

2 April 2020

Dear Stakeholder

Telecommunications: updates to decision processes and timelines in light of COVID-19

1. The COVID-19 pandemic brings with it many challenges. The Commission is committed to doing what it can to ensure that the telecommunications sector is focused on providing essential services to New Zealanders during these unprecedented times, particularly in light of the substantial increase in use of our telecommunications networks during the lockdown.
2. The purpose of this letter is to advise stakeholders that we are consequently reviewing our decision processes and timelines, and will be extending the dates for consultation and publication on a number of pieces of work.
3. We have set out updates below on the following projects:
 - 3.1 Fibre input methodologies;
 - 3.2 111 Contact Code and Copper Withdrawal Code;
 - 3.3 Telecommunications Development Levy (TDL); and
 - 3.4 Equivalence and non-discrimination guidance.

Fibre Input Methodologies (Fibre IMs)

What have we previously said about timeframes

4. We published our Fibre IMs Draft Decision Reasons Paper (**Draft Decision**) on 19 November 2019. We published our Draft Fibre IMs Determination (**Draft Determination**) on 11 December 2019, alongside a paper setting out our intended implementation approach for the Draft Determination (**Intended Implementation paper**). These papers did not cover the Regulatory Processes and Rules IMs.
5. In our Draft Decision, we indicated that we would:
 - 5.1 publish our Regulatory Rules and Processes IM draft decisions and an updated draft determination incorporating changes arising from these decisions in March 2020;

- 5.2 undertake technical consultation on a further updated draft determination in May 2020, if required; and
 - 5.3 publish our final decisions and the final determination in July 2020.
6. Our Intended Implementation paper further explained that we would consult on the impact on our decisions of the differences between the exposure draft of the s 226 regulations (which we used for our Draft Decision) and the final form of those regulations.

Review of decision process and timeframes

Regulatory Rules and Processes IM

7. We think it is important to progress our Regulatory Rules and Processes IM decisions so that all Fibre IMs can be brought back onto the same track and stakeholders have an opportunity to consider the determination drafting as a whole package.
8. We have therefore published our Regulatory Rules and Processes IM draft decisions and an updated draft determination now.
9. However, we are aware that everyone's ability to engage with the consultation will vary as a result of the current lockdown and other challenges associated with COVID-19 and have therefore allowed for a relatively lengthy consultation period. We will keep this under review, particularly should the national lockdown extend beyond the current 4-week period.

Process and timeframes for further consultation and publication of our final IMs decisions

10. We are currently reviewing the process and timeframes for any further consultation and the publication of our final IMs decisions, including taking account of the COVID-19 context, and will provide a process update on these matters as soon as we can.
11. However, in advance of that update, we wanted to let you know that our final IMs decisions will not be published before September 2020.
12. We are still planning to consult on an updated draft determination and the impact on our decisions of the differences between the exposure draft of the s 226 regulations and their final form, although this will be after May 2020.
13. The process update will also include more information on the timing for both the determination of the price-quality path for Chorus and the Information Disclosure determination for Chorus and Local Fibre Companies.
14. Thank you to everyone who has participated in our consultation processes to date.
15. The submissions received have been very helpful in assisting us to reach our draft decisions and remain important as we progress to our final decisions.

111 Contact Code and Copper Withdrawal Code

What have we previously said about timeframes

16. We published the draft 111 Contact Code and an accompanying reasons paper on 11 March 2020, with submissions on the draft due on 23 April 2020 and the final code due to be published on 30 June 2020.
17. We published an updated timetable for the Copper Withdrawal Code (CWC) on 16 March 2020. In that update we said the Commission planned to publish the draft of the CWC in mid-May and the final code in late July.

