

Consultation on the draft Equivalence and Non-discrimination Guidance

Process paper

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Background

1. The Commerce Commission (**Commission**) has previously stated our view that there would be a public benefit in developing, in a transparent way, our views on the interpretation of the equivalence and non-discrimination obligations applying to telecommunications regulation in New Zealand.
2. Last year we engaged Professor Ingo Vogelsang to provide expert economic advice (**the expert report**)¹ on the economic interpretation of the equivalence and non-discrimination obligations imposed on local fibre companies (**LFCs**).² We invited stakeholder views on this report on 18 October 2019 and we published the submissions received on our website.³ We plan to publish our response to the submissions received on the expert report in **late-March 2020**, along with a high level overview of the telecommunications regulatory frameworks for copper and fibre.
3. Today, we have published our draft equivalence and non-discrimination guidance (**draft guidance**).⁴ We now seek stakeholder views on the draft guidance.

Submitting on the draft guidance

4. Please lodge your submissions on the draft guidance via the project page at the following link:

<https://comcom.govt.nz/regulated-industries/telecommunications/projects/unbundled-layer-1-fibre-service>
5. The project page will direct you to a form with instructions on how to upload your submission. Your submission should be provided as an electronic file in an accessible form.
6. The deadline for submissions is **10am on Tuesday, 28 April 2020**.

¹ The expert report, provided by Professor Ingo Vogelsang, on the economic interpretation of the equivalence and non-discrimination obligations imposed on local fibre companies is available on the project page, at <https://comcom.govt.nz/regulatedindustries/telecommunications/projects/unbundled-layer-1-fibre-service>.

² The LFCs comprise Chorus Limited, Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited and Ultrafast Fibre Limited.

³ The request for views and the stakeholder submissions on the expert report are available on the project page, at <https://comcom.govt.nz/regulatedindustries/telecommunications/projects/unbundled-layer-1-fibre-service>.

⁴ The draft Equivalence and Non-discrimination guidance is available at: <https://comcom.govt.nz/regulatedindustries/telecommunications/projects/unbundled-layer-1-fibre-service>

7. The protection of confidential information is something we take seriously. We have developed a new submission process to continue to protect confidential submissions. When you upload your submission via the form from the project page, you will be required to provide (if necessary) both a confidential and non-confidential version of your submission and to clearly identify the confidential and non-confidential versions.
8. When including commercially sensitive or confidential information in your submission, we offer the following guidance:
 - 8.1 Provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website.
 - 8.2 The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
9. If we consider information disclosed in the confidential version to be in the public interest, we will consult with the party that provided the information before any such disclosure is made.
10. We will provide the opportunity for interested parties to provide views on the submissions on the draft guidelines by inviting cross-submissions. You will then have until **5pm on Tuesday, 12 May 2020** to make a cross-submission.
11. Finally, we note that we reserve the right to use any information provided to us in your submissions on these guidelines in any investigation or enforcement action we might take in relation to the deeds, whether or not the information provided is confidential.

Next steps

12. Table 1 provides an overview of the completed milestones and the indicative process timeline for developing the final guidance.

Table 1: Process timeline

Milestone	Date
Publication of the expert report	Completed on 18 October 2019
Submissions on the expert report due	Completed on 19 November 2019
Publication of the draft guidance	Completed on 4 March 2020
Response to submissions on expert report and high level overview of telecommunications regulatory framework	Late-March 2020
Submissions on the draft guidance due	28 April 2020
Cross submissions on the draft guidance due	12 May 2020
Publication of the final guidance	Q3 2020