

17 November 2023

[REDACTED]
[REDACTED]

Enable Networks Limited
Level 3, 93 Cambridge Terrace,
Christchurch Central,
Christchurch 8013

By e-mail only: [REDACTED]

Tēnā koe [REDACTED],

Notice of conditional exemption to Enable Networks Limited in relation to reporting on quality (availability) under the Fibre Information Disclosure Determination 2021

1. The Commerce Commission (the **Commission**) is issuing a conditional exemption to Enable Networks Limited (**Enable**) in relation to quality reporting requirements under the Fibre Information Disclosure Determination 2021 (the **ID Determination**) for quality disclosures due by 30 November 2023.¹
2. This notice provides a conditional exemption to Enable from certain reporting requirements with respect to any information that relies on the term “outage” in its disclosures for disclosure year 2023 that are due by 30 November 2023, as specified in paragraph 4. The exemption is granted on the condition specified in paragraphs 5 and 6. This exemption applies to certain information contained within the Report on Quality, as set out in Schedule 20 of the ID Determination.

¹ *Fibre Information Disclosure Determination 2021 [2021] NZCC 24, as amended 28 July 2022.*

3. We have granted this conditional exemption because we consider it would be unworkable for Enable to complete and publicly disclose all the information in the current schedules mentioned in paragraph 2.

Conditional exemption issued

4. Using the exemption powers under clause 2.10.1(1) of the ID Determination, the Commission has decided to issue a conditional exemption to Enable. The conditional exemption is from having to, for the purpose of clause 2.4.4(1) of the ID Determination, use the definition in paragraph (a) of "outage" in clause 1.1.4(2) of the IM Determination. This is in relation to completing and publicly disclosing information for the following line items in the Report on Quality, as set out in Schedule 20 of the ID Determination, for disclosure year 2023:
- 4.1 **average unplanned downtime**, as used in Schedule 20(iii): Availability;
 - 4.2 **average unplanned downtime excluding force majeure events**, as used in Schedule 20(iii): Availability;
 - 4.3 **faults per 100 connections**, as used in Schedule 20(ii): Faults;
 - 4.4 **number of faults**, as used in Schedule 20(ii): Faults;
 - 4.5 **percentage of notified unplanned outages**, as used in Schedule 20(iii): Availability;
 - 4.6 **percentage of regulated provider faults not restored within 2 calendar days**, as used in Schedule 20(ii): Faults;
 - 4.7 **percentage of regulated provider faults that met expected restoration time**, as used in Schedule 20(ii): Faults;²
 - 4.8 **planned downtime**, as used in Schedule 20(iii): Availability;³
 - 4.9 **planned outage**, as used in Schedule 20(iii): Availability;
 - 4.10 **unplanned downtime**, as used in Schedule 20(iii): Availability; and
 - 4.11 **unplanned downtime attributable to force majeure events**, as used in Schedule 20(iii): Availability.
5. The exemption referred to in paragraph 4 is provided on the condition that Enable must, for the purpose of clause 2.4.4(1) of the ID Determination, measure an "outage" as specified in paragraph 6 when completing and publicly disclosing

² We note that this line item is referred to as "percentage of regulated provider faults that met expected restore date" in Schedule 23 of the ID Determination.

³ We note that this line item is referred to as "planned downtime (minutes)" in Schedule 23 of the ID Determination.

information for the line items listed in paragraph 5 and in the Report on Quality, as set out in Schedule 20 of the ID Determination, for disclosure year 2023.

6. For the purpose of paragraph 5, Enable must measure an “outage” as the cessation in the supply of **ID FFLAS** from the earliest of the following times:⁴
 - (a) When a **RSP, access seeker**, or other party notifies Enable that the cessation in the supply of **ID FFLAS** has occurred, which includes the reporting party providing all information necessary for Enable to address the cessation in the supply of **ID FFLAS** (such as the location of this cessation);^{5 6} or
 - (b) When Enable is notified by its own systems of a cessation in the supply of **ID FFLAS** on its **fibre network**, which includes major fault alerts.⁷
7. We consider that granting this exemption is reasonable given that:
 - 7.1 Enable will disclose the information that it does hold in relation to the duration of outages, which we understand is largely consistent with industry practice; and
 - 7.2 The issue is outside of Enable’s control in that Enable does not hold and does not appear to be reasonably capable of obtaining the information that complies with the definitions outlined in paragraph 4.
8. We have considered the impact of the conditional exemption on the purpose of information disclosure under section 186 of the Telecommunications Act 2001 and have concluded that the purpose will still be met if this exemption is granted. We consider that the information provided under the conditional exemption would ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 6 of the Act is met. In particular, we consider that the information provided under the conditional exemption would ensure that interested persons can assess whether Enable is supplying fibre fixed line access services of a quality that reflects end-user demands, consistent with s 162(b) of the Act.

⁴ “ID FFLAS” has the meaning set out in the IM Determination. See the definition of “ID FFLAS” in clause 1.1.4(2) of *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended.

