

Cross- submission on Draft Information Disclosure Determination

5 August 2021

C H ● R U S

Summary

Introduction

1. This is Chorus' cross-submission on the Commerce Commission's (**Commission**) draft Fibre Information Disclosure Determination, dated 27 May 2021 (**draft ID determination**).

The ID regime must have a staged implementation

2. Like Enable, UFF and Northpower, we are concerned the proposed ID regime is not fit for purpose. The proposals are too broad in scope, do not provide for staged implementation and do not provide appropriate protection for commercially sensitive information.
3. To address these concerns, the Commission should start with an authentic 'minimum package' that recognises the formative stage of the regime and balances the value of disclosure with the feasibility of implementation and the cost of compliance.
4. As detailed in our submission,¹ the Commission can do this by:
 - 1.1 **Reconsidering the scope of the proposed disclosures:** For PQP1, the Commission should:
 - a. Focus on disclosures that are essential for implementing PQ regulation and for assessing Chorus' profitability and efficiency of expenditure;
 - b. Remove any disclosures that are not sufficiently linked to the purpose of ID or can be requested under other mechanisms in the Telecommunications Act; and
 - c. Defer to PQP2 any disclosures that are in scope but are not essential for PQ implementation.
 - 1.2 **Allowing a realistic transition period for the new ID regime:** The draft ID determination should include transition measures for PQP1 that:
 - a. Apply a "reasonable efforts" standard for compliance; and
 - b. Relieve regulated providers of liability for non-compliance in PQP1, provided the reasonable efforts standard is met.
 - 1.3 **Holding technical workshops:** The Commission should hold technical workshops with regulated providers prior to reaching any final decisions. At a minimum, we suggest technical workshops on quality and expenditure categories.
 - 1.4 **Establishing an efficient process for clarifications and exemptions:** The Commission should establish a clear and efficient process, in advance of 1 January 2022, for resolving clarifications of the final ID Determination and for providing exemptions.

¹ Chorus, *Submission on Draft Information Disclosure Determination*, 8 July 2021.

RSPs' confidentiality concerns are over-stated

5. Some RSPs have raised concerns with the Commission protecting Chorus' confidential information from public disclosure.
6. Disclosure of information that would prejudice Chorus' commercial and competitive position would be contrary to the purpose of Part 6 as it would not be consistent with the practice in a workably competitive market. Nor would the disclosure of regulated providers' competitively sensitive information to network competitors be a legitimate means of promoting competition; it would be anti-competitive.
7. The Commission has run a very robust confidentiality process across the information Chorus has been required to provide, using standard categories of confidentiality that it has used across telecommunications regulatory proceedings for many years. It is striking a careful balance between ensuring stakeholders have sufficient information to allow them to engage meaningfully with the price quality consultation and preventing disclosure of information that would prejudice Chorus' commercial and competitive position.
8. We expect the Commission will run a similar confidentiality process across the information Chorus is required to provide under the ID regime. However, the Commission must first consider whether there are more appropriate mechanisms it can use to obtain sensitive information, rather than via the ID regime. For example, the Commission can make a request under either section 187(1)(c) (if the information is necessary to assess compliance with the ID requirements) or section 221 (if the information is necessary to carry out the Commission's functions and to exercise its powers under Part 6).
9. Chorus will need to reconcile any disclosures required by the ID regime with our NZX market disclosure obligations and ensure the disclosures are digestible for investors. We also note that we are in a different position to other listed Part 4 companies, as we operate in a competitive market. Our current market disclosures include information about connections and our fibre services throughout each financial year, at a frequency and level of aggregation that gives investors the information they need to assess Chorus' performance without risking unwarranted use of that information by competitors.
10. We respond to individual submissions in **Appendix 1**.