Review of timeframes

18. In the last two weeks we have received a number of requests from parties to review our timeframes in light of the COVID-19 pandemic. We note Chorus does not share the view of a number of industry participants that the timelines should be reviewed.
19. We are particularly concerned about the ability for consumer groups, including those who represent vulnerable consumers, to participate in our processes during this period.
20. Having considered these requests and the impact of COVID-19 on the ability of a range of parties to participate in the development of the two codes, we have updated our timeframes as follows:
 - 20.1 111 Contact Code:
 - 20.1.1 Submissions on draft due: 17 July 2020
 - 20.1.2 Cross-submissions on draft due: 5 August 2020
 - 20.1.3 Final code and reasons paper published: ~21 September 2020
 - 20.2 CWC:
 - 20.2.1 Draft code and reasons paper published: 14 May 2020
 - 20.2.2 Submissions on draft due: 17 July 2020
 - 20.2.3 Cross-submissions on draft due: 5 August 2020
 - 20.2.4 Final code and reasons paper published: ~21 September 2020
21. The statutory deadline for developing the two codes is 1 January 2022.

Telecommunications Development Levy (TDL)

What we have said about timeframes

22. Under section 82 of the Act, liable persons that earned \$10 million or more from providing telecommunications services by means of a PTN or that relied primarily on the existence of a PTN in the 2018/19 financial year (qualified revenue) are required to provide the Commission with financial statements specified by the Commission by **1 April 2020**.
23. The Commission will use the information provided in compliance with section 82 to identify the parties required to pay a portion of the 2019/20 TDL. It's important to note for this process that the 2018/19 information identifies *if* a party is required to pay, and 2019/20 information (sourced later in the year) identifies *what* a party is required to pay.

Review of timeframes

24. It is important to note that parties who were liable for the TDL last year will have already complied with the obligation in section 82, by providing their 2018/19 financial statements as part of qualified revenue disclosures last year.
25. For those parties who may have become liable persons for the TDL in the past year, and may not have complied with the obligation under section 82, we understand that there may have been difficulties in providing the necessary financial statements by 1 April. We can confirm that we will exercise our enforcement discretion not to take action under section 156B of the Act if these statements are able to be submitted by **1 June 2020**. We will also be sensitive to this issue when considering when to use our powers under section 81 to seek financial information from those parties that we consider might have become liable persons in the last year.
26. We will keep this matter under review, and may provide further extensions in due course, depending on the progress of the Covid-19 Alert levels.

Equivalence and non-discrimination guidance

What have we previously said about timeframes

27. We published the draft equivalence and non-discrimination guidance on 4 March 2020, seeking submissions on the draft on 28 April 2020, and cross-submissions on 12 May 2020. We said that we expected the final guidance to be published in Q3 2020.
28. When we published the draft guidance, we said that we would also publish in late March an overview of fixed line telecommunications regulation and our response to submissions received on Professor Ingo Vogelsang's expert report on equivalence and non-discrimination.

Review of timeframes

29. The overview of fixed line telecommunications regulation and our response to submissions received on Professor Ingo Vogelsang's expert report on equivalence and non-discrimination are both being published today. We are not seeking submissions on those papers, but expect that they will assist stakeholders in preparing their draft guidance submissions.
30. For the draft equivalence and non-discrimination guidance, we are keen to ensure that stakeholders have sufficient opportunity to provide their submissions and cross-submissions. We recognise that the current circumstances are likely to have hampered the ability of some stakeholders to engage with the process.
31. For that reason, we are removing the current deadlines for submissions and cross-submissions on the draft guidance.
32. We expect to contact stakeholders at the end of April with new deadlines. We continue to hope that it will be possible for us to publish our final guidance in Q3 2020.

Next steps and getting in touch

33. Thank you for all the work you are doing to ensure New Zealanders remain connected at the moment.
34. We remain open and responsive to further industry feedback, to ensure companies are able to focus on providing essential goods services and service during the COVID-19 pandemic.
35. If you have any questions regarding these matters, please contact:
 - 35.1 Vanessa Howell for Fibre Regulation; Vanessa.Howell@comcom.govt.nz or (04) 924 3833.
 - 35.2 Simon Thomson for all other Telco matters; Simon.Thomson@comcom.govt.nz or (04) 974 3791

Yours sincerely



Dr Stephen Gale
Telecommunications Commissioner