

Draft framework for fibre deregulation reviews

Under section 210 of the Telecommunications Act 2001

Date: 30 October 2025

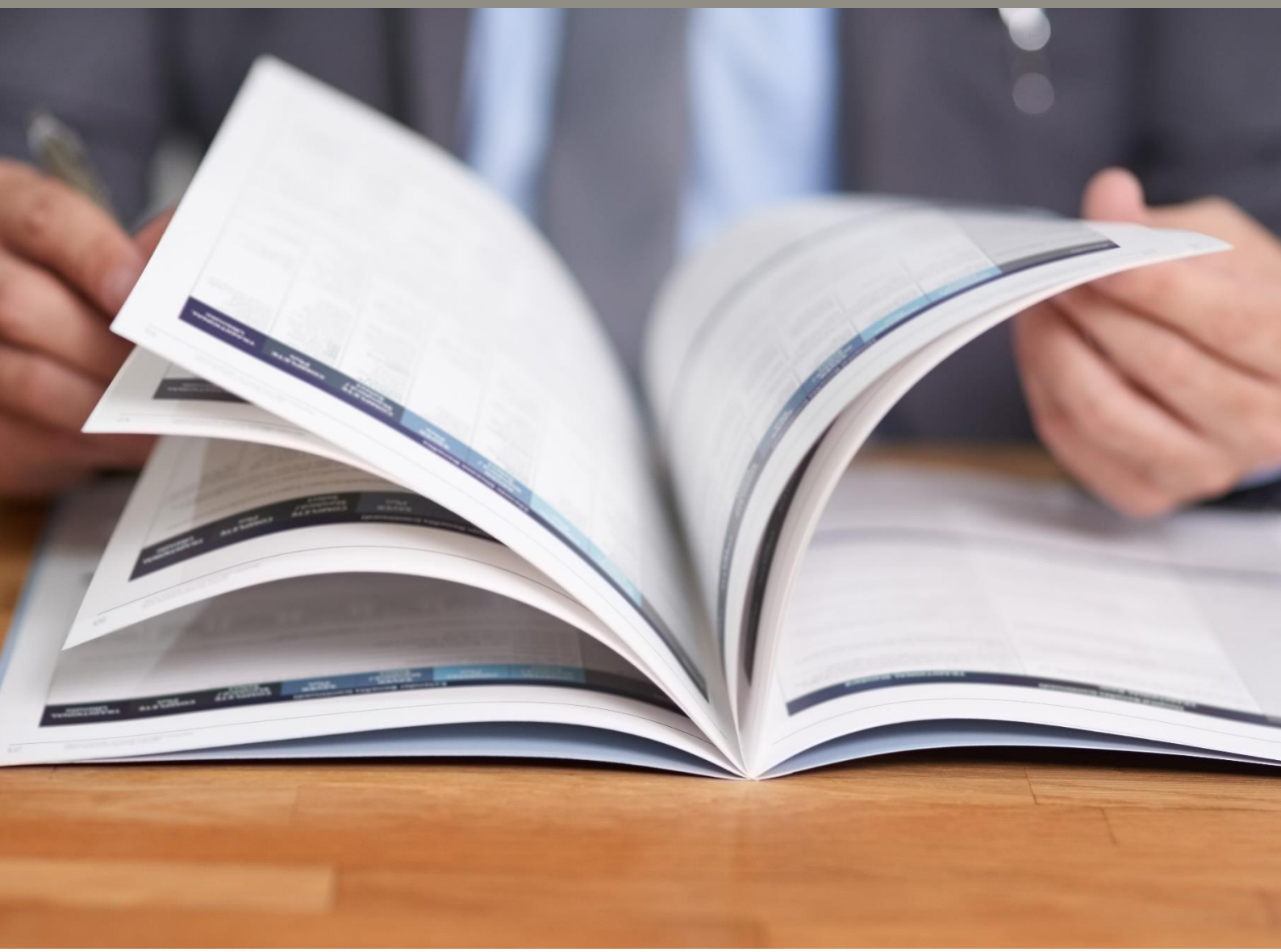


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Chapter 1 Introduction

Purpose of this paper

- 1.1 This paper sets out the Commerce Commission's (**Commission**) draft legal and economic framework for carrying out fibre deregulation reviews under section 210 of the Telecommunications Act 2001 (**Act**). Deregulation reviews are carried out in respect of fibre services that we have concluded there are reasonable grounds to carry out a review.
- 1.2 The framework is, where appropriate, consistent with the reasonable grounds assessment framework previously published by the Commission.¹
- 1.3 This paper contains two chapters:
 - 1.3.1 Chapter 1 is this introduction.
 - 1.3.2 Chapter 2 provides the legal and economic framework.

