

Fibre Information Disclosure Reviews

Framework paper



Associated documents

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Chapter 1 Purpose and structure

- 1.1 This framework explains how the Commerce Commission (**the Commission**) sets and amends information disclosure (**ID**) requirements for regulated fibre service providers (**fibre ID requirements**).^{1, 2}
- 1.2 This framework is adopted without substantive change from the framework we developed when we first set the fibre ID requirements.³
- 1.3 The framework paper is intended to be an enduring document which we will refer to, as part of setting or amending fibre ID requirements (**fibre ID amendments**), in the future. In due course we intend to integrate the framework for fibre ID amendments into a consolidated framework for undertaking ID reviews across all infrastructure sectors we regulate.
- 1.4 When appropriate, we may update the Framework from time to time to reflect any significant changes in legislation or in our approach to fibre ID amendments.
- 1.5 The Commission sets fibre ID requirements in a section 170 determination under Part 6 of the Telecommunications Act (**Part 6**) for ID regulation of fibre fixed line access services (**FFLAS**, also referred to in this paper as **fibre services**).^{4, 5}
- 1.6 The current fibre ID requirements determination (**ID determination**) is the *Fibre Information Disclosure Determination 2021*.⁶ A consolidated version of that determination, including amendment determinations, is available on the Commission's website.⁷

¹ Unless stated otherwise, all references to statutory provisions are references to provisions of the Act.

² The Act, s 164(1), definition of "information disclosure requirement".

³ Commerce Commission, *Fibre Information Disclosure Final Decisions Reasons Paper* (30 November 2021), Chapter 2.

⁴ The Act, s 164(1), definition of "section 170 determination".

⁵ The Act, s 5, definition of "fibre fixed line access service".

⁶ *Fibre Information Disclosure Determination 2021* [2021] NZCC 24.

⁷ See <https://comcom.govt.nz/regulated-industries/fibre/information-disclosure-requirements-for-fibre/current-information-disclosure-requirements-for-fibre>.

Chapter 2 Purpose of fibre ID regulation and interpretation

Purpose of regulation under Part 6 of the Telecommunications Act

- 2.1 The purpose of Part 6 of the Telecommunications Act is to promote the long-term benefit of end-users of fibre services by promoting outcomes that are consistent with those produced in workably competitive markets so that regulated fibre service providers:
- 2.1.1 have incentives to innovate and to invest, including in replacement, upgraded, and new assets;
 - 2.1.2 have incentives to improve efficiency and supply FFLAS of a quality that reflects end-user demands;
 - 2.1.3 allow end-users to share the benefits of efficiency gains in the supply of FFLAS, including through lower prices; and
 - 2.1.4 are limited in their ability to extract excessive profits.⁸
- 2.2 Fibre ID regulation is a specific form of regulation made under subpart 4 of Part 6 of the Telecommunications Act. The purpose (from section 162) of it is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 6 is being met.⁹
- 2.3 In making a determination under Part 6, the Commission must consider whether the determination best gives, or is likely to best give, effect to the purpose in section 162 of the Telecommunications Act. The Commission may also consider, to the extent it deems relevant, the promotion of workable competition in telecommunications markets for the long-term benefit of end-users.¹⁰

Regulated parties and ID regulation

- 2.4 This paper focuses on regulated fibre service providers that are subject to ID regulation (ID-regulated providers).¹¹

⁸ The Act, s 162.

⁹ The Act, s 186.

¹⁰ The Act, s 166.

¹¹ The Act, s 5, definition of “regulated fibre service provider”, para (a).

- 2.5 Under regulation 5 of the Telecommunications (Regulated Fibre Service Providers) Regulations 2019, the following fibre service providers are ID-regulated providers in relation to all fibre services:¹²
- 2.5.1 Chorus Limited (Chorus), which is also subject to price-quality regulation under regulation 6; and
 - 2.5.2 Enable Networks Limited (Enable), Northpower Fibre Limited (Northpower Fibre), and Tuatahi First Fibre Limited (Tuatahi) (together, ID-only regulated providers).
- 2.6 Fibre ID regulation requires an ID-regulated provider to:¹³
- 2.6.1 publicly disclose information in accordance with the ID requirements set out in the relevant section 170 determination;¹⁴
 - 2.6.2 supply the Commission with a copy of all information disclosed in accordance with the section 170 determination, within 5 working days after the information is first made available to the public; and
 - 2.6.3 supply to the Commission, in accordance with a written notice by us, any further statements, reports, agreements, particulars, or other information required for the purpose of monitoring compliance with an ID determination.

