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**Input methodologies review draft decision**

**Related party transactions**

**Draft decision and determinations guidance**

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## Associated documents

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30 August 2017	978-1-869456-03-0	[DRAFT] Gas Distribution Services Input Methodologies Amendments Determination 2017
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30 August 2017	978-1-869456-06-1	[DRAFT] Gas Distribution Information Disclosure Amendments Determination (No.3) 2017
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14 September 2016	Notice of intention	Amended notice of intention: Input methodologies review
20 December 2016	978-1-869455-44-6	Input methodologies review decisions: Introduction and process paper

20 December 2016	978-1-869455-53-8	Input methodologies review decisions: Framework for the IM review
20 December 2016	978-1-869455-51-4	Input methodologies review decisions: Report on the IM review
16 June 2016	978-1-869455-17-0	Input methodologies review draft decisions: Topic paper 7 – Related party transactions
1 October 2012	978-7-869452-09-4	Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper
16 January 2012	978-1-869451-87-5	Information Disclosure Requirements for Electricity Distribution Businesses and Gas Pipeline Businesses Draft Reasons Paper
22 December 2010	978-1-869451-32-5	Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons Paper

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## Executive Summary

### What this paper covers

- X1 This paper sets out our draft decision on our review of the related party transactions provisions as part of the input methodologies (**IMs**) review.<sup>1</sup> As this work is part of the IM review, we have applied our IM review framework for decision-making.<sup>2</sup>
- X2 The paper also sets out proposed changes to the related party transactions information disclosure (**ID**) requirements.
- X3 This paper includes:
- X3.1 our draft decision on the review of the related party transaction provisions for Electricity Distribution Businesses (**EDBs**) and Gas Pipeline Businesses (**GPBs**); and
  - X3.2 our guidance that will support the application of the draft IM and ID amendments determinations that give effect to the draft decision.

### The related party transactions policy intent

- X4 The purpose of Part 4 of the Commerce Act 1986 (**the Act**) is set out in s 52A as:

The purpose of this Part is to promote the long-term benefit of consumers in markets by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services—

(a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and

(b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and

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<sup>1</sup> In September 2016 we decided to progress the review of the related party transactions provisions on a longer timeframe than the rest of the IM review. This was to allow more time to assess whether the issues identified in our June 2016 related party transactions topic paper amounted to a broader problem with the related party transactions provisions. On 20 December 2016 we published our final decisions on all areas of the IM review except for three areas where we had not yet reached decisions. One of those areas is the related party transactions provisions, which is the focus of this paper. As this work remains part of the IM review, we have applied our IM review framework for decision-making.

<sup>2</sup> Commerce Commission “Input methodologies review decisions: Framework for the IM review” (20 December 2016).

(c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and

(d) are limited in their ability to extract excessive profits.

X5 In deciding whether to make changes to the provisions as a result of this review, we are guided by the IM review framework. Specifically, we only propose changing the related party transactions provisions across the IMs where this appears likely to:

X5.1 promote the Part 4 purpose more effectively;

X5.2 promote the IM purpose in s 52R more effectively (without detrimentally affecting the promotion of the Part 4 purpose); or

X5.3 significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting the promotion of the Part 4 purpose).

X6 The purpose of ID in s 53A is to ensure that sufficient information is readily available to interested persons to assess whether the Part 4 purpose is being met. We have considered the s 53A ID purpose to the extent we have considered changes to the ID requirements.

X7 We consider that transactions between related parties have the potential to impact the achievement of the Part 4 purpose in the following ways:

X7.1 The presence of related party transactions may adversely affect the ability to constrain prices to the benefit of consumers, as there is an ability to use an unregulated related party to increase overall profits by charging greater than arm's-length prices to the regulated supplier.

X7.2 The presence of a related party relationship and extensive related party transactions could affect the level and timing of investment. For example, if weight is placed on the interests of the related party supplying the service, more investment may be undertaken, and at greater cost, than if the relationship and all transactions were on an arm's-length basis.

X7.3 The presence of related party transactions and the lack of information on what equivalent arm's-length terms would have been. This can make it hard to determine if cost efficiencies (or inefficiencies) are being created. If inefficiencies already exist, they may be being sheltered. These make it hard to tell whether any efficiencies are being shared with consumers of the regulated service or being solely enjoyed by the related party.

X7.4 There can be reduced pressure from the commercial relationship to be innovative.



- X7.5 The presence of related party transactions may harm consumers of the regulated service if the relationship means quality is traded off in favour of other interests of the related party supplying the service, or if the regulated supplier uses a more costly input to deliver the regulated service without any corresponding increase in quality.
- X8 We do not seek to prevent regulated suppliers from using related parties to provide services, as they can be efficient, securing economies of scale and scope. However, there is an onus on the regulated supplier to be able to demonstrate that the cost of the underlying service is consistent with the input price that it would have otherwise paid in a transaction on arm's-length terms.
- X9 For reference, we propose in the related party transactions provisions to adopt the wording for 'arm's-length transaction' from the definition in auditing standard ISA (NZ) 550:<sup>3</sup>

Arm's length transaction means -

A transaction conducted on such terms and conditions as between a willing buyer and a willing seller who are unrelated and are acting independently of each other and pursuing their own best interests.

## **Our draft decision**

### **Principles-based valuation approach**

- X10 Our draft decision proposes the removal of the current prescriptive valuation options for disclosing the value of related party transactions.
- X11 We instead propose a principles-based approach under which regulated suppliers will be required to demonstrate that the value of a good or service acquired from a related party, or the value received from the sale or supply of an asset or good or service by the regulated supplier to a related party, is disclosed on the basis that:
- X11.1 each related party transaction is valued as if it had the terms of an arm's-length transaction; and
- X11.2 the value of a related party transaction is based on an objective and independent measure.

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<sup>3</sup> External Reporting Board (XRB) "International standard on auditing (New Zealand) 550 - Related Parties (ISA (NZ) 550)." Compiled November 2016 and incorporating amendments up to and including October 2016, page 9.

X12 Regulated suppliers will need to reveal a methodology that looks to the competitive testing of markets to value transactions for IM and ID purposes, and be seen to apply that methodology in practice in the following ways:

X12.1 in the case of markets where competitive options are available, the regulated supplier will need to demonstrate a process is followed for identifying and applying competitive price signals that are reflected in those markets; and

X12.2 where competitive price signals are not apparent, then benchmarking of transaction values (where relevant) is to be taken into account.

### **New disclosure requirements to support the valuation approach**

X13 We propose new disclosure requirements if the supplier of the regulated service transacts with a related party in a disclosure year, including:

X13.1 more extensive disclosure of any related party relationships;

X13.2 disclosure of the regulated supplier's procurement policies and processes in respect of a related party relationship;

X13.3 director assurance that, in practice, the disclosed procurement policies and processes are consistently applied;

X13.4 details of how and when the regulated supplier last tested the market valuation of transactions (using its chosen method) in all of its major operating expenditure (**opex**) and capital expenditure (**capex**) categories that involve a related party relationship; and

X13.5 a map of anticipated network expenditure and network constraints likely to involve expenditure by the regulated supplier with related parties.

X14 Our proposed amendments seek greater alignment with auditing standards. We propose additions to the annual ID assurance report, which will be required to state whether in the auditor's opinion:

X14.1 valuation and disclosure of related party transactions in the disclosure year meets the general related party transactions valuation rule;

X14.2 procurement policies and processes disclosed are consistent with the regulated supplier's general practice; and

X14.3 examples disclosed of market testing of transaction terms are representative of the methodology applied by the supplier of the regulated service.

- X15 In circumstances where the related party transactions are 65% or more of a disclosure year's total opex or capex spend or the independent auditor is not able to conclude that the valuation or disclosures of related party transactions complies with the related party rules, we are proposing the supplier of the regulated service will be required to seek a further report from an independent expert.

### **Invitation to make submissions**

- X16 We invite submissions on this paper by **5pm, Wednesday 27 September 2017**. We will then invite cross-submissions by **5pm, Wednesday 4 October 2017**. Further details on the submission process can be found in Chapter 1.

## Chapter 1 Introduction

### Purpose of this paper

- 1.1 This paper provides:
  - 1.1.1 an outline of our policy intent for the related party transactions provisions (Chapter 2);
  - 1.1.2 confirmation of our problem definition for the IMs and ID (Chapter 3);
  - 1.1.3 an overview of our proposed amendments to the related party transactions valuation methodology and changes to key definitions (Chapter 4);
  - 1.1.4 an outline of our proposed amendments to the disclosure requirements for EDBs, gas pipeline distribution businesses (**GDBs**) and the gas pipeline transmission business (**GTB**) (Chapter 5);
  - 1.1.5 indicative examples of transactions on arm's-length and non-arm's-length terms (Attachment A);
  - 1.1.6 an outline of the relationship between the cost allocation provisions and related party transactions provisions (Attachment B); and
  - 1.1.7 how we have incorporated the auditing and accounting standards into the determinations by reference (Attachment C).
- 1.2 We note that Chapters 2 and 3 of this paper are based on our problem definition paper and updated where appropriate in response to submissions.<sup>4</sup>

### How this paper fits into the IM review and with ID amendments

- 1.3 We first put the related party transactions provisions in place in 2010 (IMs) and 2012 (ID). We are now reviewing these as part of our IM review process.

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<sup>4</sup> Commerce Commission "Related party transactions – Invitation to contribute to problem definition" (12 April 2017).

