommunications Act 2001 (the **2001 Act**) to provide a process for access to multi-unit complexes that fibre-to-the-premises (FTTP) service providers may use if an access agreement cannot be obtained. Owners may opt out of the process, in which case the service provider has to apply for a court order for access. The new process involves the following steps on the part of the FTTP service provider:

- agreement to be bound by a Code prepared by the Minister relating to access to multi-unit complexes by FTTP service providers; and
- the taking of all reasonable steps to negotiate an agreement for entry with the owner in accordance with the Code; and
- the service of a preliminary notice on each owner of the affected part of the multi-unit complex; and
- the service of a second notice on each owner of the affected part of the multi-unit complex who has not opted out; and
- application to the District Court for an access order in respect of each owner of the affected part of the multi-unit complex who has opted out (which the Court may grant if the owner has acted unreasonably in opting out); and
- membership of a consumer complaints system that provides for the resolution of complaints about access.

This new FTTP access regime applies instead of certain of the existing land access rights that are currently contained in subpart 2 of Part 4 of the 2001 Act. Those existing rights are, first, a right for other network operators to obtain access orders from the District Court, subject to conditions and, secondly, a right of entry in respect of existing works and existing lines built before 1988/1989.

The existing rights apply for the purpose of constructing, erecting, laying, or maintaining lines. The new FTTP access regime also applies to upgrades.

All of the other land access rights in existing Part 4 of the 2001 Act will apply to FTTP service providers, for example, access rights to the road reserve.

New clause 19(3) and Schedule 1 propose amendments to sections 135 to 153 of the 2001 Act to give wireless or mobile network operators the same rights of entry onto road reserves in order to install and maintain works as other network operators currently have in respect of lines.

Amendments to enable the structural separation of Telecom NZ in the event that Telecom is selected as a preferred supplier under the UFB Initiative and that it accordingly decides to proceed with a demerger of its access network business

A *new Part 1A* is inserted into the Bill to deal with the structural separation of Telecom as follows:

- *subpart 1 of new Part 1A* comes into force immediately and contains machinery provisions that are in preparation for separation day. It sets out a process for the Minister to approve an asset allocation between Telecom and Chorus, for the purpose of ensuring that Telecom provides information about the proposed asset allocation to the Minister, and that an overview of the asset allocation plan is made publicly available on or before the demerger of Telecom takes place in accordance with an arrangement to be approved by the High Court under the Companies Act 1993. It also sets out a process for the Minister to approve Chorus undertakings:
- *subpart 2 of new Part 1A* comes into force on separation day. It repeals the existing Part of the 2001 Act (that deals with operational separation), and substitutes a *new Part 2A* that contains the substantive rules that will apply after structural separation. Separation day is the day on which Telecom distributes 100% of the ordinary shares it will hold in Chorus to the holders of ordinary shares in Telecom in accordance with the demerger arrangement:
- *subpart 3 of new Part 1A* contains consequential amendments, saving and transitional provisions, and miscellaneous matters. The first batch (*clauses 23HA to 23S*) come into force on separation day. The rest (*clauses 23T to 23ZE*) come into force immediately.

Approval of asset allocation plan

Subpart 1 of new Part 1A requires Telecom to submit a plan to the Minister (an **asset allocation plan**) that specifies how all of Telecom's assets and liabilities on the day that the company separates will be allocated between Telecom and Chorus, how those assets and liabilities will be transferred or vested, how assets will be used to provide telecommunications services, and key terms of sharing arrangements between Chorus and Telecom (*new clause 23B*). After receipt of the plan, the Minister must decide whether to recommend the making of an Order in Council approving it. The only basis on which the Minister may decline to

recommend that the plan be approved is that it does not meet the information requirements in *new clause 23B*. However, if approval is declined, the Minister must give reasons and may invite Telecom to submit a revised plan. After approval (but no later than separation day), Telecom is required to make an outline of the asset allocation plan publicly available by publishing it on an Internet site. There is a power for Telecom to withhold confidential information from the overview that is made public. Under *new clause 23G*, Telecom must ensure that the separation of Telecom is in accordance with, and gives effect to, the asset allocation plan as approved.

Approval of Chorus undertakings

Subpart 1 of new Part 1A also sets out a process for the Minister to approve Chorus undertakings (see *subpart 4 of new Part 2A* below).

