

TELECOM OPERATIONAL SEPARATION

Terms of Reference of the Independent Oversight Group

As adopted by the Telecom Board on 10 April 2008

Overview

With effect from 31 March 2008, Telecom operationally separated in accordance with legally binding undertakings (*Undertakings*) which it gave to the Government under the Telecommunications Act 2001.

The Undertakings require Telecom to establish the Independent Oversight Group (*I/OG*) to monitor, report and advise on Telecom's compliance with the Undertakings. The IOG's role does not extend to executive policy making for Telecom or any Telecom Business Unit.

These Terms of Reference set out the functions, powers, and the key requirements and responsibilities, of the IOG as required by the Undertakings. In these Terms of Reference, capitalised terms have the same meanings as in the Undertakings and numbers in brackets are references to clauses of the Undertakings.

In the event of any conflict or inconsistency between these Terms of Reference and the Undertakings, the Undertakings shall prevail to the extent of that conflict or inconsistency.

A Functions and powers

- 1 The functions of the IOG are to:
 - (a) consider the key performance indicators and codes of conduct prepared by Telecom in accordance with the Undertakings in consultation with the IOG; (*79.1(a), 84.1*)
 - (b) recommend to the Board the key performance indicators and codes of conduct resulting from that consultation process, once the IOG is satisfied with them; (*79.1(a)(i)*)
 - (c) review Telecom's performance against, and recommend changes to, the key performance indicators and codes of conduct; (*79.1(a)(ii)*)
 - (d) process complaints about Telecom's compliance with the Undertakings; (*79.1(b)*)
 - (e) request information from Telecom and carry out any investigations to assess Telecom's compliance with the Undertakings; (*79.1(c)*)
 - (f) request the Support Office to carry out any investigations to assess Telecom's compliance with the Undertakings; (*79.1(d)*)
 - (g) review reports prepared in accordance with the Undertakings by the Support Office; (*79.1(e)*)

- (h) be kept informed of service-level agreements set by Telecom in respect of Relevant Services and review Telecom's performance against those agreements; *(79.1(f))*
- (i) review the provision of Relevant Services internally to Telecom Business Units in accordance with the Undertakings; *(79.1(g))*
- (j) review the process established by Chorus in accordance with the Undertakings for making, considering, advising on and implementing decisions about requests in respect of Relevant Network Access Services and/or the Access Network, including reviewing whether requests have been dealt with in accordance with that process; *(41, 79.1(h))*
- (k) review documentation that the Undertakings require to be supplied to the IOG and investigate whether that documentation shows that there has been a breach of the Undertakings; *(79.1(i))*
- (l) report to the Board and/or the Commerce Commission as required by the Undertakings (see further Section B below); *(79.1(j), (k))*
- (m) conduct an annual review of Telecom's compliance with the Undertakings; *(79.1(k)(iii))*
- (n) make each of the IOG's annual reports, and any other report or document that the IOG chooses to publish, available on an Internet website (see further Section B below); *(79.1(l))*
- (o) agree a process with Telecom, under which the IOG may request from Telecom the information reasonably required by the IOG to demonstrate compliance with the Undertakings, in order to ensure that such requests are directed to the most appropriate contact person within Telecom who can best facilitate the provision of correct information in a timely manner (see further Section C below); *(84.3(c))*
- (p) agree a timeframe with Telecom for the implementation of the separate brand developed for Chorus; *(37.2)*
- (q) agree and implement an information sharing protocol with Telecom to aid in maintaining the status and confidentiality of information that may be provided to the IOG; *(87.2)*
- (r) agree any proposal by Telecom to increase the number of Chorus Employees performing the Access Planner Function to 20 or more persons; *(100.1(a))*

- (s) request that Telecom has its compliance with an Enforceable Milestone referred to in clause 12.1 of Schedule 1 of the Undertakings (relating to the percentage of certain Fixed Voice Customer Lines which are being supplied with a certain Retail Unit voice service as at 31 December 2012) audited by an External Auditor; and (*Schedule 1, 12.1*)
 - (t) undertake every other function contemplated for the IOG in the Undertakings. (*79.1(m)*)
- 2 The IOG will have the powers necessary to perform the functions listed in paragraph 1 of these Terms of Reference.

B Reporting

- 3 The IOG must:
- (a) report to the Board as soon as reasonably practicable after becoming aware of any act or omission of Telecom that (in the opinion of the IOG) may become an issue of concern in terms of Telecom's compliance with the Undertakings; (*79.1(j)*)
 - (b) report to the Board and the Commerce Commission: (*79.1(k)*)
 - (i) as soon as reasonably practicable after becoming aware of any non-trivial breach of the Undertakings by Telecom;
 - (ii) on a regular basis, at times agreed with Telecom, on Telecom's compliance with the Undertakings;
 - (iii) annually, in an annual review of Telecom's compliance with the Undertakings; and
 - (c) make available on an Internet website that is available to the public at all reasonable times (subject to clause 86 of the Undertakings, which allows any information which the IOG agrees is confidential or commercially sensitive information that can be removed to be withheld from the public version of such reports or documents) each of its annual reports, and any other report or document that the IOG chooses to publish. (*79.1(l), 86, Schedule 1, 12.2*)