- 1.4 In September 2016 we decided to progress the review of the related party transactions provisions on a longer timeframe than the rest of the IM review.<sup>5</sup> This was to allow more time to assess whether the issues identified in our June 2016 related party transactions topic paper amounted to a broader problem with the related party transactions provisions.<sup>6</sup>
- 1.5 On 20 December 2016 we published our final decisions on all areas of the IM review except for three areas where we had not yet reached decisions. One of those areas is the related party transactions provisions, which is the focus of this paper.<sup>7</sup> As this work remains part of the IM review, we have applied our IM review framework for decision-making.<sup>8</sup>
- 1.6 As indicated in our June 2016 topic paper, we consider it useful for our review of the related party transactions provisions to simultaneously consider whether changes to associated ID requirements are required.<sup>9</sup>
- 1.7 This paper therefore provides the reasons for our IM and ID decisions, and also provides guidance to support your use of the IM and ID amendments determinations.<sup>10</sup>

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<sup>5</sup> Commerce Commission “Input methodologies review: Process update paper” (14 September 2016); Commerce Commission “Amended notice of intention: Input methodologies review” (14 September 2016).

<sup>6</sup> Commerce Commission “Input methodologies review draft decisions: Topic paper 7 – Related party transactions” (16 June 2016).

<sup>7</sup> Our final IM review decisions can be found in Commerce Commission “Input methodologies review decisions: Summary paper” (20 December 2016). We have since reached our decision on the Transpower Incremental Rolling Incentive Scheme (**IRIS**) as part of the Transpower IM. We are yet to reach a decision on our review of the IMs relating to CPP information requirements for Gas. See Commerce Commission “Input methodologies review decisions: Introduction and process paper” (20 December 2016).

<sup>8</sup> Commerce Commission “Input methodologies review decisions: Framework for the IM review” (20 December 2016).

<sup>9</sup> We note any changes to the ID requirements are consulted on and made under s 52Q of the Act, rather than under s 52Y. Our topic paper indicated that we would review our related party provisions across ID and the IMs in parallel. See Commerce Commission “Input methodologies review draft decisions: Topic paper 7 – Related party transactions” (16 June 2016).

<sup>10</sup> To help you navigate from the requirements in the determinations to the reasons and explanatory material in this paper, we have inserted guidance notes into the draft determinations for key amended clauses and definitions, which we expect to stay in the final determinations.

## Who this paper will be relevant to

- 1.8 The related party transactions provisions discussed in this paper apply to EDBs, GDBs and the First Gas GTB.
- 1.9 This paper may also be of interest to:
- 1.9.1 entities involved in (or planning to be involved in) related party transactions with EDBs, GDBs, or the GTB;
  - 1.9.2 entities other than related parties that are involved in (or planning to be involved in) transactions to provide services or assets to EDBs, GDBs, or the GTB;
  - 1.9.3 auditors completing compliance engagements on annual ID requirements of the regulated suppliers;
  - 1.9.4 other gas and electricity sector firms, such as generator-retailers; and
  - 1.9.5 consumers of electricity lines services and gas pipeline services.

## Invitation to make submissions

- 1.10 We invite submissions on this paper by **5pm, Wednesday 27 September 2017**. We will then invite cross-submissions by **5pm, Wednesday 4 October 2017**.
- 1.11 In particular, we invite submissions on:
- 1.11.1 our proposed principles-based approach for the general valuation rule, and our proposed reliance on the work of auditors to test the application of the rule;
  - 1.11.2 our proposed high level ID areas, and whether there are any other disclosures which could be of material value to stakeholders;
  - 1.11.3 whether our proposed implementation of specific disclosure requirements is appropriate for these proposed high level ID areas, taking into account submitters' views on the extent of the problem being addressed by changes to the provisions;
  - 1.11.4 the additional independent report requirement for regulated suppliers with a high level of related party transactions;
  - 1.11.5 regulated suppliers that use related parties for opex or capex publishing a forward-looking map of anticipated network expenditure and network constraints consistent with the asset management plan (**AMP**); and

- 1.11.6 suggested changes to what we are proposing to make the related party regime more effective, in particular our proposal to incorporate the accounting and auditing standards by reference into the IM and ID determinations.<sup>11</sup>
- 1.12 Where you propose an alternative to the proposed wording of the draft amendments determinations, we encourage you to outline your proposed changes as track changes in a new file version of our draft amendments determinations.
- 1.13 Please address submissions to:
- Keston Ruxton  
Manager, EAD Regulation Development  
Regulation Branch  
[regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz)

### **Proposed effective dates**

- 1.14 We plan to publish our final decisions, including the final amendments to the IMs and ID requirements, by **December 2017**. This means:
- 1.14.1 The IM amendments would take effect from the date of amendment, but would not impact default price-quality paths (**DPPs**) until they are next reset.
- 1.14.2 The IM amendments would take effect for ID disclosure years that commence after the amendments are determined.
- 1.14.3 These amendments would take effect for any customised price-quality path (**CPP**) proposal submitted to us from the date the amendments are made in December 2017.

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<sup>11</sup> In accordance with clause 7(2)(e) of Schedule 5 to the Act. See Attachment C for further details.

- 1.14.4 The EDB IM and ID amendments would have effect for disclosed information that we may use in determining the EDB 2020 DPP reset (ie, the rules would apply to ID for disclosure year 2019 commencing 1 April 2018 and the DPP commencing on 1 April 2020). Our objective is to ensure that at least one year of updated disclosures is available to us for reference in determining the EDB 2020 DPP reset.
- 1.14.5 The proposed amendments to the GDB and GTB IM determinations will not have effect until the GDB and GTB 2022 DPP resets (ie, the rules would apply to DPPs commencing on 1 October 2022). However, the proposed GDB and GTB ID amendments would have effect from disclosure year 2019 (ie, disclosure years commencing 1 June 2018, or 1 October 2018 depending on the entities involved).



## Chapter 2 Related party transactions policy intent

### Purpose of this chapter

- 2.1 This chapter describes:
- 2.1.1 the focus of this review;
  - 2.1.2 background on the related party transactions provisions;
  - 2.1.3 the policy intent of the provisions;
  - 2.1.4 how we used the IM review framework to review the policy intent of the provisions; and
  - 2.1.5 our view that the policy intent remains relevant.

### The focus of this review

- 2.2 Related party transactions occur when a regulated business transacts with an entity which is related to it by a common shareholding or other common control. Those transactions may not be on arm's-length terms and the input costs of the regulated business may not reflect efficient costs that we would expect might otherwise apply in the absence of such a relationship.<sup>12</sup>
- 2.3 In this review we are interested in transactions where parties related to the regulated supplier, or unregulated parts of the regulated supplier, are supplying inputs to the supplier of the regulated service. The total volume and value of related party transactions are proportionately large for regulated services (ie, electricity lines services and gas pipeline services) and appear to be growing.<sup>13</sup>
- 2.4 The presence of related party transactions may not promote the Part 4 purpose. Our concern is that suppliers of regulated services have the ability to use an unregulated related party to:
- 2.4.1 increase overall profits by overcharging for inputs supplied by the related party; and/or

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<sup>12</sup> In referring to 'input costs', we are referring to capex and/or opex costs to the regulated supplier.

<sup>13</sup> The scale of related party transactions across EDB opex and capex can be seen in Figures 3.2 to 3.4 of Commerce Commission "Related party transactions – Invitation to contribute to problem definition" (12 April 2017).

- 2.4.2 purchase services from a related party when it is not the most efficient supplier.
- 2.5 We are concerned that the consumers of the regulated service should not be harmed as a result of either of these two causes by having to pay higher prices for the regulated service.
- 2.6 For example, the price that we set for regulated services is expected to be less than the monopoly price the regulated supplier might otherwise charge in order to maximise profits. There is an incentive for the regulated supplier to use a related unregulated service provider to supply inputs at increased prices (and higher overall profits) and indirectly move the regulated price closer to the monopoly price.
- 2.7 Also, we are concerned that a supplier of a regulated service may be incentivised to use a related party for an input to the regulated service even though it may not be the most efficient provider of the input. Further detail of the potential risks of related party transactions in achieving our regulatory objectives are outlined in Table 2.1.
- 2.8 Although our related party provisions cover sales from the regulated supplier to the related party, we consider these transactions are much less common and are less material than the opex and capex inputs from the related party to the regulated supplier, and are not a major focus area of our review.<sup>14</sup> However, for completeness these sales provisions have been considered as part of our review.

### **Our related party transactions provisions**

- 2.9 We regulate related party transactions through both our IM and our ID rules. Part 2 of each of the sector IM determinations applies related party transaction rules to capex which is included in the value of commissioned assets that enters the regulatory asset base (**RAB**) for the purposes of both ID and price-quality paths.<sup>15</sup>

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<sup>14</sup> In the 2016 disclosures, sales total \$2m across all EDBs, which is less than 1% of total regulatory income.

<sup>15</sup> Commerce Commission “Electricity Distribution Services Input Methodologies Determination” (2012), clause 2.2.11(1)(g); Commerce Commission “Gas Distribution Services Input Methodologies Determination” (2012), clause 2.2.11(1)(g); Commerce Commission “Gas Transmission Services Input Methodologies Determination” (2012), clause 2.2.11(1)(g). These provisions are set out in accordance with s 52T(a)(ii) of the Act.

- 2.10 The ID determinations have valuation rules that cover the cost of commissioned assets and regulated services provided to (or from) a regulated service in transactions between the regulated service and related parties, and a requirement to provide a report on related party transactions (ie, in respect of both capex and opex).<sup>16</sup>
- 2.11 Although we value opex under the ID provisions, we also take these values into account in forming our conclusions on the opex allowances we use when setting a price-quality path.
- 2.12 The common types of transactions covered by the related party provisions are:
- 2.12.1 IMs:<sup>17</sup>
- 2.12.1.1 the valuation of assets acquired from a related party.
- 2.12.2 ID:<sup>18</sup>
- 2.12.2.1 the valuation of services (all opex) acquired from a related party; and
- 2.12.2.2 the valuation of sales supplied to (and revenue received from) a related party.
- 2.13 Our current related party provisions provide valuation methodologies that are intended to ensure transactions between a related party and a supplier of regulated services are recognised for regulatory purposes at values that are equivalent to arm's-length terms.