New Part 2A — substantive rules that will apply after structural separation

Subpart 1 of new Part 2A contains preliminary provisions around structural separation.

Monitoring of shared assets, services, and systems

Subpart 2 of new Part 2A relates to arrangements for continued sharing after separation day of systems, services, or assets that will be owned by one or other of the separated entities and that were owned by Telecom on the day before separation day. It establishes a regime under which the Commission will receive executed copies of such arrangements and may monitor and direct the parties to amend any arrangement that does not meet certain requirements (which include that the arrangement must be on arms-length terms between Telecom and Chorus and not be likely to harm competition in telecommunications markets). There are certain enforcement mechanisms to compel alteration of the arrangements, but these do not extend to performance of the written arrangements. *New section 69N* gives the Minister the power to grant an exemption from the requirements of the subpart (which, under the transitional provisions in *subpart 3 of new Part 1A* of the Bill, may be exercised before separation day).

Line of business restrictions

Subpart 3 of new Part 2A prohibits Chorus, or any related party of Chorus, from participating in the supply of retail telecommunications services. This will ensure, on an ongoing basis, a separation of functions and interests between the ownership of the copper local loop and other legacy assets on the one hand, and the provision of retail services on the other hand. The prohibition assumes, as does the rest of the Act, that Chorus will continue after separation day to hold the assets in accordance with the asset allocation plan.

Undertakings by Chorus

Subpart 4 of new Part 2A requires Chorus to give undertakings to supply wholesale services using its copper access network on a non-discrimination basis and

to provide a subset of those services, which Chorus consumes and which it supplies to its competitors, on an equivalence basis. It must also give further undertakings relating to the assurance of achievement and monitoring of those standards (*new section 69X*). The penalties that apply for a breach of the undertakings are currently the same as those that apply to a breach by Telecom of its operational separation undertakings.

Miscellaneous

Subpart 5 of new Part 2A deals with miscellaneous issues, including the following:

Public Works Act 1981

New section 69XF relates to the application of sections 40 to 42 of the Public Works Act 1981. In simple terms, these apply when land, including Maori land, is no longer required for “public work”. Sections 40 and 41 set out an offer-back process, requiring the land to be offered for sale to the person (or successor) from whom it was acquired. Where the structural separation of Telecom involves the transfer of land from Telecom to Chorus, that transfer, in the case of both land originally acquired by the Post Office and by Telecom under the State-Owned Enterprises Act 1986, would be likely to trigger the application of these provisions. *New section 69XF(1)* ensures that the transfer of such land from Telecom to Chorus does not have this effect. However, the requirements of sections 40 and 41 of the Public Works Act 1981 do apply to any future disposals or transfers of the land by Chorus and the new section sets out requirements in relation to the offer-back process (*subsections (3) and (4)*).

Resource Management Act 1991 issues

In order to ensure that, after separation day, Chorus and Telecom are in an equivalent position to that which Telecom was in immediately before separation day, *new sections 69XG and 69XH*—

- confer requiring authority status on Chorus;
- transfer specified designations from Telecom to Chorus;
- given the transfer of designations from Telecom to Chorus, grant additional specified designations back to Telecom.

Requiring authority status for Chorus is approved for an equivalent purpose to that for which Telecom was approved immediately before separation day. The status will be able to be revoked under the Resource Management Act 1991.

The designations transferred to Chorus, and granted additionally to Telecom, are in the same form and content as Telecom’s designations were immediately before separation day. The designations transferred to Chorus are to be treated as earlier designations, for the purposes of section 177 of the Resource Management Act 1991, with respect to the designations additionally granted to Telecom. Those designations are subject to the ongoing application of the Resource Management Act 1991, including any notification requirements.

Restrictive covenants

New section 69XI relates to land that Telecom transfers to Chorus on separation day. The benefit of any covenants that affect that land will automatically transfer to Chorus, under normal operation of law. *New section 69XI* provides that Telecom will also continue to get the benefit of those covenants, along with Chorus.

Government Superannuation Fund Act 1956

Employees of Telecom or its subsidiaries who were members of the Government Superannuation Fund (**GSF**) before 1 January 1988 are currently entitled to continue that membership as if employment with Telecom or its subsidiaries were Government service. Telecom pre-1988 GSF-member employees will continue to be protected by existing protection that currently applies to Telecom. *New section 69XJ* gives corresponding protection for pre-1988 GSF-member employees of Chorus. It also means that if a pre-1988 GSF-member employee of Chorus were later to become an employee of Telecom, or vice versa, the protection continues. The payment of GSF contributions by Chorus to the Crown is intended to be addressed by deed.