Our process to date and next steps

- 1.4 On 12 June 2025, we published our process update letter announcing the commencement of the deregulation reviews.² The fibre deregulation reviews of the four services are being conducted in parallel, but on different timelines depending on the information requirements and complexity of each review.
- 1.5 This draft framework paper relates to our deregulation reviews. Table 1.1 sets out the process.

Table 1.1 Draft framework paper process

Milestone	Indicative date
Draft reasonable grounds assessment	27 August 2024
Final reasonable grounds assessment	19 December 2024
Fibre deregulation process update letter	12 June 2025
Draft framework published (this paper)	30 October 2025
<i>Submissions on draft framework due</i>	<i>5pm, 27 November 2025</i>
<i>Final framework published</i>	<i>Q1 2026</i>

¹ Commerce Commission "[Framework for reasonable grounds assessments](#)" (17 June 2025).

² Commerce Commission "[Fibre deregulation reviews – Process update](#)" (12 June 2025).

Information for interested parties on making a submission

Process and timeline for making submissions

- 1.6 We are seeking submissions on our draft framework by 5pm, 27 November 2025.
- 1.7 Address your responses to:
 - 1.7.1 Toni Shuker (Manager, Regulatory Rules and Compliance);
 - 1.7.2 c/o fibre_deregulation_review@comcom.govt.nz.

Confidentiality

- 1.8 We intend to publish the non-confidential/public version of all submissions we receive on our website.
- 1.9 The protection of confidential information is something we take seriously. If you need to include commercially sensitive or confidential information in your submission or cross-submission, you must provide us with both confidential and non-confidential/public versions of your submission that are clearly identified.
- 1.10 You are responsible for ensuring that commercially sensitive or confidential information is not included in a public version of the submission provided to us.
- 1.11 All submissions and cross submissions we receive, including any parts of them that we do not publish, can be requested under the Official Information Act 1982 (**OIA**). This means we would be required to release material that we do not publish unless good reason existed under the OIA to withhold it. We would normally consult with the party that provided the information before we disclose it to a requester.

Chapter 2 Fibre deregulation review framework

Legal framework

2.1 Since 1 January 2022, providers of regulated fibre fixed line access services (**FFLAS**)³ (**regulated providers**) have been subject to regulation under Part 6 of the Act. Section 210 (in subpart 7 of Part 6) of the Act provides for the Commission to carry out reviews into the potential deregulation of one or more FFLAS (**fibre deregulation reviews**). Section 210 provides:

210 Deregulation review

- (1) The Commission may, at any time after the implementation date, review how 1 or more fibre fixed line access services are regulated under this Part if the Commission has reasonable grounds to consider that those services—
 - (a) should no longer be regulated under this Part; or
 - (b) should no longer be subject to price-quality regulation under this Part.
- (2) For the purposes of subsection (1), the Commission may, without limitation, describe a service under review with reference to any 1 or more of the following:
 - (a) the geographic area in which the service is supplied:
 - (b) the service's end-users:
 - (c) the service providers who seek access to the service:
 - (d) the technical specifications of the service:
 - (e) any other circumstances in which the service is supplied.
- (3) The Commission must, before the start of each regulatory period (except the first regulatory period), consider whether there are reasonable grounds to start a review.
- (4) A review may consider the following:
 - (a) whether competition to 1 or more fibre fixed line access services has increased or decreased in a relevant market:
 - (b) the impact of any increase or decrease on the ability of regulated fibre service providers to exercise substantial market power:

³ The Act, s 5 definition of “fibre fixed line access service”:

- (a) means a telecommunications service that enables access to, and interconnection with, a regulated fibre service provider's fibre network; but
- (b) does not include the following:
 - (i) a telecommunications service provided by a regulated fibre service provider (F) if the ultimate recipient of the service is F or a related party of F (as if the test for related parties were the same as the test in section 69U, applied with any necessary modifications):
 - (ii) a telecommunications service provided, in any part other than a part located within an end-user's premises or building, over a copper line:
 - (iii) a telecommunications service used exclusively in connection with a service described in paragraph (ii).