Appendix 1: Response to individual submissions

No.	Submitter	Position/statement	Chorus response
Quarterly reporting, with Director certification			
1	Enable & UFF	<p>Paragraphs 3.6(b) and (c), 4.8(a) and 4.8(b), Table 8: Quarterly reporting of monthly pricing and quality information is unnecessary for assessing performance against the s162 purpose statement, imposes a considerable compliance burden and creates issues for audit and certification.</p> <p>Pricing and quality information should be published annually.</p>	<p>We agree with Enable & UFF that pricing and quality disclosures and director certification should be annual, rather than quarterly.</p> <p>Quarterly pricing and quality disclosures with director-level certification is unnecessary and inconsistent with ID regimes under both Part 4 of the Commerce Act and Part 4AA of the Telecommunications Act. The Commission has not demonstrated that the value of quarterly disclosure and certification outweighs the cost of compliance. Nor has the Commission justified why disclosure and certification of pricing and quality information needs to be four times as frequent under Part 6.</p> <p>See paragraphs 5.1 and 8.1 of our Executive Summary and paragraphs 25.1 and 26-32 of our submission.</p>
2	Northpower	<p>Pages 2-3: Quarterly disclosure of director-certified quality and pricing metrics is too frequent. There is no need to disclose pricing information every quarter as there are existing restrictions on how often prices can increase. Prices can change annually in accordance with wholesale services agreements.</p>	<p>We agree with Northpower. Chorus can only increase prices once per year, following consultation with our customers. Our ability to change prices is constrained by both our UFB services agreements (which will continue in our post 2022 CSA) and the Telecommunications Act. In addition, our prices are already public.</p> <p>See paragraphs 5.1 and 8.1 of our Executive Summary and paragraphs 25.1 and 26-32 of our submission.</p>

Financial information			
1	Enable & UFF	Table 1: Remove the monthly ROI requirement from Schedule 1 and clauses 2.3.15 and 2.3.16 from the draft ID determination.	We support Enable & UFF's proposal to remove the requirement to provide a monthly ROI and the assessment criteria to determine whether a monthly ROI should apply. Like Enable & UFF, our services are provided and billed continuously over the year, so a monthly ROI is unnecessary. We agree that the materiality assessment is not sufficient because it requires unnecessary additional calculations that would only confirm the materiality threshold has not been met.
2	Enable & UFF	Table 1: Insert the stranding allowance in Schedule 2(i).	We support Enable & UFF's proposal to insert the stranding allowance in Schedule 2(i) for completeness because it is a revenue building block and affects the regulatory profit calculation. The derivation of the ROI formula in Appendix 2 of our submission includes an adjustment to revenue for asset stranding. We note that the asset stranding allowance is non-cash and it should be identified as a non-cash adjustment in Schedule 2(i).
3	Enable & UFF	Table 1: Remove merger and acquisition expenditure from Schedule 2(iii).	We support Enable & UFF's proposal that merger and acquisition expenditure should be removed from Schedule 2(iii). We agree that the Commission will receive sufficient information in the narrative commentary in Schedule 14.
4	Enable & UFF	Table 1: Adopt asset categories: Layer 1, Layer 2, Other network assets, Non-network assets and financial loss asset in Schedule 4(vii).	We support Enable & UFF's proposal that more aggregated asset reporting categories may be appropriate for LFCs and enable comparability.
5	Enable & UFF	Table 1: Adopt opex categories: Customer, Network and Support.	We agree with Enable and UFF's proposal to adopt the categories of Customer, Network and Support from our PQP1 proposal.

			<p>We expect to report at the sub-category level and then aggregate to the categories above for comparability.</p> <p>See paragraphs 66-67 of our submission.</p>
6	Enable & UFF	Table 1: Remove sub-component expenditure of capex and opex.	<p>We agree with Enable & UFF's proposal to remove sub-component expenditure reporting for both capex and opex because this level of granularity is unnecessary.</p> <p>See paragraphs 61-63 of our submission.</p>
7	Enable & UFF	Table 1: Adopt capex categories: Layer 1 – growth, Layer 1 – maintain & renew, Layer 2 – growth, Layer 2 – maintain & renew, Other network and Non-network.	<p>We support the more aggregated reporting categories proposed by Enable & UFF to enable consistency between regulated providers.</p> <p>We would like to work with the Commission to agree how we relate our capex sub-categories to the categories proposed and suggest we do this through a technical workshop.</p> <p>We note that our Network Capacity sub-category includes both Layer 2 – growth and Layer 2 – maintain and renew expenditure. We suggest Layer 2 is combined into one category.</p> <p>A view of how we would relate our sub-categories to the categories proposed is included in Appendix 2.</p>
8	Enable & UFF	Table 1: Include a de-minimis threshold of \$1m for Schedule 6(ii) – Schedule 6(vii) Project & Programme reporting.	We disagree with the draft ID determination's requirement to disclose actual and forecast project and programme expenditure. The Commission has not defined what project and programme expenditure is or explained why they think it is necessary. See paragraphs 49-56 of our submission.

