

15 June 2023

**To:** All providers of fibre fixed line access services subject to information disclosure regulation under Part 6 of the Telecommunications Act 2001

By e-mail only: [REDACTED]

Tēnā koutou

## **Notice of exemption to fibre providers regulated by the Fibre Information Disclosure Determination 2021**

1. The Commerce Commission (the **Commission**) is issuing a conditional exemption to the fibre providers regulated by the Fibre Information Disclosure Determination 2021 (the **ID Determination**) (**fibre providers**) in relation to the methodology for calculating network traffic performance, set out in Schedule 22 of the ID Determination (the **Schedule 22 methodology**).
2. This notice exempts fibre providers from the requirement to test traffic performance using a Bitstream service profile of 100Mbps downstream, 20Mbps upstream and a committed information rate (**CIR**) of 2.5Mbps in each direction (**100/20 service**), on the following condition:<sup>1</sup>
  - 2.1 fibre providers test using a Bitstream service profile of 300Mbps downstream, 100Mbps upstream, and a CIR of 2.5Mbps in each direction (**300/100 service**).<sup>2</sup>
3. The purpose of this conditional exemption is to ensure interested persons have meaningful information about the performance of traffic on the fibre providers' networks by requiring them to test traffic performance using the Bitstream service most consumed by end-users.

### **Background**

4. Fibre providers are subject to information disclosure (**ID**) regulation under section 226 of the Telecommunications Act 2001 (the **Act**). The fibre providers are:

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<sup>1</sup> Clause (3)(n) of Schedule 22, ID Determination

<sup>2</sup> The requirement, under clause (3)(n) of Schedule 22 of the ID Determination, for equipment to be tagged to treat high-priority traffic and low-priority traffic appropriately is not affected by this exemption.

- 4.1 Enable Networks (**Enable**), Northpower Fibre (**Northpower**) and Tuatahi First Fibre (**Tuatahi**) (the **ID-only fibre providers**); and
  - 4.2 Chorus.
5. Clauses 2.3.3(1) and 2.4.4(1) of the ID Determination require the fibre providers to:
- 5.1 complete and disclose a Report on Quality, which includes information on network traffic performance;<sup>3</sup> and
  - 5.2 apply the Schedule 22 methodology when completing that report.
6. The Schedule 22 methodology requires each fibre provider to use a reference network that provides a statistically significant sample of traffic paths for the purposes of ensuring its fibre network is correctly managed to deliver acceptable traffic performance.<sup>4,5</sup> Testing equipment used in a reference network must be configured using a 100/20 service.<sup>6</sup>
7. During development of the ID Determination, we considered the 100/20 service appropriate to use for testing for the following reasons:
- 7.1 it aligns with the anchor service requirement that applies to Chorus;<sup>7</sup>
  - 7.2 it is very similar to the service that fibre providers used for traffic performance testing when reporting to Crown Infrastructure Partners prior to the ID Determination coming into effect;<sup>8</sup> and
  - 7.3 at the time, all fibre providers sold a 100/20 service.

*Communication with the fibre providers*

8. Enable notified Commission staff that it no longer sells a 100/20 service as it increased the headline speeds of this service to 300Mbps downstream, 100Mbps upstream (ie, the 300/100 service). As such, Enable sought guidance on which Bitstream profile it should use for traffic performance testing.

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<sup>3</sup> The Report on Quality is in Schedule 19 for Chorus, and Schedule 20 for the ID-only fibre providers.

<sup>4</sup> Clause (3)(a), Schedule 22, ID Determination.

<sup>5</sup> Definition of “reference network,” Schedule 23, ID Determination

<sup>6</sup> Clause (3)(n), Schedule 22, ID Determination

<sup>7</sup> Chorus is price-quality regulated and must comply with the anchor service requirements set out in the Telecommunication (Regulated Fibre Service) Regulations 2021. Under section 6(a), the broadband anchor service requirement specifies a minimum download speed of 100 Mbps and minimum upload speed of 20 Mbps (ie, a 100/20 service).

