

15 July 2022

[REDACTED]
General Counsel
Enable Networks Limited
PO Box 9228
Tower Junction
Addington
Christchurch 8149

By e-mail only: [REDACTED]

Dear [REDACTED]

Response to Enable Network's request for exemption from quality disclosure requirements under the Fibre Information Disclosure Determination 2021

1. We write in response to Enable Network's (**Enable**) letter dated 19 April 2022 requesting the Commerce Commission (**Commission**) provide it with an exemption from aspects of the disclosures required by clause 2.4.4 of the Fibre Information Disclosure Determination 2021 (the **ID Determination**).
2. Please find our response to your request below, which includes an outline of the background to Enable's exemption request and the basis for our decision.

Background

3. Clause 2.4.4 of the ID Determination sets out the disclosure requirements relating to quality for ID-only regulated providers. Respectively, clauses 2.4.4(1) and (2) require ID-only regulated providers to complete and publicly disclose the following quality reports:
 - 3.1 **A Report on Quality (Schedule 20)**, that must apply the Schedule 22 Methodologies for Calculating Port Utilisation and Traffic Performance. This report is due no later than 5 months after the end of the disclosure year (except in respect of the first nine months following the commencement date)¹; and

¹ The commencement date is 1 January 2022, outlined in 1.2.1 of the ID Determination.

- 3.2 **A Transitional Report on Quality (Schedule 20a).** This report is due no later than 1 month after the relevant 3-month period, for the first nine months following the commencement date.
- 4. Enable's disclosure year ends on 30 June each year. For the 2022 and 2023 disclosure years, its quality reports are due by the following dates:
 - 4.1 Schedule 20 – due 30 November 2023; and
 - 4.2 Schedule 20a – due 30 April 2022; 31 July 2022; and 31 October 2022.

The exemption request

- 5. On 19 April 2022, Commission staff received a letter from Enable requesting an exemption from the following quality reporting requirements, relating to the period 1 January 2022 to 30 June 2023:
 - 5.1 the reporting of low priority traffic performance, under Schedule 20(iv) and Schedule 20a(iii); and
 - 5.2 applying certain aspects of the Schedule 22 methodology when calculating traffic performance for reporting in Schedule 20, with those aspects being:
 - 5.2.1 3(a) – Reference network (in respect of low priority traffic only);
 - 5.2.2 3(b) – Reference probes;
 - 5.2.3 3(j) – Number of OLT reference probes;
 - 5.2.4 3(k) – Distribution of OLT reference probes;
 - 5.2.5 3(o)(ii) – Frame loss ratio for low traffic priority;
 - 5.2.6 3(q) – (r) – Synthetic test traffic; and
 - 5.2.7 3(s) – (v) – Traffic performance reporting.
- 6. With respect to the Schedule 20a report due 30 April 2022, we notified Enable that we would not be able to consider this disclosure in our assessment for exemption due to the short notice of the request.

Legal framework

- 7. Under clause 2.10 of the ID determination the Commission has the power to provide exemptions from any requirement of the determination, for a period and on such terms and conditions as the Commissions specifies.

Decision to grant exemption

8. Having considered Enable's request, and the information it has provided to the Commission in support of this request, we have decided to grant Enable an exemption from:
 - 8.1 the reporting of low priority traffic for the quality reports due 31 July 2022, 31 October 2022, and 30 November 2023; and
 - 8.2 applying the aspects of the Schedule 22 methodology outlined in paragraph 5.2, when calculating traffic performance for the Schedule 20 report due 30 November 2023.
9. This exemption is subject to the conditions outlined at paragraph 13 below.

Reasons for granting exemption

10. We understand Enable is currently using equipment² that, without further investment, is not able to report on low priority traffic performance; or apply the full Schedule 22 methodology when calculating traffic performance.
11. Enable is in the process of procuring and upgrading its equipment, with an expectation that those upgrades will be finished by 30 June 2023. Once complete, Enable expects to be able to comply fully with the quality reporting requirements set out in the ID Determination.
12. We do not consider it reasonable or proportionate for Enable to invest any further resources into its current equipment in order to comply with the quality reporting requirements. Given the circumstances of Enable's application we believe the purpose of Fibre information disclosure and of Part 6 of the Act would be best met if those resources were focused on the purchase and commissioning of replacement systems and equipment.

Conditions of exemption

13. The exemption is granted with two conditions attached:
 - 13.1 Enable must provide quarterly updates to the Commission documenting its progress towards procuring and commissioning its new equipment, particularly where there is any deviation from the expected completion date. The first update will be required by the end of Q3 of 2022 (i.e., 30 September 2022); and
 - 13.2 With respect to the Schedule 20 report due 30 November 2023:

² This equipment includes Layer 2 access and aggregation equipment and a Network Quality Assurance (NQA) platform.

13.2.1 for the aspects outlined in paragraph 5.2 (where Enable cannot apply the Schedule 22 methodology), Enable must publicly disclose information about the methodology it currently applies that will allow interested persons to reasonably assess traffic performance.

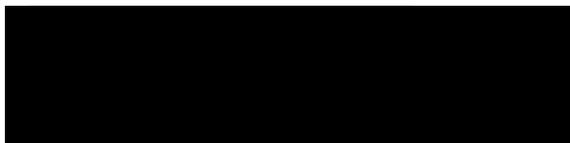
Decision to take no further action regarding non-compliance

14. Further to our letter dated 29 April 2022, we have decided to exercise our discretion to take no further action in relation to your failure to comply with your 30 April 2022 disclosure obligations.
15. As noted in this letter, we recommend that exemption requests are submitted at least two months in advance of the relevant disclosure due date, to ensure we have sufficient time to process your request.
16. We have now updated our website to reflect our expectations regarding requests for exemptions under the Fibre ID determination and information regarding this process can be found here - <https://comcom.govt.nz/regulated-industries/fibre/information-disclosure-requirements-for-fibre/exemptions-to-information-disclosure-requirements> .

Further information

17. This exemption may be revoked or further amended by the Commission at any time in accordance with clause 2.10.1(2) of the ID Determination.
18. A copy of this exemption response letter will be published on the Commission's website.
19. If you have any questions regarding this matter, please contact Robin Meaclem at Infrastructure.Regulation@comcom.govt.nz.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

Tristan Gilbertson

Telecommunications Commissioner