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<sup>16</sup> Commerce Commission “Electricity Distribution Information Disclosure Determination” (2012), clauses 2.3.6 and 2.3.7, and Schedule 5b; Commerce Commission “Gas Distribution Information Disclosure Determination” (2012), clauses 2.3.6 and 2.3.7, and Schedule 5b; Commerce Commission “Gas Transmission Information Disclosure Determination” (2012), clauses 2.3.6 and 2.3.7, and Schedule 5b. These provisions are set out in accordance with s 53C(2)(e) and (k) and s 53D of the Act.

<sup>17</sup> The related party capex transaction valuation methodology for EDBs is provided in Commerce Commission “Electricity Distribution Services Input Methodologies Determination” (2012), clause 2.2.11(5)(a)-(i). As also applied for ID purposes in Commerce Commission “Electricity Distribution Information Disclosure Determination” (2012), clause 2.3.6.

<sup>18</sup> The related party opex and sales valuation methodology for EDBs is provided in Commerce Commission “Electricity Distribution Information Disclosure Determination” (2012), clauses 2.3.6 and 2.3.7.

- 2.14 These provisions consider the valuation and disclosure of opex or capex inputs from a related party to the supplier of the regulated service, and sales to a related party by the supplier of the regulated service.
- 2.15 As a practical matter, we are not permitted to integrate all of the valuation requirements into the IMs, as there is no existing opex input methodology. We cannot create an IM on a matter not covered by an existing IM under s 52Y or s 52X of the Act, which is why we do not have an IM for opex and cannot now determine one.
- 2.16 The IMs set out the rules for the valuation of assets and capex, and our rules for the valuation of opex and sales transactions are set out in the ID requirements.<sup>19</sup>

### **Why we regulate related party transactions**

- 2.17 The purpose of Part 4 of the Act is outlined as:<sup>20</sup>

The purpose of this Part is to promote the long-term benefit of consumers in markets by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services—

(a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and

(b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and

(c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and

(d) are limited in their ability to extract excessive profits.

### **Potential outcomes and risks of related party transactions with respect to the Part 4 purpose**

- 2.18 We consider that transactions between related parties have the potential to impact the achievement of the Part 4 purpose.<sup>21</sup>

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<sup>19</sup> See Commerce Commission “Input methodologies review decisions: Framework for the IM review” (20 December 2016), para 47.

<sup>20</sup> As set out in s 52A of the Act.

<sup>21</sup> As set out in s 52(a)(1(a)-(d)) of the Act.

- 2.19 Table 2.1 sets out the relevant regulatory objectives under Part 4 and considers the outcomes and risks that related party transactions can have for the achievement of these objectives.<sup>22</sup>
- 2.20 When suppliers are selling their goods or services in competitive markets, the price they charge reflects the interplay between demand and supply from a range of other parties. In this context, a consumer does not typically care what costs the supplier incurs and why, nor do they care whether the supplier has used related party relationships to produce its service.
- 2.21 This is because the consumer has choices over what to buy and from whom, and can switch products or suppliers if they find a better offer. One supplier attempting to pass on costs specific to it (not borne to the same extent by other suppliers) can expect to lose market share, and potentially profits, as consumers may prefer other suppliers' offers.
- 2.22 In contrast, a supplier of a regulated service has market power and, in the absence of regulation, would charge a price that reflects that market power. The regulatory price for their services is determined largely by the costs they incur.
- 2.23 For example, as a starting point under our price-quality regulation, we assume the costs that regulated suppliers incur reflect efficient costs, and we use estimates of actual and forecast costs to inform allowed prices. Exempt suppliers may also use their actual or budgeted costs to determine prices for their services.
- 2.24 When referring to efficient costs we mean the prudent costs that a supplier of electricity lines services would require to meet or manage expected demand for its services, at appropriate service standards.
- 2.25 In the regulated context, we and consumers therefore care about whether the underlying costs incurred in setting prices are efficient, and in particular whether the cost paid for a service from a related party is efficient, because it may directly impact on the price that consumers ultimately pay.
- 2.26 We do not seek to prevent regulated suppliers from using related parties to provide services as they can be efficient, securing economies of scale and scope. However, there is an onus on the regulated supplier to be able to demonstrate that the cost of the underlying service is efficient and consistent with the input price that it would have paid in an arm's-length transaction.

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<sup>22</sup> We also consider the s 53A ID purpose in our review of the related party provisions further on in this chapter.

**Table 2.1 Risks to regulatory objectives posed by related party transactions**

Regulatory objective	Intended outcome	Potential risks of related party transactions
<b>Efficiency</b> <sup>23</sup>	Suppliers of regulated services should have incentives to improve efficiency in the supply of the regulated goods or services and share the benefits of efficiency gains with consumers through lower prices.	<p>Close business relationships (including related party relationships) may generate economies of scale and scope that could benefit consumers. However, the presence of related party transactions, coupled with the lack of information on what equivalent arm's-length terms would have been, can:</p> <ul style="list-style-type: none"> <li>• make it hard to determine if cost efficiencies (or inefficiencies) are being created; and</li> <li>• whether any efficiencies are being shared with consumers of the regulated service or if these are being enjoyed instead by the related party.</li> </ul> <p>Our related party transactions provisions seek to ensure such efficiencies are shared with consumers.</p>
<b>Profits</b>	Suppliers of regulated services should expect profits are just sufficient to reward investment, efficiency and innovation. Superior performers are more likely to be rewarded by receiving returns greater than a 'normal profit' (or 'normal return'—i.e. their risk-adjusted cost of capital), at least for the short to medium term, until competitors catch up. Over the lifetime of its assets, a typically efficient supplier would not invest unless it expected, in advance, to earn at least a normal return.	Due to the close business relationship between related parties, there is the potential to increase overall profits by overcharging for inputs supplied by the related party. This could adversely affect the consumer of the regulated service through higher prices, which is a key consideration in our review.

<sup>23</sup> When referring to efficiency of related party transactions, we are referring to cost efficiencies in providing services at a quality that reflects consumer demands and the sharing with consumers of the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices: see s 52A of the Act.

Regulatory objective	Intended outcome	Potential risks of related party transactions
<b>Price</b>	The price paid by consumers should be based on efficient input costs. In workably competitive markets, suppliers have incentives to constrain price.	The presence of related party transactions may adversely affect the ability to constrain prices to the benefit of consumers, as there is an ability to use an unregulated related party to increase overall profits. This is a key consideration in our review.
<b>Quality</b>	Suppliers of regulated services should have incentives to improve efficiency and provide services at a quality that reflects consumer demands.	The presence of related party transactions may adversely affect quality of service provided to consumers of the regulated service if the relationship means quality is traded off in favour of other interests of the party supplying the service. This issue is not a primary driver of the current related party provisions across the IM and ID determinations.
<b>Investment</b>	Suppliers of regulated services should have incentives to undertake investments at an efficient level at the optimal time (to the extent these levels and time can be ascertained).	The presence of a related party relationship and extensive related party transactions could affect the level and timing of investment. For example, if weight is placed on the interests of the related party supplying the service, more investment may be undertaken, and at greater cost, than if the relationship and all transactions were on arm's-length terms.
<b>Innovation</b>	Suppliers of regulated services should have incentives to promote the discovery and use of new information, leading to the development of new goods and/or services, and more efficient production techniques.	Given related parties are not independent and have an ongoing close operating nature, there can be reduced pressure from the commercial relationship to be innovative.

### **Relationship between cost allocation and the related party transactions provisions**

- 2.27 The cost allocation rules split shared costs between regulated and unregulated activities for regulatory purposes. For example, common operating costs (eg, expenses for a head office) and commonly used assets (eg, poles which carry both electricity and fibre) have their costs shared between regulated and unregulated services.<sup>24</sup>
- 2.28 Sharing of services can produce cost efficiencies. A purpose of cost allocation is to ensure these efficiencies are effectively shared with consumers. It looks at the splitting of shared costs between unregulated and regulated activities.<sup>25</sup>
- 2.29 However, the cost allocation IM does not address:
- 2.29.1 the value of revenues derived from a related party; or
  - 2.29.2 the value placed on services supplied by a related party.
- 2.30 These are dealt with in the related party transactions provisions to ensure such transactions are valued on terms that are equivalent to arm's-length. For example, when considering an integrated unregulated business unit of a regulated supplier (ie, an unregulated branch or division), the related party rules assess the valuation of goods and services provided by unregulated business units or related separate entities.
- 2.31 A diagram outlining the relationship between cost allocation and related party transactions is provided in Attachment B.

### **Review of the policy intent of the related party transactions provisions**

- 2.32 Consistent with the IM review framework, in reviewing the related party transactions provisions, we have considered whether the policy intent is still relevant, and whether the way the provisions have been implemented could be more effective in achieving that policy intent, or achieve it in a way that better promotes s 52R or reduces complexity and compliance costs.<sup>26</sup>

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<sup>24</sup> Cost allocation rules are found in the IM determinations in Part 2, subpart 1.

<sup>25</sup> This is outlined further in Attachment B.

<sup>26</sup> This is set out in more detail in Commerce Commission "Input methodologies review decisions: Framework for the IM review" (20 December 2016).



2.33 In deciding whether to make changes to the provisions as a result of this review, we are guided by the IM review framework. Specifically, we only propose changing the related party transactions provisions across the IMs and ID where this appears likely to:

2.33.1 promote the Part 4 purpose in s 52A more effectively;

2.33.2 promote the IM purpose in s 52R more effectively (without detrimentally affecting the promotion of the s 52A purpose); or

2.33.3 significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting the promotion of the s 52A purpose).

2.34 We have also considered the s 53A ID purpose to the extent we have considered changes to the ID requirements:<sup>27</sup>

The purpose of information disclosure regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of this Part (Part 4) is being met.

