

Statutory purposes in Part 6 - s162 and s166(2)(b), and s 174

In the invitation to comment on our proposed approach, we asked stakeholders:

Q4 What are your views on our preliminary views on how s 162 and s 166(2)(b) interact?

Q12 Do you agree with our application of s 166(2)(b) in practice as illustrated in the example?
Where else may s 166(2)(b) be relevant in setting IMs?

Relationship between s 162 and s 166(2)(b) – summary

- Section 166(2)(a) of Part 6 of the Telecommunications Act 2001 directs us to make decisions that promote the purpose in s 162, ie, those outcomes produced by workably competitive markets for the long-term benefit of fixed fibre line access services (FFLAS) end-users.
- Section 166(2)(b) requires us to make decisions that promote workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services where we consider this 'relevant'.
- Section 166 does not establish a hierarchy between the two outcomes. Where we consider that the promotion of competition is relevant, we must make the decision that best gives, or is most likely to give effect, to both outcomes.
- Both sections are concerned with outcomes produced by workable competition. The provisions therefore contain complementary rather than competing objectives. This recognises that s 162 is focussed on the long-term benefit of FFLAS end-users while s 166(2)(b) relates to end-users of telecommunications services generally.
- Where feasible, we consider that workable competition, rather than regulatory incentive mechanisms, is more likely to be the preferred mechanism to promote the outcomes under ss 162 and 166(2)(b).

Relationship between s 162 and s 166(2)(b) – practical example

- Consider the example of FFLAS expenditure that promotes competition at layer 2 through access to layer 1 (ie, layer 1 unbundling) in the case of a regulated FFLAS provider that is subject to price-quality regulation.
- Under s 176(1)(d)(ii) we need to determine an input methodology (IM) that prescribes the methodologies for evaluating expenditure proposals submitted by regulated suppliers. Our evaluation under the IM will inform the expenditure allowances we approve.
- The question we would consider is whether the IM should include criteria for the consideration of the promotion of workable competition in the market for layer 2 services when we evaluate capital expenditure proposals submitted in relation to layer 1.
- To the extent that we consider that promoting workable competition in the market for layer 2 services would be relevant, then the IM could include criteria that facilitate the approval of expenditure for upgrades that have a higher cost where this would promote workable competition in the market for the long-term benefit of end-users.

How section 174 applies

In the invitation to comment on our proposed approach, we asked stakeholders:

Q5 What are your views on our preliminary view on how s 173 applies when we set the IMs?
(Note: s 173 changed to s 174 in the final version of the Amendment Act.)

- Providing a stable and predictable regulatory framework is one of the objectives of the new regime. IMs are a key tool for helping to achieve this objective.
- Increased certainty is an important objective, but the regime does not aspire to absolute certainty. Increased certainty, timeliness and incentives to invest will develop over time.
- While certainty is not the predominant consideration, it will inform how we determine the IMs.
- We must give effect to the purposes described in section 166 and the objective of promoting certainty in section 174 does not prevent us from amending the IMs where this is necessary to promote those purposes.