⁵ “Access seeker” and “ID FFLAS” have the meaning set out in the IM Determination. See the definition of “access seeker” and “ID FFLAS” in clause 1.1.4(2) of *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended.

⁶ “RSP” has the meaning set out in the ID Determination. See the definition of “RSP” in clause 1.4.3 of *Fibre Information Disclosure Determination 2021* [2021] NZCC 24, as amended 28 July 2022.

⁷ “ID FFLAS” has the meaning set out in the IM Determination. See the definition of “ID FFLAS” in clause 1.1.4(2) of *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended. “Fibre network” has the meaning set out in s 5 of the Act.

Background

9. Fibre providers (the **providers**) are subject to information disclosure (**ID**) regulation as a result of regulations made by the Governor-General under s 226 of the Telecommunications Act 2001 (the **Act**).⁸ The providers are:
 - 9.1 Enable, Northpower Fibre Limited and Tuatahi First Fibre Limited (the **ID-only regulated providers**); and
 - 9.2 Chorus Limited (**Chorus**).
10. Chorus and the ID-only regulated providers each have their own set of quality Schedules to complete for each disclosure year.⁹
11. Enable's quality reporting for disclosure year 2023 is due to be publicly disclosed by 30 November 2023 as its disclosure year is the 12 months ending 30 June each year.¹⁰

ID Determination requirements relating to "outages"

12. Schedule 23 of the ID Determination sets out the definitions used for certain line items within the quality Schedules for ID-only regulated providers. Of these line items, the definitions listed in paragraph 4 rely on the term "outage".
13. "Outage" is defined in the Fibre Input Methodology Determination 2020 (the **IM Determination**) for the purposes of the ID Determination as "a cessation in the supply of **ID FFLAS**".¹¹

Communication with Enable and other ID-regulated providers

14. In September 2023, Enable sent the Commission an ID enquiry which included a query regarding the "cessation in the supply of **ID FFLAS**" aspect of the definition of "outage".
15. Enable noted that, from the workshops between staff from the Commission and ID-regulated providers prior to the final ID Determination, it understood faults/outages would be reported when Enable is notified by a Retail Service Provider (**RSP**), and has obtained all requisite customer information. It considers this to be the only practical

⁸ Telecommunications (Regulated Fibre Service Providers) Regulations 2019, regulation 5.

⁹ Commerce Commission, *Fibre Information Disclosure Final Decisions Reasons Paper (30 November 2021)*, Table 7.1, Overview – Decisions on quality metrics and performance measures.

¹⁰ In respect of disclosure year 2023, clause 2.4.4 requires ID-only regulated providers to complete and publicly disclose no later than 5 months after the end of disclosure year 2023, a Report on Quality in Schedule 20 in respect of each month of disclosure year 2023.

¹¹ For the definition of "outage", see clause 1.1.4(2) of *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended.

way it can measure faults, apart from when a major fault triggers an alarm on its systems which leads to a fault ticket being raised by Enable staff.¹²

16. Commission staff have reviewed Enable’s enquiry and have explored practices undertaken in the industry by engaging with the other ID-regulated providers to determine how they measured outages for ID purposes.^{13 14 15}
17. It has become apparent the “cessation in supply” aspect of the definition for “outage” is difficult to comply with in the majority of instances of outages occurring, largely because the technology is not currently available that notifies ID-regulated providers of the details of outages when they occur in real time (i.e. there is a delay from when the outage actually begins and when providers are notified by an RSP/access seeker of the details of those outages).¹⁶
18. In some instances of outages, the “cessation in supply” aspect of the definition for “outage” can be complied with, such as when a major fault occurs on a provider’s network which is picked up in real time via that provider’s monitoring systems.

Legal framework

19. Clause 2.10.1(1) of the ID Determination allows the Commission to, by written notice to a provider, exempt the provider from any requirement of the ID Determination, for a period and on such terms and conditions as the Commission specifies in that notice. Furthermore, clause 2.10.1(2) gives the Commission the power to amend or revoke any such exemption.

Further information

20. This exemption may be revoked or amended by the Commission at any time in accordance with clause 2.10.1(2) of the ID Determination.
21. A copy of this exemption response letter will be published on the Commission’s website.
22. If you have any questions regarding this matter, please contact Joe O’Sullivan at infrastructure.regulation@comcom.govt.nz.

¹² Email enquiry from Enable to the Commerce Commission, on 6 September 2023.

¹³ Enquiry from Tuatahi First Fibre Limited in relation to the definition of an ‘outage’, on 2 August 2023,

¹⁴ Email from Northpower Fibre Limited, on 1 November 2023 in reply to information request from Commerce Commission staff.

¹⁵ Email from Chorus, on 2 November 2023 in reply to information request from Commerce Commission staff.

¹⁶ “RSP” is defined in clause 1.4.3 of *Fibre Information Disclosure Determination 2021* [2021] NZCC 24, as amended 28 July 2022. “Access seeker” is defined in clause 1.1.4(2) of *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended.

Nāku iti noa, nā



Tristan Gilbertson

Telecommunications Commissioner