2.35 We have also considered, where relevant, whether there are alternative solutions to the identified problems with the IMs and ID that do not involve changing the IMs.

### **Whether the policy intent of the related party transactions provisions is still relevant**

2.36 We have expressed the policy intent in various documents over time as summarised below. The words used in each instance are not exactly the same, but the key principles from our documents are.

2.37 Our concern is that suppliers of regulated services have the ability to use an unregulated related party to:

2.37.1 increase overall profits by overcharging for inputs supplied by the related party; and/or

2.37.2 purchase services from a related party when it is not the most efficient supplier.

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<sup>27</sup> See s 53A of the Act.

- 2.38 Inputs into the regulated service may in either of those cases end up being over-priced, which would not promote the long-term benefit of consumers.
- 2.39 Our policy intent is therefore to ensure that the value of a good or service acquired by the regulated service from a related party, or the value received from the sale or supply by the regulated service of an asset or good or service to a related party, is disclosed on the basis that:
- 2.39.1 each related party transaction is valued as if it had the terms of an arm's-length transaction; and
- 2.39.2 the value of a related party transaction is based on an objective and independent measure.

*What we said in 2010 in the development of the input methodologies*

- 2.40 In our 2010 paper, the intention behind the development of our related party transaction provisions in the IMs was:<sup>28</sup>

Without the discipline of arm's-length negotiation, which is essentially where the price paid for an asset may be greater (or less) than an asset's market value, there could be a transfer of value between an EDB or GPB and consumers that would not otherwise occur. To address this concern, the Commission considers that where a regulated supplier buys an asset from a related party, the asset's RAB value should not be based on the purchase price, but instead on some objective, independent measure.

*What we said in 2012 when putting in place the information disclosure requirements*

- 2.41 In our 2012 paper, our intention behind the related party transactions ID requirements was to enable interested persons to understand whether the information disclosed may be affected by related party dealings.
- 2.42 In setting ID requirements we considered the value placed on services supplied by related parties and revenues received from related parties. The policy intent in our ID determinations is similar to that of the IMs. ID also requires the value of related party transactions to be based on, or linked to, objective verifiable information. This information should help demonstrate that the price approximates that which could be expected in a transaction on arm's-length terms.<sup>29</sup>

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<sup>28</sup> Commerce Commission "Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons Paper" December 2010, E8.8, E8.9.

<sup>29</sup> Commerce Commission "Information Disclosure Requirements for Electricity Distribution Businesses and Gas Pipeline Businesses Draft Reasons Paper" (16 January 2012), A1.36.

- 2.43 We concluded in 2012 that the related party transactions provisions in ID should allow interested persons to have access to information that discloses:
- 2.43.1 the existence and extent of related party transactions;
  - 2.43.2 what the related party transactions relate to;
  - 2.43.3 whether the price is the same or similar to the price which would be expected in an equivalent arm's-length transaction (and if not, what adjustment is required to make it similar to an arm's length price); and
  - 2.43.4 whether the price is based on objective verifiable information.

*Continued policy relevance*

- 2.44 We consider the policy intent of the related party transactions provisions is still relevant for both the IMs and ID. We have seen nothing in our review which suggests that the policy intent for these provisions should change.
- 2.45 Submissions generally agreed with our policy intent to ensure that transactions between related parties and suppliers of regulated services are equivalent to arm's-length terms.<sup>30</sup>

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<sup>30</sup> For example, see Pioneer Energy "Pioneer Energy submission - Related party transactions - problem definition" (17 May 2017), page 1; and ENA "ENA Submission on IM review - Related party problem definition" (17 May 2017), page 4.

## Chapter 3 The problem definition

### Purpose of this chapter

- 3.1 This chapter provides:
  - 3.1.1 our response to relevant submissions on the problem definition; and
  - 3.1.2 our confirmation of the problem definition.

### The problems

- 3.2 We identified the following broad problem with the provisions:
  - 3.2.1 The current practical application of the related party provisions is not well aligned with the policy intent.<sup>31</sup>
- 3.3 This can be further broken down into two problems with a common linked potential harm to consumers of regulated services:
  - 3.3.1 aspects of the way we have designed and implemented the related party transactions rules raises a risk that we will not achieve the related party transactions policy intent (problem one); and
  - 3.3.2 aspects of the way in which some regulated suppliers have applied the rules also raises the risk that the related party transactions policy intent is not being achieved in practice (problem two).
- 3.4 We see our role as being to create rules that support regulated suppliers in meeting the arm's-length policy intent. Our related party transactions provisions are aimed at requiring regulated suppliers and their related parties to demonstrate that for regulatory purposes, the transactions between them are equivalent to arm's-length terms. To achieve this, our related party rules must be workable and applicable in a wide range of supplier circumstances.
- 3.5 We have outlined the above problems based on our discussions with a sample of EDBs and sector auditors, submissions received during the IM review, and information gathered through our reviews of ID over time.

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<sup>31</sup> Commerce Commission "Related party transactions – Invitation to contribute to problem definition" (12 April 2017), para 4.2.1.

- 3.6 As a result of the two identified problems, the value at which an asset or service is transferred from a related party to a regulated service may not be consistent with an arm's-length transaction. We wish to avoid this, as it could frustrate the achievement of the Part 4 purpose.<sup>32</sup>

### **What we considered in reaching our view on the problem**

- 3.7 In originally designing and implementing our rules we provided a number of valuation and disclosure options which may not be achieving our intended outcomes. This is because we understand some of the prescriptive options we originally designed may not be usable in a number of typical company ownership and operating structures.
- 3.8 In understanding the two problems identified above, we have analysed the context and issues under the following headings:
- 3.8.1 imperfect local markets consideration;<sup>33</sup>
  - 3.8.2 complexity and understanding of terminology;
  - 3.8.3 transparency of disclosures; and
  - 3.8.4 compliance with the prescribed rules.
- 3.9 Table 3.1 and Table 3.2 provide explanations of the problems and our view of their potential impact on consumers. These tables outline the following:
- 3.9.1 what we saw from our discussions with the sample of EDBs, auditors and in the ID reporting, and how this points to the problems;<sup>34</sup>
  - 3.9.2 the effect the focus areas outlined in these tables is having on the identified problems; and
  - 3.9.3 our consideration of the materiality of the issues for consumers.

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<sup>32</sup> Chapter 2, Table 2.1 sets out the regulatory objectives consistent with Part 4 of the Act and considers the outcomes and risks that related party transactions can have on the achievement of these objectives.

<sup>33</sup> In smaller regional markets, EDBs may have fewer choices and face difficulties in attracting third party contracting service companies and some specialist services to the area to get the services required. We refer to this issue as imperfect local markets. An EDB example is not having electrical contracting services readily available in the EDB location.

<sup>34</sup> An overview of our initial findings can be found in Chapter 3 of our problem definition paper, see Commerce Commission "Related party transactions – Invitation to contribute to problem definition" (12 April 2017).

**Table 3.1 Problem with the nature of our original design and implementation of the related party transactions provisions and potential impact on consumers**

Overarching problem	Focus areas	What are we seeing which points to this being a problem?	Effect of the problem	Materiality of potential impact on consumers
<p><b>Our design and implementation of the provisions</b></p>	<p>Imperfect local market for contracting services</p>	<p>We originally attempted to design a range of disclosure options that would encompass most foreseeable circumstances such as an imperfect local market for contracting services. Due to the lack of comparative market information, there is a difficulty in measuring an appropriate internal margin for contracting activities provided by an integrated business unit of the regulated supplier or another company in the group.</p> <p>In particular, the provisions provide options for disclosing using a competitive tender process, however only a small number of regulated suppliers disclose using this option.</p>	<p>Valuation of transactions affected in each case. This could lead to transactions not being equivalent to arm's-length terms, which could adversely affect the consumer.</p>	<p><b>Medium</b></p> <p>Not all regulated suppliers face an imperfect local market in assessing whether transactions are on the equivalent of arm's-length terms.</p>

Overarching problem	Focus areas	What are we seeing which points to this being a problem?	Effect of the problem	Materiality of potential impact on consumers
	Complexity of terminology	<p>Ambiguity is caused by:</p> <ul style="list-style-type: none"> <li>the original rules use some terms that are not as well defined as they could be; and</li> <li>some terms used have more than one meaning within the IMs and more broadly.</li> </ul> <p>In particular, the term "directly attributable costs" is used in the cost allocation provisions to mean something different from the meaning intended for related party transactions. A "related party" is defined in accounting standards but defined differently for the purposes of our regulatory rules.<sup>35</sup></p>	Decreased quality of disclosure and potential impact on the valuation of transactions.	<p><b>High</b></p> <p>This could have a large impact on the valuing of transactions.</p>

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<sup>35</sup> In its submission, Vector noted that a clear definition about the term related party should mitigate the likelihood for selective interpretation. Vector "Vector submission on related party transactions" (17 May 2017), para 22.

Overarching problem	Focus areas	What are we seeing which points to this being a problem?	Effect of the problem	Materiality of potential impact on consumers
	Transparency of our methodology	<p>The way in which the original valuation options are drafted can lead to some regulated suppliers defaulting to the director certification option. This provides stakeholders with limited transparency of information to assessing whether the transactions are at the equivalent of arm's-length terms.</p> <p>A high proportion and value of transactions are being disclosed under this low visibility option. This raises questions as to the appropriateness of the methodology if directors are not applying the necessary rigour in providing certification.</p>	Decreased confidence in ID. This makes it hard for us to assess whether any efficiencies are being shared with consumers of the regulated service if these are being enjoyed by the related party.	<p><b>Medium</b></p> <p>Some disclosure valuation options result in limited transparency. We consider the percentage of EDBs using the director certification option is sufficiently material to limit transparency of the potential impact on consumers.</p>
	Compliance with the prescribed rules	<p>The original rules are drafted in a way which has led to some confusion as to which rules apply to opex and capex transactions due to the disconnection of the IMs and ID.<sup>36</sup></p> <p>In particular, ID shows some suppliers of regulated services inappropriately applying IM capex rules to opex or vice versa.</p>	Decreased quality of disclosure. Any inconsistent disclosure decreases transparency that transactions are on arm's-length terms.	<p><b>Low</b></p> <p>Some suppliers are showing confusion as to what ID and IMs cover.</p>

<sup>36</sup> A number of submissions on the problem definition paper noted the problem with the inconsistency across the IMs and ID, including PwC. PwC "PwC group submission on related parties" (17 May 2017), page 10.