Taxation consequences of structural separation

Subpart 6 of new Part 2A provides for the tax treatment of the transfer of assets and liabilities (designated assets and liabilities) to the Chorus Group from Telecom, as well as providing for the tax treatment of the demerger distribution to Telecom Corporation of New Zealand Limited shareholders, as part of demerging the Chorus Group out of Telecom. The transfer of the designated assets and liabilities to the Chorus Group will not give rise to any tax consequences under the Inland Revenue Acts that would not have arisen if Telecom and the Chorus Group were the same person. The demerger distribution to Telecom Corporation of New Zealand Limited shareholders, as part of demerging the Chorus Group out of Telecom, will not give rise to any tax consequences that would not have arisen if the transfer of the designated assets and liabilities and the demerging of the Chorus Group out of Telecom had not occurred.

Commerce Act 1986 authorisations

Subpart 7 of new Part 2A exempts from the Commerce Act 1986 certain aspects of the arrangements with the Crown to provide ultra-fast broadband to New Zealanders. The effect is that sections 27 and 29 (which relate to restrictive trade practices) and Part 3 (which relates to business acquisitions) of that Act will not apply to the UFB arrangements that include Telecom.

The restrictive trade practice exemption in *new section 69XZA* applies to—

- any contracts between the Crown and Telecom that are necessary to give effect to the selection of Telecom as a UFB partner. This exemption covers all arrangements, understandings, and acquisitions that, at any time, may flow from the selection to the extent that they are “necessary to give effect to” the selection:

- any contract between the Crown, Telecom and a UFB partner in a particular region or regions, under which Telecom transfers fibre optic network assets to a local fibre company owned by the Crown and the UFB partner.

The business acquisition exemption in *new section 69XZB(1)(a) and (b)* is intended to provide for a scenario in which—

- Chorus and a number of regional lines or fibre companies (**local partners**) are selected as the Crown's partners in different regions:
- in each region, a new company will be established with responsibility for the implementation of the UFB initiative:
- the shareholders in the new company will be Chorus, the local partner, and Crown Fibre Holdings Limited:
- the new company will acquire any existing fibre assets from Chorus and the local partner.

This acquisition might result in a lessening of competition under Part 3 of the Commerce Act 1986 to the extent that these assets are pooled under the control of one company.

The business acquisition exemption in *new section 69XZB(1)(c)* is intended to provide for a scenario in which Chorus might be selected as the only partner in a region. The Crown may provide UFB funding in these circumstances through investment in Chorus shares or assets. The section authorises any acquisition by the Crown of Telecom's shares or assets pursuant to its selection as a partner.

Under existing provisions in the Commerce Act 1986, the Commerce Commission may grant authorisations from the Part 2 requirements, and from the Part 3 requirements (for example, if satisfied that the acquisition will result in a benefit to the public). However, this is likely to be difficult to complete in a time frame that will allow the timely completion of the UFB partner selection process. *New subpart 7* instead grants statutory authorisations which will avoid the need for the usual Commerce Commission processes.

Telecommunications service obligations

After the separation day, the deemed TSO instrument known as the Local Service TSO (the Telecommunications Service Obligations (TSO) Deed for Local Residential Telephone Service dated December 2001, provided by Telecom) will no longer be operable because the assets and inputs required to meet the obligations under the instrument will be split between Telecom and Chorus. Amendments are therefore made to—

- accommodate the split of the Local Service TSO obligations across 2 separate TSO providers:
- ensure that the obligations continue to be included within the definition of a deemed TSO instrument:
- provide for liability for breaches of obligations where a TSO service is delivered by 2 providers.

These amendments, made by *new clauses 23HA to 23HH*, do not come into force until separation day (see *new clause 2(2)*), by which stage the amendments relat-

ing to TSO obligations made by *Part 1* of the Bill would already be in force (see *new clause 2(1)*). The amendments in *new clauses 23HA to 23HH* are therefore made to the 2001 Act as if it had already been amended by *Part 1* of the Bill.

New section 101A, inserted by *new clause 17A*, requires the Ministry to commence a review of the deemed TSO arrangements and report to the Minister on its findings not later than the end of 2013.