<sup>8</sup> Crown Infrastructure Partners “Layer 2 Performance Measurement and Reporting Regime” (17 November 2016), page 8, para 7.4.

9. Enable provided further information about its Bitstream services to Commission staff, who then contacted the other fibre providers to obtain similar information. This information indicated that most end-users in New Zealand are now on a 300/100 service.

### **Legal framework**

10. Clause 2.10.1(1) of the ID Determination allows the Commission to, by written notice to a fibre provider, exempt the fibre 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.

### **Exemption decision**

11. We have decided to issue a conditional exemption to all fibre providers that exempts them from the requirement under clause (3)(n) of the schedule 22 methodology to test traffic performance using a 100/20 service, on the condition that they test traffic performance using a 300/100 service.
12. The period the exemption applies is:
  - 12.1 for the ID-only fibre providers, 1 July 2023 to 30 June 2025; and
  - 12.2 for Chorus, 1 January 2024 to 30 June 2025.
13. Noting the various start dates of the ID-only fibre providers' disclosure years, we consider an exemption from 1 July 2023 will support interested persons to compare industry performance as it will be the start of a new quarter.
14. Chorus requires additional time to ready itself for the conditional testing requirement and as such, the exemption will apply to it from 1 January 2024.
15. We will consider amending the ID Determination before the end of the exemption period. If an amendment does not occur before 30 June 2025, we will review the terms and conditions of this exemption (including the timeframe during which the exemption applies).

### *Reasons for issuing this exemption*

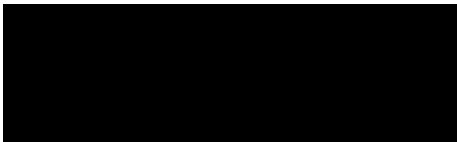
16. The Bitstream service used to test traffic performance is intended to be the service most consumed by end-users and the test results should be comparable to the average end-user's experience. As most end-users are no longer on a 100/20 service, the value of testing using this service is diminished for interested persons.
17. We consider it appropriate for fibre providers to test traffic performance using a 300/100 service instead of a 100/20 service for the following reasons:

- 17.1 all of the fibre providers increased the headline speeds of their 100/20 services to 300Mbps downstream, 100Mbps upstream;
  - 17.2 Chorus is the only fibre provider that continues to sell a 100/20 service;<sup>9</sup>
  - 17.3 the 300/100 service is now the service most consumed by end-users; and
  - 17.4 the purpose of ID will be better served.<sup>10</sup> Testing using a 300/100 service will result in more meaningful information for interested persons to assess whether fibre providers have incentives to supply fibre fixed line access services of a quality that reflects end-user demands.<sup>11</sup>
18. We consider that any potential analysis undertaken by interested persons will not be materially affected by this exemption. End-users on a 100/20 service will have less meaningful traffic performance information. However, we consider this is significantly outweighed by the benefit to interested persons more generally as most end-users now consume a 300/100 service.

#### Further information

- 19. We ask the fibre providers notify us if a different Bitstream service profile becomes its predominant mass market service by number of connections. We recognise the number of connections for each Bitstream service is disclosed in a Report on Quality but for the purpose of this exemption, the report is not available in a timely manner as it is published 5 months after the end of a disclosure year.
- 20. This exemption may be revoked or amended by the Commission at any time in accordance with clause 2.10(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 Rhys Williams at [infrastructure.regulation@comcom.govt.nz](mailto:infrastructure.regulation@comcom.govt.nz).

Nāku iti noa, nā



**Tristan Gilbertson**  
Telecommunications Commissioner

<sup>9</sup> Although Chorus increased the headline speeds of its original 100/20 service, it continues to offer a 100/20 service to meet its broadband anchor service obligation.

<sup>10</sup> Section 186, Telecommunications Act 2001.

<sup>11</sup> Section 162(b), Telecommunications Act 2001.