**Table 3.2 Problem with the nature of regulated suppliers' application of the original related party transactions provisions and potential impact on consumers**

Overarching problem	Focus areas	What are we seeing which points to this being a problem?	Effect of the problem	Materiality of potential impact on consumers
<b>Regulated suppliers' application of the provisions</b>	Imperfect local market in contracting services	<p>We are seeing limited separation of governance between management of the related party and the supplier of the regulated service. This, combined with a lack of credible benchmarking between the regulated supplier and its various related parties in imperfect local markets, means there is less likelihood that related party transactions will be demonstrated to be on the equivalent of arm's-length terms.<sup>37</sup></p> <p>In particular, some behaviour shows procurement preference for 'in-house' contracting services, which is also supported by a submission.<sup>38</sup></p>	Valuation of transactions may be affected. If the input prices paid by the regulated supplier are too high, this would not promote the long-term benefit of consumers of the regulated service.	<p><b>Medium</b></p> <p>This type of market is not faced by all regulated suppliers.</p>

<sup>37</sup> The ENA acknowledges that imperfect local markets are a characteristic of the sector, and that the Commission cannot solve this problem through related party transaction rules. ENA "ENA Submission on IM review - Related party problem definition" (17 May 2017), para 21. We agree that the related-party transaction rules cannot solve this problem, but it should be considered when assessing whether related party transactions meet arm's-length terms.

<sup>38</sup> Asplundh "Input Methodologies Review - draft decisions, topic 7: Related Party Transactions" (11 August 2016).

Overarching problem	Focus areas	What are we seeing which points to this being a problem?	Effect of the problem	Materiality of potential impact on consumers
	Complexity in understanding terminology	Due to the ambiguity of the key defined terms, suppliers have made their own interpretations as to the defining of key terms in the rules, such as directly attributable costs.	Valuation of transactions may be affected. This could lead to higher input costs for the regulated supplier, which would adversely affect the long-term benefit for consumers of the regulated service.	<b>High</b>  Due to potential impact on the valuation of transactions.
	Transparency of the valuation of transactions	<p>Directors' certification has effectively become a default option to use in disclosing the valuation of related party transactions for some regulated suppliers. This results in a lower level of transparency that prices achieved are equivalent to arm's-length terms as there is no visibility in how directors have satisfied that conclusion.<sup>39</sup></p> <p>In particular, we have seen increased values of related party transactions using director certification in information disclosures and limited or no use of some other valuation options available. There does not seem to be consistent reasoning from regulated suppliers as to the use of this option.<sup>40</sup></p>	Decreased confidence in ID. This makes it hard for us to assess whether any efficiencies are being shared with consumers of the regulated service or if these are being enjoyed by the related party.	<b>Medium</b>  Not all disclosure valuation options provide for limited transparency.

<sup>39</sup> We acknowledge that current related party provisions do not require such additional disclosure.

<sup>40</sup> We note our intention was for director certification to only be used when none of the other options apply. See Commerce Commission "Information Disclosure for EDBs and GPBs Final Reasons Paper" (1 October 2012), para 3.50.

Overarching problem	Focus areas	What are we seeing which points to this being a problem?	Effect of the problem	Materiality of potential impact on consumers
	Compliance with the prescribed rules	The way in which the original rules were drafted has led to some suppliers charging a margin in excess of the 17.2%, which was intended to allow for the recovery of overhead costs experienced by the related party. This is either by charging a higher margin and using director certification or by structuring their business in a way to receive a greater combined margin.	Valuation of transactions may be affected. If prices charged by related parties are too high, this would adversely affect the consumers of the regulated service.	<p><b>Medium</b></p> <p>Our focus is ensuring any efficiency gains made from the use of a related party are passed through to the consumer.</p>

### Submissions received on our problem definition paper

3.10 We concluded on balance that the submissions received confirmed our problem definition and a number provided suggestions on how we could update the related party transactions provisions to address the problem. We have taken these into account in the proposed solutions in Chapters 4 and 5.

3.11 We received a range of submissions on our problem definition paper, with some submitters agreeing that there is a clear problem, and others considering the problem to be overstated.

3.12 MEUG supports our interpretation of the problem definition, noting:<sup>41</sup>

The related party provisions are not leading to outcomes consistent with the purpose of Part 4 of the Act relative to an alternative set of provisions.

3.13 Several submitters supported our problem definition that the policy intent could be better implemented through a review of the current rules. For example, in its submission, Powerco states:<sup>42</sup>

Aspects of the current design are difficult to interpret and therefore implement. The difficulties we have experienced appear to be common to suppliers as evidenced in the Commission's findings. We have found the complexity of the rules and inconsistency between IMs and IDD (sic) particularly troublesome. We welcome a review of these rules.

3.14 We have considered submissions on the complexity of the current regime in devising our proposed amendments outlined in Chapters 4 and 5.

3.15 Conversely, some submissions disagreed with our problem definition, stating that the existing provisions currently meet the policy intent. For example, Wellington Electricity Lines Limited (**WELL**) submits:<sup>43</sup>

WELL considers that with the exception of some improvement to the design and structure of the related party rules, the existing provisions in the input methodologies and information disclosure requirements are working effectively to support this policy.

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<sup>41</sup> MEUG "MEUG to CC, Related Party Transactions" (17 May 2017), para 5.

<sup>42</sup> Powerco "Powerco submission on problem definition" (17 May 2017), page 3.

<sup>43</sup> Wellington Electricity Lines Limited "Wellington Electricity Lines Limited - IM submission - related party transactions problem definition" (17 May 2017), page 1.

- 3.16 Based on our learnings from discussions with other suppliers of regulated services in the EDB sector and our subsequent further analysis, we do not agree with WELL's comment.<sup>44</sup> We instead agree with MEUG that the current provisions allow for outcomes that are not consistent with the Part 4 purpose, and we have considered this in developing our proposed amendments.
- 3.17 Several submissions were concerned that the Commission's view of the degree of the potential problem was overstated, citing a lack of evidence that suppliers are inherently biased towards related party transactions that do not meet an arm's-length standard. For example, Aurora states in its submission:<sup>45</sup>
- We are yet to see evidence of related parties supplying inputs at excessive prices under the current RPT rules. Aurora considers that evidence of over-payments is needed to justify tightening of the RPT rules.
- 3.18 Given the fact that the total volume and value of related party transactions are large and growing, we are concerned that the potential for consumer harm could be significant. However, with the way our current prescriptive set of rules are set out, it is correct that we are unable to conclude whether a large share of the related party transactions meet the arm's-length standard.
- 3.19 Nova states in its submission, the number of specific instances where the current related parties regime is being abused is difficult to identify, given that:<sup>46</sup>
- 3.19.1 beneficiaries of such arrangements will not object;
- 3.19.2 inadequate disclosure requirements make it difficult for disadvantaged competitors to establish evidence of non-arm's-length practices; and
- 3.19.3 consumers that indirectly incur the costs have no real engagement.
- 3.20 Our view of the potential materiality of the problem is supported by the ERANZ submission on the problem definition paper.<sup>47</sup>
- 3.21 Submissions proposed that many of the problems in the regime could be resolved by replacing the current complex and inconsistent provisions with a principles-based approach.<sup>48</sup>

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<sup>44</sup> Our discussions with suppliers of regulated services are set out in our problem definition paper.

<sup>45</sup> Aurora "Aurora Submission - RPT Problem Definition" (17 May 2017), page 1.

<sup>46</sup> Nova "Nova submission IM review - Related Party Transactions" (17 May 2017), page 1.

<sup>47</sup> ERANZ "ERANZ submission on Related Party Transactions Issues Paper" (17 May 2017), para 5.1.

- 3.22 In particular, we have noted the submission points regarding the perceived degree of the problem and have attempted to ensure that the approach we have adopted to the general valuation rule and the specific ID requirements is scaled appropriately for the issue.

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<sup>48</sup> For example, PwC "PwC group submission on related parties" (17 May 2017), para 7; ENA "ENA submission on IM review - Related Party problem definition" (17 May 2017), para 11.

## Chapter 4 Our draft amendments to the valuation methodology and key definitions

### Purpose of this chapter

- 4.1 This chapter provides:
- 4.1.1 an outline of our current approach;
  - 4.1.2 our proposed principles-based valuation methodology;
  - 4.1.3 our proposed updated annual ID audit requirements amended to align with the new valuation methodology; and
  - 4.1.4 our amendments to key definitions to implement the valuation methodology.

### Our current approach

- 4.2 Our current related party transactions provisions include prescriptive valuation options. We currently require suppliers of regulated services to disclose related party transactions using one of an identified list of options:
- 4.2.1 we currently have nine valuation methodology options for capex supplied by related parties;<sup>49</sup>
  - 4.2.2 we currently have seven valuation methodology options for opex supplied by related parties;<sup>50</sup> and
  - 4.2.3 we currently have three valuation methodology options for revenue received from related parties.<sup>51</sup>
- 4.3 Our discussions with auditors and the submissions we received on our problem definition consultation paper have informed us that the rules of the prescriptive valuation options can be difficult to interpret and apply in practice.<sup>52</sup>

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<sup>49</sup> Commerce Commission “Electricity Distribution Services Input Methodologies Determination” (2012), clause 2.2.11(5); Commerce Commission “Gas Distribution Services Input Methodologies Determination” (2012), clause 2.2.11(5); Commerce Commission “Gas Transmission Services Input Methodologies Determination” (2012), clause 2.2.11(5).