			If project and programme reporting is required, then we agree with Enable and UFF that a de-minimis threshold should apply. The threshold should be above the \$1m suggested by Enable & UFF as this would mean nearly all our projects are captured. Paragraphs 57-60 in our submission suggest alternative materiality metrics.
9	Enable & UFF	Table 1: Consolidation statement	We agree with Enable and UFF's proposal that a consolidation statement should not be required. Chorus' information disclosures, combined with the audit opinion and director certification, is sufficient to enable the Commission to monitor compliance with ID regulation for FFLAS. See paragraphs 46-48 of our submission.
10	Northpower	Page 3: Financial Information - Aggregation of expenditure categories because proposed categories are too granular.	We support Northpower's proposal that more aggregated reporting categories are appropriate to enable comparability between regulated providers. We refer to items 4, 5 and 7 above and paragraph 68 of our submission.
Pricing and contracts			
1	Enable & UFF	Paragraph 4.8(e) and Table 8: Reporting on incentives should be required annually, subject to a materiality threshold where the total value of incentive payments exceeds 10% of total FFLAS revenue in the year.	We disagree. Our incentives are not part of the price and therefore they should be removed from pricing disclosures. The Commission has recognised that incentives are expenditure and therefore they should be reported as expenditure. See paragraphs 84-94 of our submission.
2	Enable & UFF	Paragraph 4.9(a): Proposed contract disclosures duplicate existing regulatory obligations under Part 4AA and the Open Access Deeds. Compliance with Part 4AA obligations should be deemed to satisfy	We agree with Enable & UFF - there is no need to duplicate our existing reporting requirements. Our Reference Offer terms, including any variations or additions, are already public. As noted above at item 2 under "Quarterly reporting, with Director certification", our prices are also public and don't change frequently or materially.

		obligations under clauses 2.3.24 - 2.3.27.	
3	Enable & UFF	<p>Paragraph 4.9(b): Disclosure under clause 2.3.28 should be subject to a materiality threshold; disclosure should only be required where revenue from non-standard contracts exceeds 10% of total FFLAS revenue in the year.</p>	<p>Chorus does not support the public disclosure of our non-standard contracts because it would expose information which is commercially sensitive to Chorus and RSPs.</p> <p>If the Commission requires this sensitive information, the appropriate avenue would be a request under either s187(1)(c) or s221 of the Telecommunications Act, rather than via the ID regime. If this sensitive information must form part of ID, then it should be exempted from public disclosure (either under s188(3)(d) or s222).</p> <p>In any case, our FFLAS revenue under any non-standard contracts would not be material.</p> <p>See paragraphs 82.7, 82.8 and 107-109 of our submission.</p>
4	Enable & UFF	<p>Paragraphs 2.4 and 3.8(a): Commercially sensitive information, including forecast information, must be Commission-only disclosures under s188(3) given the level of competition in the market. Unreasonable compliance burden if required to invoke s222 process for each item of commercially sensitive information.</p>	<p>We agree that if commercially sensitive information must form part of the ID regime, it should be exempted from public disclosure. Section 188(3)(d) would be an efficient way to do this.</p> <p>However, the Commission must first consider whether there are more appropriate mechanisms the Commission can use to obtain sensitive information, rather than via the ID regime. For example, the Commission can make a request under either section 187(1)(c) (if the information is necessary to assess compliance with the ID requirements) or section 221 (if the information is necessary to carry out the Commission's functions and to exercise its powers under Part 6).</p> <p>See paragraph 5.2 of our Executive Summary and paragraphs 21-24, 82.8 and 107-109 of our submission.</p>

5	Enable & UFF	Paragraph 2.5: Disclosure of commercially sensitive information to competitors would not promote workable competition but would distort competition.	<p>We agree. Disclosure of commercially sensitive information to competitors is contrary to the Part 6 purpose statement as it is not consistent with what would occur in a workably competitive market; nor is it a legitimate means of promoting competition to advantage certain competitors by requiring disclosure of competitively sensitive information. Disclosure will distort competition and lessen competitive tension between competitors.</p> <p>See paragraphs 21-24 and 105 of our submission.</p>
6	Enable & UFF	Paragraph 2.3: Disclosure requirements seem to be designed for market analysts with specialist knowledge. For others it is excessive and confusing.	<p>We support Enable & UFF's comment. For pricing, we think reporting of Regulated FFLAS at the level of Chorus' core FFLAS products is appropriate. Reporting pricing information at a more granular level has not been justified and would produce an excessive amount of detail that would not be meaningful for interested persons.</p> <p>See paragraphs 98-105 of our submission.</p>
Asset management and network characteristics			
1	Enable & UFF	Table 2: Update to the asset categories for the purpose of asset register disclosures	<p>We agree with Enable & UFF that more aggregated reporting of asset classes is appropriate.</p> <p>We support the proposed categories of Layer 1 ducts, Layer 1 manholes, Layer 1 cabinets, Layer 1 fibre cable and Layer 2 cabinets.</p> <p>In addition, we propose more aggregated reporting of other asset classes such as network land and buildings. See paragraph 133 of our submission.</p>
2	Enable & UFF	Table 2: Asset condition reporting	We agree with Enable & UFF that asset condition reporting should be deferred until at least PQP2 once we have had more time to develop our reporting capability.