Key relevant terms for the purpose of ID regulation

- 2.7 We set out below our interpretation of the key terms referred to in section 186 (purpose of ID regulation).

“Interested persons”

- 2.8 We consider “interested persons” broadly to include, but not be limited to:
- 2.8.1 ID-regulated providers;
 - 2.8.2 end-users and end-user representative groups in telecommunications markets;
 - 2.8.3 retail service providers, access seekers, and their representative groups;
 - 2.8.4 central government, regional councils, and territorial authorities;
 - 2.8.5 market analysts and investors;

¹² These regulations are regulations made under s 226 of the Act. ID-regulated providers are referred to in [Fibre Information Disclosure Determination 2021\[2021\] NZCC 24](#) at 10, 12, 14, 18 and 25.

¹³ The Act, s 187(1).

¹⁴ The Act, s 164(1), definition of “publicly disclose”.

2.8.6 the Commission; and

2.8.7 any other persons who are or may be affected by the way in which FFLAS are provided.

“Sufficient information”

2.9 Both quantitative and qualitative information is necessary to ensure the information disclosed is sufficient. To assess whether information is ‘sufficient’ we consider that:

2.9.1 quantitative information should be sufficiently disaggregated to allow interested persons to understand what drives the ID-regulated providers’ performance when delivering FFLAS;

2.9.2 the information disclosed must be sufficiently broad to enable interested persons to assess whether the purpose of Part 6 is being met; and

2.9.3 the requirement for ‘sufficient’ information to make informed assessments against the purpose of Part 6 is independent of whether or not a regulated provider is also subject to price-quality regulation.¹⁵

“Readily available”

2.10 The form in which information is disclosed affects interested persons’ ability to use that information to assess ID-regulated providers’ performance and whether the purpose of Part 6 is being met. Relevant factors in ensuring information is ‘readily available’ include whether the information is:

2.10.1 consistent;

2.10.2 accessible; and

2.10.3 understandable.

2.11 Consistent disclosure of data in a standardised form that can be compared over time and across the industry helps interested persons to compare ID-regulated providers’ performance and identify potential trends in their performance.

2.12 We require most disclosures to be provided in a standardised format as a lack of data consistency may mean that it is not ‘readily available’.¹⁶ Without requirements ensuring consistency, the disclosed data may not be useful for gaining valuable insights, or time-consuming processes may be needed to provide data consistency and comparability.

¹⁵ However, price-quality regulation is relevant context when we determine the ID requirements.

¹⁶ For example, in a standardised spreadsheet template or online disclosure system.

- 2.13 Accessibility of information refers to the ease with which information can be accessed (for example, on a website) and the format in which it is available (for example, in a PDF report or a spreadsheet).
- 2.14 Understandability refers to the ease with which interested persons can navigate quantitative or qualitative information and access key insights relevant to them.¹⁷

¹⁷ The format of disclosures and our summary and analysis of information will assist interested persons' understanding.

Chapter 3 Our role in fibre ID regulation

We decide what information regulated providers must disclose, and how they must disclose it

3.1 Our role in ID regulation is to:

- 3.1.1 decide what information a regulated provider must disclose to the public, and the form in which it must be disclosed. We do this by setting ID requirements in a section 170 determination;¹⁸
- 3.1.2 publish a summary and an analysis of any information a regulated provider publicly discloses under our ID requirements, including analysing how effective our ID requirements are in promoting the purpose of Part 6;¹⁹ and
- 3.1.3 monitor and analyse disclosed information.²⁰

Information that must be included in our ID determination

3.2 An ID determination relating to FFLAS must specify the following:²¹

- 3.2.1 the regulated fibre service providers to which it applies;
- 3.2.2 the information to be disclosed;
- 3.2.3 the manner in which the information is to be disclosed;
- 3.2.4 the form of disclosure;
- 3.2.5 when, and for how long, information must be disclosed;
- 3.2.6 the input methodologies that apply; and
- 3.2.7 any other methodologies that are required in the preparation or compilation of the information.