C Information and access

- 4 Where reasonably requested by the IOG, Telecom will provide the IOG with reports and information relating to Telecom's compliance with the Undertakings and with access to Telecom Employees, any independent contractor performing the role of an Employee, and information. In addition, Telecom will use its best endeavours to provide whatever other

assistance the IOG may reasonably require in the performance of its functions. *(80.1(e), (f), (h), 84.2)*

5 The IOG will also receive:

- (a) the documentation, certificates and reports which the Undertakings require the Board or CEO (as applicable) to provide to the IOG whenever the Board or CEO directs a Telecom Business Unit to act in a way that the Board or CEO reasonably believes the relevant Telecom Business Unit could not, but for that direction, itself resolve to do in accordance with the Undertakings; *(7.2)*
- (b) the documentation which the Undertakings require Telecom to provide to the IOG whenever the Board or CEO participates in certain significant decisions of Chorus in respect of a Relevant Network Access Service, or of the Wholesale Unit in respect of a Relevant Wholesale Service; *(7.3)*
- (c) the plan for upgrading or migrating Telecom's service configuration systems to prevent specified information being disclosed to or accessed by Telecom Employees in the ordinary course of providing customer service; *(9.3(e)(iii))*
- (d) notice from the Board or CEO (as applicable) of each material change by the Board or CEO to Chorus' scope of business; *(13.2(b))*
- (e) written copies of each of the agreements and arrangements required by the Undertakings between a Required Telecom Business Units and any other part of Telecom, as soon as practicable after those arrangements or agreements are entered into or materially changed;
- (f) a copy of the Chorus annual and long term corporate plans and technology plans (or equivalent documents) and the certification from the Board and CEO required by the Undertakings in respect of those plans; *(27.2)*
- (g) notice from Telecom of each material change to the delegation of authority to the Chief Executive Officer of Chorus; *(28.4)*
- (h) notice from Telecom of any changes to Schedule 5 of the Undertakings (which sets out the extent to which long term incentive and remuneration schemes for Wholesale Unit Employees include Telecom shares); *(60.3(c))*
- (i) every 6 months (commencing on 1 July 2008), an updated register identifying commercial policy of general application across Telecom that could materially impact on the provision of Relevant Services, and where requested by the IOG, a copy of any such commercial policy of general application across Telecom; *(88.6)*

- (j) where requested by the IOG, a copy in writing of any information provided by Part A Persons (being the persons or functional groups listed in Part 2 of Schedule 2 of the Undertakings as being permitted to Participate in Policy of Chorus or the Wholesale Unit) to Chorus in response to a request from Chorus for that information, if that information is intended or likely to encourage Chorus to take a materially different approach to a significant matter, or otherwise materially influence the content or shape of the relevant Chorus policy; *(89.2(b)(ii))*
- (k) where requested by the IOG, a copy in writing of any information provided by Part A Persons to the Wholesale Unit, if that information is intended or likely to cause the Wholesale Unit to take a materially different approach to a significant matter, or otherwise materially influence the content or shape of the relevant Wholesale Unit policy; *(89.4(b)(ii))*
- (l) notice from Telecom of each force majeure event preventing or being likely to prevent Telecom from complying with the Undertakings, and the likely effect of that event; *(95.2)*
- (m) evidence provided by TCNZ of the steps TCNZ has taken to establish arrangements to ensure that it and each of its subsidiaries, and all of their officers, Employees, agents and contractors, comply with the Undertakings and with any documents or procedures that are required by, or necessary to give effect to the Undertakings; *(96.1(b))*
- (n) details of any matters reported by Telecom Employees under the "whistleblowing" arrangements established by Telecom in accordance with the Undertakings; *(103)*
- (o) copies of the statement prepared by Telecom of the assets controlled by Chorus as at 1 July 2008, the independent Expert Auditor's report in relation to that statement, and full information setting out the methodologies used to prepare the statement of assets; *(104.4)*
- (p) quarterly reports from Telecom on Telecom's progress in meeting the equivalence migration milestones in Schedule 1 of the Undertakings; *(Schedule 1, 4.1)*
- (q) the additional binding PSTN Migration Plan referred to in Schedule 1 of the Undertakings which must include, among other things, additional Tracking Milestones for the period of 1 January 2013 to 31 December 2015 and must be provided by 30 June 2011; *(Schedule 1, 12.1)*
- (r) the confidential reports referred to in Schedule 1 of the Undertakings setting out Telecom's progress towards meeting the 2012, 2015 and 2020

Enforceable Milestones set out in the PSTN Migration Plan; (*Schedule 1, 12.2*)

- (s) the reports from Telecom referred to in clause 17.2 of Schedule 1 of the Undertakings, relating to decisions by Telecom to consume an alternative input service rather than an input service specified in the migration plans set out in Schedule 1 of the Undertakings, including details of the change, the reasons for the change and an explanation to confirm that the alternative is being supplied to the same or a better standard of equivalence; (*Schedule 1, 17.2*)
- (t) the information contemplated by clause 17.9 of Schedule 1 of the Undertakings (which concerns the audit to be completed by Telecom of the Delivery Process for certain specified services in order to identify the specific circumstances where there is a delivery process overlap); and (*Schedule 1, 17.9*)
- (u) reports from Telecom on the details and resolution of all issues raised by Service Providers regarding the application of the Resale Equivalence standard to Resale Services that are Relevant Wholesale Services. (*Schedule 1, 17.21(d)*)