<sup>50</sup> Refer ID determinations clause 2.3.6 (EDBs, GDBs and GTBs).

<sup>51</sup> Refer ID determinations clause 2.3.7 (EDBs, GDBs and GTBs).

- 4.4 We consider our current prescriptive valuation options could not be sufficiently re-written to:
- 4.4.1 ensure the related party policy intent was met; and
  - 4.4.2 adequately address comments provided in submissions on the current ability to apply these rules in practice.

### **Our approach to developing the new valuation methodology**

- 4.5 In assessing the best outcome for a new valuation methodology, we have considered:<sup>53</sup>
- 4.5.1 the best way of ensuring that the policy intent and Part 4 purpose is being achieved;<sup>54</sup>
  - 4.5.2 the need for clear alignment of related party provisions across the IMs and ID;
  - 4.5.3 understanding the needs of those who will be applying the provisions in an attempt to mitigate future interpretation issues:
    - 4.5.3.1 regulatory accountants completing annual disclosure documentation; and
    - 4.5.3.2 sector auditors completing ID assurance engagements.<sup>55</sup>
  - 4.5.4 ensuring that the updated valuation methodology is able to stay current in order to account for new developments in the sector over future regulatory periods (eg, for the effects of emerging technologies).

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<sup>52</sup> Deloitte noted that the related party transactions rules are complex and it has had to resolve issues with an audit client on the varying interpretations of the rules, particularly the classification and measurement of related party transactions. Commerce Commission "Related party transactions - Invitation to contribute to problem definition" (12 April 2017), para 3.23. PwC noted that a significant source of complexity of the related party transactions rules is the current level of prescription used in the current regime. PwC "Submission to the Commerce Commission on Input Methodologies review: Related party transactions - invitation to contribute to problem definition" (7 May 2017), para 6.

<sup>53</sup> Our considerations are consistent with our proposed solutions outlined in Commerce Commission "Related party transactions - Invitation to contribute to problem definition" (12 April 2017), Table 5.1.

<sup>54</sup> As outlined in Chapter 2.

<sup>55</sup> Further detail of how we have considered the auditor is provided later in this chapter.



## Details of our proposed changes and our supporting reasoning

### A principles-based approach to valuation

- 4.6 We are proposing a principles-based valuation approach. That is, an amended regime with a general valuation rule which corresponds more closely to the policy intent. We propose this replaces the list of options provided in the current prescriptive valuation options.
- 4.7 Regulated suppliers will be required to demonstrate that the value of a good or service acquired from a related party, or the value received from the sale or supply of an asset or good or service to a related party, is disclosed on the basis that:
- 4.7.1 each related party transaction is valued as if it had the terms of an arm's-length transaction; and
  - 4.7.2 the value of a related party transaction is based on an objective and independent measure.
- 4.8 Regulated suppliers will need to reveal a methodology that looks to the competitive testing of markets and be seen to apply that methodology in practice in the following ways:
- 4.8.1 In the case of markets where competitive options are available, the regulated supplier will need to demonstrate a process is followed for competitive price signals that are reflected in those markets.
  - 4.8.2 Where competitive price signals are not apparent, then benchmarking (where relevant) is to be taken into account.
- 4.9 We propose that auditors of ID disclosures will be required to report against these requirements.
- 4.10 We consider the principles-based approach:
- 4.10.1 ensures that the policy intent and Part 4 purpose is met by corresponding more closely to the policy intent;
  - 4.10.2 corrects the issue of the current misalignment of the methodology in the IMs and ID, by having an identical valuation methodology across both determinations;

- 4.10.3 covers all of the services likely to be provided by related parties and anticipates emerging technology developments, enabling us to be both service and technology agnostic in drafting the new wording;<sup>56</sup>
- 4.10.4 removes current determination drafting complexities; and
- 4.10.5 addresses the objective of greater transparency that related party transactions are based on arm's-length terms, and will more easily enable us to assess any future potential consumer harm.

*Our proposed valuation methodology*

- 4.11 Table 4.1 outlines our principles-based valuation methodology, how this is applied in the IM and ID determinations, and where it is further discussed in this draft reasons paper.

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<sup>56</sup> Currently suppliers of regulated services have varying portfolios offering a range of services and with the advancement of emerging technologies in both the electricity and gas sectors, our amendments aim to remain applicable to a range of services and future sector developments.

**Table 4.1 Summary of our principles-based valuation methodology and associated assurance features**

Consideration	Outline	Determinations	Reasons paper
<b>General valuation rule (IMs/ID)</b>	<p>The cost of a good or service acquired from a related party, or the price received from the sale or supply of an asset or good or service to a related party, must be set on the basis that:</p> <p>(a) each related party transaction must be valued as if it had the terms of an arm's-length transaction; and</p> <p>(b) the value of a related party transaction must be based on an objective and independent measure.</p>	IM and ID	Paragraphs 4.12-4.13.
<b>Value limitation</b>	The rules will incorporate a value limitation at not more than the cost incurred, to ensure that there are no upward adjustments to the actual transaction price for regulatory purposes.	IM and ID	Paragraphs 4.18 to 4.20.
<b>Independent audit assurance requirements</b>	<p>We propose aligning the audit assurance requirements of related party provisions with auditing standards, which set out related party audit requirements which we seek to incorporate by reference in the determinations.<sup>57</sup></p> <p>In satisfying the valuation methodology, we propose the audit assurance opinion states whether the valuation and disclosure of related party transactions in the disclosure year meets the general related party transactions valuation rule.</p>	ID	Paragraphs 4.21 to 4.36.

<sup>57</sup> ISA (NZ) 550 is the New Zealand version of the international auditing standard for related party transactions. See External Reporting Board website at: <https://www.xrb.govt.nz/standards-for-assurance-practitioners/auditing-standards/isa-nz-550/>.

Consideration	Outline	Determinations	Reasons paper
<b>Additional independent report</b>	<p>The supplier of the regulated service will also be required to seek an additional independent assurance report if:</p> <p>(a) the proportion of the regulated supplier's total operating expenditure (<b>opex</b>) accounted for by related party transactions exceeds 65% of the total opex of the regulated supplier in the disclosure year;<sup>58</sup> or</p> <p>(b) the proportion of the regulated supplier's total capital expenditure (<b>capex</b>) accounted for by related party transactions exceeds 65% of the total capex of the regulated supplier in the disclosure year; or</p> <p>(c) the auditor of the ID requirements is unable to conclude that the related party transactions in the disclosure year meet the general related party transactions valuation rule; or</p> <p>(d) the independent auditor issues a modified audit opinion for the disclosure year and time constraints do not permit the preparation of an additional independent report for that disclosure year, in which case the report will need to be provided with the following year's disclosures.</p> <p>Detail of this proposed additional report is provided further in this Chapter 4.</p>	ID	Paragraphs 4.37 to 4.43.

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<sup>58</sup> For example, if the related party opex spend was greater than 65% of total opex spend in a disclosure year, then the supplier of the regulated service will be required to seek an additional independent report.

### *General valuation rule*

- 4.12 The general valuation rule for related party transactions is that the cost of a good or service acquired from a related party, or the price received from the sale or supply of an asset or good or service to a related party, must be set for the IMs and ID on the basis that:
- 4.12.1 each related party transaction must be valued as if it had the terms of an arm's-length transaction; and
  - 4.12.2 the value of a related party transaction must be based on an objective and independent measure.
- 4.13 This general valuation rule aligns directly with the terminology used in the related party policy intent, to address our problem that the current practical application of the related party provisions is not well aligned with the policy intent. We propose this rule should be applied consistently as the valuation methodology in the IMs (related party capex transactions) and ID (related party opex and revenue transactions).<sup>59</sup>

### *Expected characteristics of an arm's-length relationship and transactions*

- 4.14 By seeking to overcome the effect of common ownership or common economic interest, the arm's-length principle aims to achieve the equivalent of a transaction between the supplier of the regulated service and the related party that reflects the conditions that would have existed if the terms of the transaction had been governed by market forces between independent players.
- 4.15 For this purpose we will adopt the wording for 'arm's-length transaction' from the definition in auditing standard ISA (NZ) 550:<sup>60</sup>

Arm's length transaction means -

A transaction conducted on such terms and conditions as between a willing buyer and a willing seller who are unrelated and are acting independently of each other and pursuing their own best interests.

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<sup>59</sup> This attempts to address submission comments received that the related party rules in the IMs and ID are not currently well aligned.

<sup>60</sup> External Reporting Board (XRB) "International standard on auditing (New Zealand) 550 - Related Parties (ISA (NZ) 550)." Compiled November 2016 and incorporating amendments up to and including October 2016, page 9.

- 4.16 This will ensure that there is a direct linkage between our requirements and the work that auditors will carry out to test our requirements under the applicable auditing standard.
- 4.17 The proposed definition in this case is also consistent with the applicable term used in the Electricity Industry Act.<sup>61</sup>

*Value limitation*

- 4.18 To ensure that the amended rules do not open the door to adjustments to the actual transaction values for regulatory purposes, the rules will incorporate the following value limitation:
- 4.18.1 Where a regulated supplier procures a service or asset from a related party, the value of the transaction shall not exceed the actual transaction price.<sup>62</sup>
- 4.19 This is intended to set an upper limit in order to remove the opportunity for the supplier of the regulated service to add an additional margin above the purchase price to the transaction when costing it into the cost of the regulated service. This additional margin could result in the regulated service incorporating inefficient costs.
- 4.20 We seek to have transactions valued at no more than actual purchase price in order to avoid consumers losing out on any potential efficiency gains received by the regulated supplier in the use of a related party.