3.3 The requirement for an ID determination to specify the ‘manner’ and ‘form’ in which information is disclosed means we can specify how a regulated provider is to disclose information to the public. This can be relevant where we consider certain information should be presented in a particular way to ensure interested persons can understand it and access relevant key insights. For example, if we set an ID requirement that a regulated provider is to publicly disclose all of its current prices, we may require that:

¹⁸ The Act, s 170.

¹⁹ The Act, s 187(2)(b).

²⁰ The Act, s 187(2)(a) and s 187(3).

²¹ The Act, s 188(1)(a)-(g).

- 3.3.1 the pricing information must be expressed in a way that enables consumers to determine which of those prices will impact them; and/or
- 3.3.2 the regulated provider publicly discloses the pricing information by publishing it on their website and other communication channels.²²

Information that may be required to be disclosed

- 3.4 An ID determination relating to FFLAS may specify, without limitation, one or more of the following:²³
 - 3.4.1 financial statements (including projected financial statements);
 - 3.4.2 asset values and valuation reports;
 - 3.4.3 prices, terms and conditions related to prices, and pricing methodologies;
 - 3.4.4 contracts;²⁴
 - 3.4.5 transactions with related parties;
 - 3.4.6 financial and non-financial performance measures;
 - 3.4.7 plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements;
 - 3.4.8 asset management plans;
 - 3.4.9 quality performance measures and statistics;
 - 3.4.10 assumptions, policies, and methodologies used or applied in these or other areas;
 - 3.4.11 consolidated information that includes information about unregulated services, in which case section 189 applies;²⁵ and
 - 3.4.12 information related to one or more parts of a fibre network.

²² For example, see the definition of “publicly disclose” in [*Fibre Information Disclosure Determination 2021 \[2021\] NZCC 24 at 19.*](#)

²³ The Act, s 188(2)(a)-(l).

²⁴ However, s 188(4) provides that an ID determination may not require a regulated provider to publicly disclose any provision of an existing contract that, immediately before the FFLAS became subject to ID regulation, was not required by or under any other enactment to be publicly disclosed.

²⁵ The specific requirements for consolidated information are specified in s 189.

Other things an ID determination may do

- 3.5 An ID determination may do one or more of the following:²⁶
- 3.5.1 require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration;
 - 3.5.2 require independent audits of disclosed information;
 - 3.5.3 require the retention of data on which disclosed information is based, and associated documentation;
 - 3.5.4 exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions;
 - 3.5.5 provide for transitional provisions; and
 - 3.5.6 impose any other requirements that we consider necessary or desirable to promote the purpose of ID regulation.

Additional powers to carry out our functions under Part 6

- 3.6 Section 221 allows us to exercise certain powers in carrying out our functions under Part 6 of the Act. For example, if our analysis of disclosed information raised concerns that a regulated provider was not complying with the ID requirements, we may investigate further, and require the regulated provider to (among other things):
- 3.6.1 prepare and produce forecasts, forward plans, or other information (s 221 (e)(i));
 - 3.6.2 apply any methodology specified by us in the preparation of forecasts, forward plans, or other information (s 221 (e)(ii)); and
 - 3.6.3 provide us with an expert opinion in relation to that matter (s 221 (g)).

Monitoring and analysis

- 3.7 We may monitor and analyse all information disclosed by a regulated provider in accordance with our ID requirements.²⁷ If we have questions regarding the information disclosed, or if our analysis of that information raises concerns regarding the regulated providers' performance, we may decide we need to engage with the relevant regulated provider to gather more information.

²⁶ The Act, s 188(3)(a)-(f).

²⁷ The Act, s 187(2)(a).

- 3.8 Part of that further engagement may involve us issuing a regulated provider with a notice under section 187(1)(c) to supply us with further information (eg, further statements, reports, agreements or particulars), for the purpose of monitoring that regulated provider's compliance with our ID requirements.
- 3.9 We must also, as soon as practicable after any information is publicly disclosed by a regulated provider, publish on our website a summary and analysis of the disclosed information.²⁸ The purpose of our analysis is to promote greater understanding of the performance of individual regulated providers, their relative performance, changes in their performance over time, and their ability to extract excessive profits.²⁹
- 3.10 The requirement to publish a summary and analysis of the disclosed information confers an ongoing, active role on us after the ID requirements have been determined. Our summary and analysis publications:
- 3.10.1 provide an ongoing source of information so that performance trends can be identified and monitored over time; and
 - 3.10.2 assist in assessing whether the purpose of Part 6 is being met, as they would enable people to better understand the information publicly disclosed and its relationship with market outcomes.
- 3.11 Since our analysis role under ID is intended to promote greater understanding of regulated providers' performance, the scope of our analysis can be broad. For example, part of our analysis of disclosed information may extend to considering what factors are impacting the regulated providers' performance.
- 3.12 Our summary and analysis function also allows for an analysis of how effective the ID requirements we imposed are in promoting the purpose of Part 6.³⁰