			See paragraph 132 of our submission.
3	Enable & UFF	Table 2: Forecast replacement assets & expenditure	<p>We agree with Enable & UFF that forecast of assets to be replaced in the next 5 years should be deferred until at least PQP2.</p> <p>See paragraph 131 of our submission.</p>
4	Enable & UFF	Table 2: Age profile data	We support Enable & UFF's proposal that asset age profile data should be deferred until at least PQP2 while we focus on implementing more critical reporting.
5	Enable & UFF	Table 4: Remove forecast capacity and utilisation information.	While we agree with some of the information proposed in Schedule 12, we also support Enable & UFF's assertion that these metrics are very difficult to compare meaningfully or consistently between Chorus and LFCs.
6	Enable & UFF	Table 4: Remove forecast demand information	<p>While we agree with the Commission that some measure of forecast network demand (such as average throughput per user) may be useful, we also agree with Enable & UFF that this granular level of forecast reporting would be commercially sensitive. See paragraph 21 of our submission.</p> <p>We also note that the Commission will receive granular port utilisation reporting under Schedule 19, which will give the Commission enough information to monitor network capacity. See paragraph 126 of our submission.</p>
7	Enable & UFF	Table 6: Network plan disclosure	<p>We support Enable & UFF's suggestion that a Network Plan (as described in their submission) is a more appropriate way to disclose asset management information than a template style of disclosure.</p> <p>We note that our Integrated Fibre Plan (which is part of our PQP proposal) includes most of the asset management information Enable & UFF propose to include in a Network Plan.</p>

			We do not support Enable & UFF's suggestion of annual disclosure of a Network Plan, as this would duplicate our PQP process.
Quality			
1	Enable & UFF	<p>Paragraph 4.7: A number of definitions relevant to Schedule 20 are unclear, missing or poorly specified. Industry standards must be established before the proposals can be successfully implemented.</p> <p>This issue can be resolved by:</p> <ul style="list-style-type: none"> • Applying our existing Reference Offer service level agreements. • The Commission hosting industry workshops to develop the necessary definitions. • Quarterly reporting of monthly performance is not warranted. • The proposed connection satisfaction survey requirements should provide a list of topics to be covered in the survey rather than specific questions. 	<p>We agree with Enable & UFF that the proposed quality disclosures are unclear and that the Commission should hold a technical workshop before it reaches any final decisions. As explained in our submission at paragraphs 136-160, some of the proposed disclosures (and the granularity required) have no clear relationship to the purpose of ID, or don't appropriately balance the value of the information with the cost of compliance. There are also new requirements that we cannot practically implement.</p> <p>Enable & UFF have proposed that quality disclosures should be based on existing reference offer service levels. Our proposal was that quality disclosures should be based on reporting to CIP under our UFB contracts. For Chorus' part, we note there is very little difference between the two particularly in the areas of provisioning and fault restoration. For example, our individual provisioning service level under our UFB contract with CIP includes a cross-reference to the cycle time service-level in the reference offer so the measure is identical. Therefore, we don't object to the fibre reference offer being used as a starting point for quality disclosures. The key requirement is that disclosures are defined in a sensible way that works for all LFCs.</p> <p>We agree with Enable & UFF that quarterly reporting of monthly performance is not warranted. As explained in paragraphs 26-32 of our submission, quarterly reporting and director certification is unnecessary and inconsistent with ID regimes under both Part 4 of the Commerce Act and Part 4AA of the Telecommunications Act. The Commission has not demonstrated that the value of quarterly disclosure and certification</p>