**The role of auditors and alignment with related party auditing standard**

- 4.21 We propose that the auditors completing assurance engagements on our annual ID requirements of the regulated suppliers will provide an assurance report as to whether, in the independent auditor's opinion, the supplier of the regulated service has complied in all material respects with the requirements of the ID determination.<sup>63</sup> If the supplier of the regulated service has not complied with the requirements, the assurance report would state the requirements not met and the reasons why.

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<sup>61</sup> Clause 1(2) of Schedule 3 of the Electricity Industry Act 2010.

<sup>62</sup> Table 4.2 provides reference to the value limitation in the draft determinations.

<sup>63</sup> The ID determinations are the Electricity Distribution Information Disclosure Determination 2012, the Gas Distribution Information Disclosure Determination 2012, and the Gas Transmission Information Disclosure Determination 2012.

- 4.22 Our proposed amendments seek greater alignment with auditing standards terminology to reduce interpretation issues. By aligning auditing standards with our determinations we intend to also provide interested parties with increased assurance as to the level of testing required by the auditor to provide assurance that the related party transactions meet the arm's-length principle.
- 4.23 Further detail of how we have incorporated the relevant auditing and accounting standards by reference in accordance with the applicable drafting rules is provided in Attachment C.

*Updated independent auditor requirements*

- 4.24 In order not to overcomplicate or cause interpretation issues for the users of these rules, we have aligned the ID independent assurance requirement with the related party transaction auditing standard and the applicable accounting standard.
- 4.25 We seek to include reference to these auditing standards as the reasoning behind the applicable standards and their purpose is aligned to the regulatory policy intent of related party transaction provisions. These standards refer to the related party transaction terminology included in our general rule eg, the arm's-length principle. Where applicable to regulatory rules, we are not attempting to re-interpret such terminology.
- 4.26 Without limiting the nature and purpose of the audit assurance report generally, we are proposing outlining the independent auditor requirements for related party transactions as part of the ID external assurance report requirements.
- 4.27 Auditors will be expected to complete a review of the disclosure requirements for related party transactions in accordance with auditing standard ISA (NZ) 550 and accounting standard NZ IAS 24.
- 4.28 In satisfying the valuation methodology, we propose the audit assurance opinion states whether the valuation and disclosure of related party transactions in the disclosure year meets the general related party transactions valuation rule.

- 4.29 Our proposed amendments to the valuation methodology may lead to future qualified audit opinions in regards to related party transactions. In situations where a qualified audit opinion is obtained, we propose that the auditor provides additional comment. This is relevant to readers' understanding of the information and to ensure that sufficient information is readily available to interested persons to assess whether the Part 4 purpose is being met.<sup>64</sup>
- 4.30 In satisfying the ID requirements, we propose the audit assurance opinion states:
- 4.30.1 procurement policies and processes disclosed are consistent with the regulated supplier's general practice; and
  - 4.30.2 examples disclosed of market testing of transaction terms are representative of the methodology applied by the supplier of the regulated service in establishing the terms for each expenditure category.
- 4.31 Reasoning as to why we are proposing the assurance opinion in these two areas is provided in Chapter 5.
- 4.32 We have identified that auditors may face difficulties in assessing arm's-length terms where there are imperfect local markets, ie, where the related party is the only provider of a service in a region. We would expect that regulated suppliers in these types of markets and their auditors might consider costs of similar services provided around New Zealand in benchmarking costs and possibly seek expert external advice to complete benchmarking.
- 4.33 If the auditor is unable to conclude that the related party transactions are on terms equivalent to arm's-length, we expect the regulated supplier would receive a modified assurance opinion. Under the auditing standards, a 'modified' assurance opinion could be a disclaimer of opinion, a qualified opinion or an adverse opinion, which will depend on the reasons for the auditor being unable to conclude on an unqualified assurance opinion.

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<sup>64</sup> Such comments could be provided in "emphasis of matter" or "other matter" paragraphs. As outlined in the New Zealand equivalents to the International Standards on Auditing: No. 700: Forming an Opinion and Reporting on Financial Statements; No 705: Modifications to the Opinion in the Independent Auditor's Report; and No. 706: Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report.



- 4.34 If the related party transacts with third parties as well as the regulated supplier, reference to the related party's pricing of equivalent transactions with those third parties, if available, may support the auditor's conclusion on the arm's-length principle.
- 4.35 It will be the auditor's professional judgement on whether they can gain sufficient evidence to enable the auditor to conclude on whether the transaction terms are consistent with the arm's-length principle. Being able to do this will depend on whether the auditor can obtain sufficient information to show that the transaction terms between the related party and the third parties are largely consistent with those between the related party and the regulated supplier.

*The form of assurance report*

- 4.36 We are proposing that the ID determination would provide guidance on the form of the assurance report, which will be based on the auditing standards for forming an opinion on financial statements. Those auditing standards were recently updated and they provide more detailed guidance than the assurance standards on which the independent assurance report is based.<sup>65</sup>

**Independent report to provide additional assurance**

- 4.37 In circumstances where the related party transactions are a material proportion of the disclosure year's total opex or capex spend, or the auditor is not able to come to an unqualified opinion in its assurance report on related party transactions, we are proposing that the supplier of the regulated service would be required to seek an additional report from an independent expert.
- 4.38 The supplier of regulated services would be required to obtain and disclose that additional independent report if:
- 4.38.1 the proportion of the regulated supplier's total opex accounted for by related party transactions exceeds 65% of the total opex; or
  - 4.38.2 the proportion of the regulated supplier's total capex accounted for by related party transactions exceeds 65% of the total capex; or

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<sup>65</sup> For further explanation, the Office of the Controller and Auditor-General provides summarised guidance on types of audit reports on its web site at <http://www.oag.govt.nz/2014/central-government/appendix1.htm>

- 4.38.3 the independent auditor of the ID requirements is unable to conclude that the related party transactions in the disclosure year (or the prior year if the auditor provides a qualified opinion and the report is unable to be commissioned in time) meet the general valuation rule; or
  - 4.38.4 the independent auditor has issued a modified assurance opinion for the valuation and disclosures of related party transactions for the preceding year and time constraints have prevented the preparation of an independent report for that year.
- 4.39 We consider this additional independent report will tell the story behind the related party transactions where these are considered to be material by size or to the achievement of an unqualified assurance opinion. This will provide interested parties with sufficient information to understand the extent to which the policy intent is or is not being met (and why) in situations where there is increased potential for consumer harm.
- 4.40 We note that the independent auditor may be engaged to complete this report, but the supplier of the regulated service may also choose another independent expert (which we refer to as the 'appraiser') to provide this report.
- 4.41 The additional independent report is proposed to:
- 4.41.1 be addressed to the directors of the regulated business and to the Commission as the intended users of the report;
  - 4.41.2 be based on the information obtained, sampling of related party transactions and analysis undertaken, state whether or not in the opinion of the independent appraiser, the regulated business' related party transactions would comply with the related party provisions, and set out the grounds for that opinion;
  - 4.41.3 where the independent appraiser provides an opinion in the report that the related party transactions would not comply with our related party provisions, state the appraiser's opinion on the alternative transaction terms that could enable compliance with the arm's-length requirements;
  - 4.41.4 set out the qualifications of the independent appraiser to provide the opinion in the report;
  - 4.41.5 set out the scope and any limitations of the engagement of the independent appraiser by the regulated business;
  - 4.41.6 state all key assumptions made by the independent appraiser on which the analysis in the report relies;

- 4.41.7 describe the basis used by the independent appraiser for sampling of related party transactions to inform the opinion in the report;
  - 4.41.8 describe the steps and analysis undertaken;
  - 4.41.9 summarise the steps the directors and management of the regulated business have taken to test whether related party transactions comply with the related party provisions;
  - 4.41.10 state whether or not, in the opinion of the independent appraiser , the steps taken by the directors and management of the regulated business are sufficient in the circumstances; and
  - 4.41.11 state whether the independent appraiser has obtained recorded information and explanations that they required and, if not, the information and explanations not able to be obtained.
- 4.42 We are not proposing to prescribe the analysis required, as this will vary based on the supplier. However, we expect such analysis may include the review of financial records, business transactions, accounting practice and internal controls in respect of disclosed related party transactions of the supplier.
- 4.43 The supplier of regulated services will not need to disclose this additional independent report if:
- 4.43.1 the last prior report was commissioned by the supplier in respect of one of the immediately prior two disclosure years; and
  - 4.43.2 the total value of related party transactions of the supplier in each of opex or capex (as applicable) has not increased by more than 5% for any disclosure year since the disclosure year addressed in the last prior report.

#### **Linking our amended valuation methodology with the IM and ID determinations**

- 4.44 Our valuation options for related party transactions are split across two determinations with the ID determinations covering related party opex and revenue transactions and the IMs covering related party capex.<sup>66</sup>
- 4.45 Table 4.2 links the elements from our proposed principles-based valuation methodology with the proposed red-lined drafting changes in the draft amendments determinations.

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<sup>66</sup> Further detail of this split is provided in paras 2.9-2.16 of this paper.

**Table 4.2 Cross-reference of our proposed principles-based methodology**

Elements of the valuation methodology	IM	ID	Reference
<b>General valuation rule</b>	Provided in the IMs for related party capex valuations.	Provided in ID for related party opex and revenue valuations.	IM clauses 2.2.11(1) and 2.2.11(5) ID clauses 2.3.6(1)-(2)
<b>Value limitation</b>	Provided in the IMs for related party capex valuations.	Provided in ID for related party opex and revenue valuations.	IM clauses 2.2.11(1) and 2.2.11(5) ID clause 2.3.6(3)
<b>Examples of arm's-length transactions</b>	Not included in the determinations. A guidance note is provided in both the IMs and ID to guide interested persons from the determinations to the relevant part of this paper. Attachment A provides worked examples of transactions on arm's-length and non-arm's-length terms to provide greater clarity for those applying the proposed valuation methodology.		Attachment A of this paper.
<b>Independent audit requirement</b>	Not included in the IMs.	Provided in ID.	ID clauses 2.8.1(2)-(3)
<b>Additional independent report</b>	Not included in the IMs.	Provided in ID.	ID clauses 2.8.2-2.8.5
<b>Relationship between cost allocation and related party transactions</b>	Not provided for in the determinations. Attachment B sets out the relationship between the cost allocation and related party provisions to provide greater clarity to those applying the rules. A guidance note is provided in both the IMs and ID to guide interested persons from the determinations to the relevant part of this paper.		Attachment B of this paper.