- (c) whether the purpose of this Part would be better met if 1 or more fibre fixed line access services—
 - (i) were no longer regulated under this Part; or
 - (ii) were no longer subject to price-quality regulation under this Part.
 - (5) The Commission must give interested persons a reasonable opportunity to give their views on the matters subject to review and the Commission must have regard to any views received.
 - (6) The Commission must make a recommendation to the Minister after a review.
- 2.2 We carry out fibre deregulation reviews when we have concluded (in a prior process) there are reasonable grounds to start a deregulation review.
- 2.3 Section 210 of the Act empowers us to carry out reviews and make recommendations to the Minister on whether one or more FFLAS:
 - 2.3.1 should no longer be regulated under Part 6; or
 - 2.3.2 should no longer be subject to price-quality regulation under Part 6.
- 2.4 We must make our recommendation applying the civil standard of proof, which operates, on the “balance of probabilities”. In other words, we must, on the information before us, reach a view on whether it is more likely than not that one or more FFLAS should no longer be regulated under Part 6 or should no longer be subject to price-quality regulation under Part 6.
- 2.5 Under section 166, we must make the recommendation that we consider best gives, or is likely to best give, effect:
 - 2.5.1 to the purpose in section 162 of the Act (purpose of Part 6); and
 - 2.5.2 to the extent that we consider it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.
- 2.6 The purpose in section 162 of the Act is as follows:

The purpose of this Part is to promote the long-term benefit of end-users in markets for fibre fixed line access services by promoting outcomes that are consistent with outcomes produced in workably competitive markets so that regulated fibre service providers—

 - (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
 - (b) have incentives to improve efficiency and supply fibre fixed line access services of a quality that reflects end-user demands; and
 - (c) allow end-users to share the benefits of efficiency gains in the supply of fibre fixed line access services, including through lower prices; and

- (d) are limited in their ability to extract excessive profits.
- 2.7 Our reviews may also consider the factors in section 210(4) of the Act, namely:
 - 2.7.1 whether competition to one or more FFLAS has increased or decreased in a relevant market:
 - 2.7.2 the impact of any increase or decrease on the ability of regulated providers to exercise substantial market power:
 - 2.7.3 whether the purpose of Part 6 (in section 162 of the Act) would be better met if one or more FFLAS:
 - 2.7.3.1 were no longer regulated under Part 6; or
 - 2.7.3.2 were no longer subject to price-quality regulation under Part 6.
- 2.8 Our reviews will be forward-looking, taking account of present and expected market conditions, with and without regulation. Where it will inform our assessment, we may compare these market conditions to those that prevailed in 2018/19 when Parliament decided that FFLAS should be subject to Part 6 regulation.
- 2.9 We may also take into consideration the costs and benefits of deregulation.

Economic framework

- 2.10 This section sets out the economic framework we will apply to our fibre deregulation reviews.
- 2.11 The economic analysis is split into four key steps, which are as follows:
 - 2.11.1 describing the service (step 1);
 - 2.11.2 identifying alternatives (step 2);
 - 2.11.3 considering the effectiveness of competition in the relevant markets including the effect of competition on substantial market power (step 3); and
 - 2.11.4 applying the legal framework, including testing alignment with the purpose statement in section 162 (step 4).

2.12 While these steps guide how we carry out our fibre deregulation reviews, we note that:

2.12.1 where it is impractical and/or unnecessary to undertake analysis at a step, we may modify how we approach that step, or elect not to apply that step.⁴ For example:

2.12.1.1 where a regulated service facilitates competition (such as by reducing barriers to switching), we may focus our assessment on the competition that the regulated service facilitates; or

2.12.1.2 where no alternatives exist, we may not assess competition; and

2.12.2 there might be other relevant considerations that should apply to each review

Describing the service (step 1)

2.13 Our first step is to describe the regulated service and the purpose the service serves. Doing this involves considering three key elements:

2.13.1 First, we consider how the service is described, including any descriptions or definitions in the Act and any regulatory decisions (if applicable), as this directs and informs the role the service is intended to play in the market.⁵

2.13.2 Second, we consider what the service is used for (the product dimension).⁶ There may be multiple uses at different levels of the value chain (ie, wholesale and retail) that are influenced by the service (the functional dimension). Recognising that the service was initially regulated due to potential or actual end-user harm, we may also consider how service is supplied to end-users of the regulated service.