			<p>outweighs the cost of compliance. Nor has the Commission justified why disclosure and certification of pricing and quality information needs to be four times as frequent under Part 6. Quality disclosures and certification should be annual, rather than quarterly.</p> <p>We support Enable & UFF's proposal that the connection satisfaction survey requirements should provide a list of topics to be covered in the survey rather than specific questions.</p>
2	Enable & UFF	Table 7: Table 7 sets out specific issues identified across provisioning, faults, availability, performance and customer service measures.	<p>We agree with Enable & UFF that the Commission's proposed disclosures raise a number of issues relating to clarity and workability. The table points out several issues additional to those examples noted in our submission.</p> <p>We suggest these issues are addressed through a technical workshop prior to the Commission reaching any final decisions.</p>
3	Northpower	Page 2: Quarterly disclosure and quarterly director certification is too frequent.	We agree with Northpower. As explained in paragraphs 26-32 of our submission, quality and pricing disclosures and director certification should be annual, rather than quarterly.
4	Northpower	Pages 4-5: Northpower sets out specific issues relating to provisioning, faults, availability, performance and customer service measures.	We agree with Northpower that the Commission's proposed disclosures raise a number of issues relating to clarity and workability. We suggest these issues are addressed through a technical workshop prior to the Commission reaching any final decisions.
5	Compass	Pages 1-3: Compass considers ID reporting requirements should include information that enable access seekers to ensure that equivalence and non-discrimination obligations are being met.	<p>Compass' proposed disclosures are not within the proper scope of ID. It is not the role of ID to monitor Chorus' compliance with equivalence and non-discrimination obligations. The purpose of ID is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 6 is being met.</p> <p>See paragraphs 3-7 of our submission.</p>
6	Spark	Pages 16-17, paragraphs 89-90:	The information Spark is asking for is already largely available under the Layer 2 Performance Measurement and Reporting Regime (L2PMRR).

	Spark sets out specific proposals for additional port utilisation disclosures.	The L2PMRR is likely to be incorporated into the new framework through declared services. Specifically: <ul style="list-style-type: none">Paragraph 89a – We agree a clear scope of what is and isn't measured is important. The L2PMRR provides this clarity today. As set out in our submission, we are concerned that the Commission's proposed performance disclosures may require measurement and reporting that is different from this process. The framework was developed by the industry and CIP and measures performance in a way that is practical and has been validated.Paragraph 89b – A testing programme of this kind was carried out as part of establishing the L2PMRR which resulted in 95% being set as the maximum utilisation threshold for aggregation ports. At the time most of our aggregation links were 1Gbps or 10Gbps links, whereas today most are 10Gbps or 100Gbps. We expect this reduces the likelihood that utilisation at a certain level results in customer experience impacts. If the Commission thinks this should be revalidated a testing programme will need to be funded by expenditure. We note that testing is likely to require intentionally congesting the network which will affect customer experience.Paragraph 90a – Raw data on port utilisation is published on our service provider website each month to comply with the L2PMRR.² This regime is likely to be incorporated into the anchor service regulations so this will continue. The raw data allows interested parties to identify congested ports or areas.Paragraph 90b – It is not clear to us what would need to be reported under a requirement to report 'errors'. In any event,
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² See here: <https://sp.chorus.co.nz/report/internodal-and-uplink>

			<ul style="list-style-type: none"> if errors are causing traffic performance issues the current measurement regime will identify this. <p>Paragraph 90c – We assume OLT port utilisation refers to PON port utilisation. As for aggregation port utilisation, we currently publish raw data on PON utilisation on our service provider website each month under the L2PMRR.³</p>
7	2Degrees	<p>Page 8: Considers that disclosure requirements should extend to all of the optional elements, e.g., ordering and switching.</p>	<p>We disagree with 2Degrees that disclosure requirements should extend to ordering and switching. 2Degrees has not provided any justification for this disclosure.</p> <p>In our view:</p> <ul style="list-style-type: none"> <i>Ordering</i> – We see no good reason relevant to the purpose of ID for requiring ordering disclosures. Ordering is largely automated and instantaneous. We note that service levels relating to ordering are ancillary in both the fibre Reference Offer and regulated copper Standard Terms Determinations. <i>Switching</i> – We see no good reason relevant to the purpose of ID for requiring switching disclosures. Switching is not just a LFC matter - all parties need to play their part to make switching work well for end users. Disconnections and intact provisioning (the steps in a switch) are both subject to service levels under our customer contracts. These service levels are likely to be incorporated in declared services regulation. Therefore, switching will be regulated by other instruments in the regulatory framework.

³ See here: <https://sp.chorus.co.nz/report/pon-utilisation>

Appendix 2: Capex categories

Capex category proposed by Enable/UFF	Chorus PQP1 capex category
Layer 1 – growth	Extending the network Installations
Layer 1 – maintain and renew	Network Sustain and Enhance
Layer 2 – growth and Layer 2 – maintain and renew (we suggest Layer 2 is combined into one category)	Network Capacity
Other network	Network and Customer IT
Non-network	Business IT, Corporate