Exemptions from ID requirements

- 3.13 ID determinations may, under section 188(3)(d), exempt any person or class of persons from any requirements of the ID determination, or provide for exemptions.
- 3.14 In addition, we may, on application, exempt any person, in respect of information that the Commission considers to be commercially sensitive, from any obligation to make the information available to the public as part of the ID requirements.³¹ We consider that this provision does not limit our power to set Commission-only ID requirements under section 188(3)(d), or to include provisions allowing for exemptions generally. Rather, it is a complementary provision that enables regulated providers to seek exemptions from public disclosure over and above those that are already included or provided for in the ID determination.

²⁸ The Act, s 187(2)(b). The Act directs us to publish "on the Commission's Internet site".

²⁹ Ibid.

³⁰ The Act, s 187(3).

³¹ The Act, s 222. This exemption power exists even if we did not grant an exemption under s 188(3)(d).

Enforcement provisions that apply to ID regulation

- 3.15 Under s 212 of the Telecommunications Act, the High Court may, on application by the Commission, order any person to pay a civil pecuniary penalty to the Crown if the court is satisfied that the person has contravened, or attempted to contravene, any ID requirement.³²
- 3.16 Contravening an ID requirement includes failing to disclose information required to be disclosed, failing to disclose information in the form or within the time required, or disclosing information that is false or misleading under an ID requirement.³³
- 3.17 The amount of civil pecuniary penalty is, in respect of each act or omission, up to \$500,000 in the case of an individual, or up to \$5,000,000 in the case of a body corporate.³⁴
- 3.18 Under s 213 of the Telecommunications Act, the High Court may, on application by us, order a regulated provider to comply with an ID requirement that applies to the provider.³⁵
- 3.19 The Telecommunications Act also establishes criminal offences in respect of information disclosure. Under s 214, a person commits an offence if:³⁶
- 3.19.1 the person, knowing that particular FFLAS are subject to ID regulation, intentionally contravenes any ID requirement relating to those services; or
 - 3.19.2 the person is subject to an order under s 213 (see paragraph 3.18 above) and fails to comply with the order by the date, or within the period, specified.
- 3.20 Where a person commits an offence under s 214, they are liable on conviction to a fine not exceeding \$200,000 in the case of an individual, or \$1,000,000 in the case of a body corporate.³⁷

³² The Act, s 212(1).

³³ The Act, s 212(2).

³⁴ The Act, s 212(3).

³⁵ The Act, s 213.

³⁶ The Act, s 214(1).

³⁷ The Act, s 214(2).

Chapter 4 Our approach to amending ID requirements

- 4.1 The repeated nature of reporting under ID regulation and assessing performance will reveal more information over time to allow interested persons to assess whether the purposes of Part 6 are being met.
- 4.2 If we assess that our fibre ID requirements are not working effectively to promote the purpose of ID regulation and the purpose of Part 6, we may decide different ID requirements, or changes to existing ID requirements, are necessary. We may amend an ID determination at any time by setting new ID requirements, revising existing ID requirements, or removing existing ID requirements, provided we consult with interested parties on material changes.³⁸
- 4.3 We expect to refine the ID reporting requirements from time to time to reflect market developments or to increase the incentives on regulated providers to behave in ways consistent with outcomes in workably competitive markets.

Economic framework

- 4.4 As part of our fibre IMs decision-making process, we developed an economic framework. We developed the framework to help guide the decisions we made in developing the new regulatory regime for Part 6. We continue to apply this framework. The economic framework relates to all aspects of our economic decision-making in regulating FFLAS.³⁹
- 4.5 The economic framework helps us make individual decisions that are consistent with each other, and that best give effect to the purposes described in s 166(2) of the Act. The economic framework has three components:
 - 4.5.1 economic principles - real financial capital maintenance, allocation of risk, and asymmetric consequences of under- or over-investment;⁴⁰
 - 4.5.2 an incentive framework - to help us evaluate how the regime may interact with the incentives faced by regulated providers and assist us in identifying risks to end-users;⁴¹ and
 - 4.5.3 an approach to identifying competition issues - to help us assess whether our decisions might be relevant to competitive outcomes in telecommunications markets.⁴²

³⁸ Under s 173(1), we may amend an ID determination in a material way only after we consult with interested parties. We may amend an ID determination in a non-material way without prior consultation.