2.13.3 Third, we assess any geographic constraints to providing the service (the geographic dimension), which, alongside step 2 below, informs whether our competition analysis should be undertaken at a national level, or if a more granular approach is more appropriate.⁷ The approach that is taken to identifying the geographic boundaries of the relevant market may be informed by any geographic differences in competitive conditions, including where competitors are actually present or in sufficiently close proximity to exercise a competitive constraint on the regulated service.

⁴ This is subject to various considerations, including the nature and type of specific regulated service in question.

⁵ See the Act, s 210(2)(e).

⁶ See the Act, s 210(2)(d).

⁷ See s 210(2)(a).

- 2.14 In certain instances, we may identify dependencies between services, such as where one service is unlikely to be used without another, or where the deregulation of one service is impractical without the deregulation of others (due to actual or potential consumer harm). Such dependencies may guide how we undertake our analysis.

Identifying alternative services (step 2)

- 2.15 We will consider any alternatives that could provide direct and indirect competitive constraints to the service, including in downstream retail markets.⁸
- 2.16 Direct competitive constraints may exist where there are alternatives available at the same functional level as the regulated service. For example, in the case of FFLAS transport services, where alternative wholesale transport services exist, they may provide a direct competitive constraint on the FFLAS transport services. There may also or instead be competitive constraints that operate indirectly through downstream markets. For example, the wholesale FFLAS voice service may be constrained by the availability of retail mobile voice services offered by mobile operators.
- 2.17 We view steps 1 and 2 as defining the relevant market(s) for the purposes of assessing competition in the fibre deregulation reviews.⁹

Considering the effectiveness of competition (step 3)

- 2.18 We will consider how much competition the service faces, and could be expected to face into the foreseeable future, with and without regulation. This may include analysis of factors such as:
- 2.18.1 whether the alternatives identified in step 2 rely on the regulated service;
 - 2.18.2 market structure and trends;
 - 2.18.3 the extent to which identified alternatives represent (sufficiently) close substitutes to the service including their availability and performance (the same applies for alternatives in downstream markets constraining services using the service being reviewed);
 - 2.18.4 actual demand and switching behaviour by access seekers (retail service providers) and end-users; and

⁸ A downstream market is one further down the supply chain. In the case of telecommunications, the retail broadband market (where the end-user buys a broadband service) is downstream from the wholesale broadband market (where a wholesaler sells a broadband service to an RSP who then on sells it to the end-user).

⁹ Defining markets, as opposed to defining services, is a distinct step in several review frameworks. However, we deem it most appropriate to combine this into steps 1 and 2 for ease of understanding. For further information on market definition, see Commerce Commission, "[Mergers and acquisitions Guidelines](#)" (May 2022), see Chapter 3.

- 2.18.5 any other factors that may constrain the regulated providers from raising prices. This may include the threat of entry. For example, a competing provider of transport services may not be directly located in a central office, but may nevertheless be in close enough proximity to represent a competitive constraint on the FFLAS transport services at that central office. The threat that nearby transport providers may extend their network to connect into the central office could competitively constrain the decisions of the FFLAS transport provider at that central office.

Applying the legal framework, including testing alignment with the purpose of Part 6 (step 4)

- 2.19 We will consider whether, for the service described in step 1, the service should no longer be regulated under Part 6 or should no longer be subject to price-quality regulation under Part 6.
- 2.20 This will include an assessment of whether or not the s 162 purpose is best given effect to, or will be likely to best given effect to, by continuing to regulate the service, relative to a counterfactual of no longer regulating the service (a with/without assessment). We will also assess, where relevant, whether or not continuing to regulate will best give effect to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.
- 2.21 We will consider this in the round, taking account of any alternatives identified in step 2 and the consideration of the effectiveness of competition faced by the service in step 3.