Amendments to Schedule 1 of 2001 Act

New Schedule 2A sets out a number of amendments to the regime for designated access services in Schedule 1 to ensure that it still functions after structural separation of Telecom. These fall into 2 categories—

- amendments to subpart 1 of Part 1 of Schedule 1, primarily to introduce new pricing rules:
 - *new clause 4A* of subpart 1 of Part 1 requires the Commission to determine regulated prices for the unbundled copper local loop network service and the unbundled bitstream access services that are averaged across the national geographic footprint of New Zealand. Under the transitional provision in *new clause 23X(1)* of the Bill, the Commission is required to make reasonable efforts to review the existing standard terms determinations for these services before separation day for the purpose of making changes required to implement this amendment. However, no changes may take effect until after separation day and, in the case of the unbundled copper local loop network service, the effect of *new clause 23X(2)* of the Bill is that the national geographic average price will not become effective until 3 years after separation day:
 - *new clause 4B* of subpart 1 of Part 1 sets out a new pricing rule that requires the Commission, when implementing any initial or a final pricing principle for a designated service, to ensure that there is no double recovery of costs by an access provider in circumstances where multiple services are supplied over the same infrastructure:
- amendments to the service descriptions in subpart 2 of Part 1. Key amendments made have the effect of—
 - changing the pricing principles for unbundled bitstream access service from retail-minus to cost-based:
 - ensuring that the unbundled bitstream access service, rather than the **POTS** (plain old telephone service), recovers the line costs where unbundled bitstream access is purchased:
 - ensuring that the pricing principles for the residential local access and calling service match the changes to the unbundled bitstream access pricing principles:
 - introducing a new unbundled copper low frequency service to ensure access seekers can provide their own POTS voice services in combination with naked unbundled bitstream access or the amended unbundled bitstream access service. Under the transi-

- tional provisions, the Commission must make reasonable efforts to make a standard terms determination for this service before separation day (*new clause 23Y*).
- Transitional provisions in *new clauses 23Z to 23ZC* also have the effect of “freezing” the unbundled bitstream access service—
 - *clause 23Z* has the effect of freezing the prices for the unbundled bitstream access service on separation day at the regulated prices effective on separation day:
 - *new clause 23X(1)(a)* requires the Commission to make reasonable efforts to complete a review of the standard determination for this service before separation day, for the purpose of making any changes necessary to implement any changes to Schedule 1, except the pricing principles applicable after the expiry of 3 years from separation day. *Clause 23ZB* requires the Commission to make reasonable efforts to conduct a review before the expiry of 1 year after separation day for the purpose of making any changes necessary to implement the pricing principles applicable after the expiry of 3 years from separation day, although no changes may take effect before the expiry of that 3-year period. Within 25 working days after the Commission notifies the results of the latter review, a party to the standard terms determination can apply for a pricing review (*new clause 23ZC*). With the exception of the 2 reviews required under *new clauses 23X and 23ZB*, *new clause 23ZA* prohibits the Commission from initiating or commencing, for a period of 3 years from separation day, a Schedule 3 investigation under clause 1(1) of Schedule 3, a review under section 30R, an application for a residual terms determination under section 30V, or a reconsideration under section 59 in respect of the unbundled bitstream access service:
 - access seekers for the unbundled bitstream access service will have contracted with end-users for the provision of services in reliance on the wholesale prices prevailing at the time. One impact of the amendments made to Schedule 1 is to average the price of unbundled bitstream access, which will materially increase the price of one form of unbundled bitstream access for access seekers taking the wholesale service. To protect access seekers who have contracted retail obligations in reliance on this unbundled bitstream access wholesale price, the wholesale price is therefore “grandfathered” on the day before separation day. The effect of *new clause 23ZD* is that it grandfathers the price of Chorus’s unbundled bitstream access service for services purchased by access seekers before separation day, the grandfathered price being the regulated price that applies under the standard terms determination for 1 April 2011, or the price set out in the determination on the day before separation day, whichever is the lower.

Other amendments to support the implementation of the Government's telecommunications policy programme

New clause 33 exempts from the Commerce Act 1986 certain aspects of the arrangements with the Crown to provide rural broadband to New Zealanders. The effect is that sections 27 and 29 of that Act (which relate to restrictive trade practices) will not apply to the rural broadband arrangements in so far as they relate to Telecom and Vodafone.