³⁹ Commerce Commission “[Fibre input methodologies: Main final decision – reasons paper](#)” (13 October 2020), Chapter 2.

⁴⁰ Ibid, paragraphs 2.272-2.316.

⁴¹ Ibid, paragraphs 2.317-2.335.

⁴² Ibid, paragraphs 2.385-2.395.

Our approach to applying s 166(2)(b)

- 4.6 We consider that ID regulation has a greater role in mitigating risks to competition than actively promoting competition.
- 4.7 In our view the most appropriate way to give effect to section 166(2)(b) in ID regulation is to apply a high-level ‘competition screening’ by asking ourselves whether the ID requirements we are considering:⁴³
- 4.7.1 have a role in mitigating risks to competition at any telecommunications market level; and/or
 - 4.7.2 could be used to promote competition at a given market level that would result in expected net benefits to telecommunications end-users in the long-term.
- 4.8 In particular, when we set or amend ID requirements, we see our role in relation to section 166(2)(b) as promoting conditions that allow for competition on the merits by mainly mitigating the risk of ID-regulated providers engaging in conduct that might hinder the emergence of competition. This is distinct from a role where we would take active steps to encourage competition by favouring the interests of an actual or potential competitor or class of competitors.

Our approach to ensuring information disclosure requirements are cost-effective

- 4.9 ID regulation is a statutory requirement, and therefore, our primary concern is setting ID requirements that meet the purpose of ID regulation, the purpose of Part 6 and, to the extent we consider it relevant, the promotion of workable competition in telecommunications markets.
- 4.10 We recognise however that regulation comes at a cost. We are mindful of the costs of new or amended disclosure requirements on ID-regulated providers and ultimately on end-users. We aim to balance the greater transparency that more comprehensive and detailed ID requirements would provide, against the costs of implementing new systems and processes to comply with the requirements. We therefore:
- 4.10.1 take account of the regulated providers’ existing practices and capability;
 - 4.10.2 require reporting based on generally accepted accounting practice (GAAP), using existing systems and processes for general purpose financial reporting, where it would meet the purpose of ID;

⁴³ We have not changed the considerations that we identified for our competition screening when setting the fibre IMs. See Commerce Commission “[Fibre input methodologies: Main final decision – reasons paper](#)” (13 October 2020), paragraphs 2.384-2.386.

- 4.10.3 require disaggregated information only where necessary to meet the purpose of ID; and
- 4.10.4 limit the ID requirements where we consider that the benefit to interested persons in meeting the purpose of ID does not justify the compliance costs.

Our decision-making criteria for setting or amending ID requirements

- 4.11 To promote the purposes of Part 6 and ID regulation and, to the extent we consider it relevant, workable competition in telecommunications markets, we need information to determine whether the performance of a regulated provider is consistent with the performance outcomes that would be expected in a workably competitive market (as envisioned in section 162(a)-(d)).
- 4.12 To make this assessment, interested persons need to be able to answer several key questions on different aspects of a regulated provider's performance. These questions relate to historical, current and future performance. Key performance questions to assess whether the purpose of Part 6 is being met include:
 - 4.12.1 Is the regulated provider operating and investing in their assets efficiently? (section 162(a)-(b));
 - 4.12.2 Is the regulated provider innovating where appropriate? (section 162(a));
 - 4.12.3 Is the regulated provider supplying FFLAS at a quality that reflects end-user demands? (section 162(b));
 - 4.12.4 Is the regulated provider sharing the benefits of efficiency gains with end-users, including through lower prices? (section 162(c));
 - 4.12.5 Do the prices set by the regulated provider promote efficiency (section 162(b))?; and
 - 4.12.6 Is the regulated provider earning an appropriate economic return over time (section 162(d))?
- 4.13 In our view, to answer these key performance questions, interested persons need a package of different types of information (both quantitative and qualitative), including how the network is being (or plans to be) managed, expenditure on different activities (both historical and forecast), quality outcomes and pricing.