**Our proposed amendments to key definitions**

- 4.46 We have proposed amending key definitions to provide for greater clarity. We note submissions received on the complexity of the current terminology. For example, as a result of the move to the principles-based approach there is no longer the term 'directly attributable costs' in our proposed drafting.<sup>67</sup>
- 4.47 An outline of our proposed key definitions is provided in Table 4.3.

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<sup>67</sup> In response to PwC "Input methodologies review: Related party transactions - invitation to contribute to problem definition" (17 May 2017), Appendix A.

**Table 4.3 Our proposed amendments to key definitions**

Term	Outline <sup>68</sup>	Status	Determination reference
<b>Arm's-length transaction</b>	<b>Arm's-length transaction</b> means- A transaction conducted on such terms and conditions as between a willing buyer and a willing seller who are unrelated and are acting independently of each other and pursuing their own best interests. <sup>69</sup>	Update	IM clause 1.1.4(2)
<b>ISA (NZ) 550</b>	<b>ISA (NZ) 550</b> means- International Standard on Auditing (New Zealand) 550, Related Parties, issued by the New Zealand Auditing and Assurance Standards Board of the External Reporting Board in July 2011 and amended effective 15 December 2016, under s 24(1)(b) of the Financial Reporting Act 1993.	New	IM clause 1.1.4(2)
<b>NZ IAS 24</b>	<b>NZ IAS 24</b> means- New Zealand Equivalent to International Accounting Standard 24, Related Party Disclosures (NZ IAS 24), issued by the New Zealand Accounting Standards Board of the External Reporting Board in November 2009, incorporating amendments to 31 December 2015, under s 24(1)(a) of the Financial Reporting Act 1993.	New	IM clause 1.1.4(2)

<sup>68</sup> When referring to the regulated business we mean the EDB, GDB or GTB as applicable in the appropriate determinations. When referring to regulated service that is, the electricity distribution services or gas pipelines services as applicable in the appropriate determination.

<sup>69</sup> Definition taken directly from ISA (NZ) 550.

Term	Outline <sup>68</sup>	Status	Determination reference
<b>Related party</b>	<p><b>Related party</b> means-</p> <p>(a) a person that is related to the regulated business, where the regulated business is considered as the 'reporting entity', as specified in the definition of 'related party' in NZ IAS 24; or</p> <p>(b) any part, branch or division of the regulated business that does not supply regulated services.</p>	Update <sup>70</sup>	IM clause 1.1.4(2)
<b>Related party transaction</b>	<p><b>Related party transaction</b> means -</p> <p>The transfer of an asset or the provision of a service between a related party and the part, branch or division of the regulated business that supplies the regulated services.</p>	Update	IM clause 1.1.4(2)

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<sup>70</sup> Given the difficulty in interpreting limb (b) of 'related party' in this definition, we propose providing a guidance note in the determination under the definition which points to the reasons paper. Examples of the treatment of part (b) definition can be found following this table.

### *Interpreting the definition of 'related party'*

4.48 As the Commission regulates services and not the legal entity (ie paragraph (b)) that operates a service, this requires us to continue to have a second limb to our 'related party' definition.<sup>71</sup>

Related party means-

(a) a person that is related to the [EDB/GDB/GTB], where the [EDB/GDB/GTB] is considered as the 'reporting entity', as specified in the definition of 'related party' in NZ IAS 24;<sup>72</sup> or

(b) any part, branch or division of the [EDB/GDB/GTB] that does not supply [electricity distribution services/gas distribution services/gas transmission services].

4.49 The second limb of this definition picks up transactions provided to the regulated service by another division within the same company providing an unregulated service.

4.50 We note Vector's submission which refers to the broadened definition of related party beyond the GAAP rules to include internal unregulated divisions of the legal entity. Vector supports a clear definition of the term related party to mitigate the likelihood for selective interpretations.<sup>73</sup>

4.51 We have attempted to reduce interpretation issues by providing a guidance note in the determination under the definition which points to this paper. To help you, we provide examples in Table 4.4 on the treatment of part (b) of the definition. The table outlines the two tiers of the definition in more detail.

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<sup>71</sup> Section 54E of the Act states that the electricity lines service is regulated. Section 54C of the Act outlines the meaning of electricity lines services.

<sup>72</sup> A 'reporting entity' is defined in NZ IAS 24 as the entity that is preparing its financial statements. In this case, the entity is the regulated supplier.

<sup>73</sup> Vector "Submission on related party transactions invitation to contribute to problem definition" (17 May 2017), para 22.

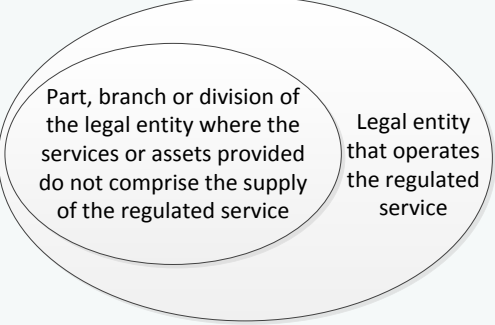


**Table 4.4 Understanding the related party definition**

Tier <sup>74</sup>	Detail	Example/s	Diagram
<p><b>(a) a person that is related to the regulated business, where the regulated business is considered as the 'reporting entity', as specified in the definition of 'related party' in NZ IAS 24.</b></p>	<p>As outlined in NZ IAS 24.</p>	<p>The related party entity and the 'reporting entity' are members of the same company group eg, either own the other, or both owned by the same parent company.</p> <p>Also if one entity is an associate or joint venture of the other entity.<sup>75</sup></p>	

<sup>74</sup> When referring to the regulated business we mean the EDB, GDB or GTB as applicable in the appropriate determinations. When referring to regulated service we mean the electricity distribution services or gas pipelines services as applicable in the appropriate determination.

<sup>75</sup> Further examples can be found at IAS Plus "IAS 24 - Related Party Disclosures" <<https://www.iasplus.com/en/standards/ias/ias24>>.

Tier <sup>74</sup>	Detail	Example/s	Diagram
<p><b>(b) any part, branch or division of the regulated business that does not supply the regulated service.</b></p>	<p>As we regulate the service and not the legal entity, any part of the entity that operates the regulated service, but which does not supply the regulated service, is considered a related party.</p>	<p>The entity that operates the electricity lines service also has a contracting division which provides a range of repairs and maintenance, vegetation management and minor capex builds to the regulated service is considered a related party for regulatory purposes.</p>	

**Relationship between cost allocation and related party transactions**

- 4.52 For the purposes of interpreting the cost allocation rules and related party transaction requirements, we have provided a diagram in Attachment B that will guide you on how and when to value a transaction with a related party that also has a cost allocation requirement.

## Chapter 5 Our draft amended related party disclosure requirements

### Purpose of this chapter

- 5.1 This chapter provides:
  - 5.1.1 an outline of our amended related party disclosure requirements to ID;
  - 5.1.2 our reasons for the amendments; and
  - 5.1.3 comments on our consideration of relevant submissions we have received on disclosure requirements.

### Our proposed disclosures

- 5.2 As outlined in our problem definition paper, we consider that the current related party transactions provisions provide limited transparency to enable stakeholders to assess whether:
  - 5.2.1 the cost of a good or service acquired from a related party, or the price received from the sale or supply of an asset or good or service to a related party, is set on the basis that each related party transaction is valued as if it had the terms of an arm's-length transaction;
  - 5.2.2 the value of a related party transaction is based on an objective and independent measure; and
  - 5.2.3 cost efficiencies are being shared with consumers of the regulated service.
- 5.3 Our current ID requirements on related party transactions are focussed on quantitative data collection and may not provide sufficient qualitative information that is readily available to interested persons to assess whether the Part 4 purpose is being met.
- 5.4 We propose greater transparency of related party transactions to ensure that the s 53A ID purpose is being met. We are therefore setting out a new set of disclosures to increase transparency on related party transactions to ensure these transactions comply with the policy intent. These proposed disclosures cover five areas and are summarised in Table 5.1.

**Table 5.1 Our proposed related party disclosure requirements**

Area	Overview <sup>76</sup>	Reference
<b>Related party relationships</b>	<p>A diagram of the regulated business and the related parties with which it had related party transactions with in the disclosure year, including-</p> <ul style="list-style-type: none"> <li>(a) any ownership relationship between the regulated business and each related party;</li> <li>(b) any common board members or senior management between the regulated business and each related party;</li> <li>(c) any common control or influence of the regulated business and each related party</li> <li>(d) principal activities of each related party;</li> <li>(e) the total annual expenditure incurred by the regulated business with each related party; and</li> <li>(f) the total annual revenues derived by the regulated business from each related party.</li> </ul>	ID clause 2.3.9(1)
<b>Procurement policies and processes</b>	<p>Where the regulated supplier transacts with related parties in the disclosure year, provide a copy of the current procurement policy or alternate documentation. We note that the regulated supplier will be required to disclose a summary of the current procurement policy or alternative documentation publicly and the full version to the Commission.</p> <p>We also propose a description of how the regulated supplier applies the policy for the procurement of assets or goods or services from a related party in practice and any procedures for how the regulated business refers a consumer to a related party in relation to the regulated service. This will allow for stakeholders (including the Commission) to assess the regulated supplier’s reasoning for using related party suppliers.</p>	ID clauses 2.3.7-2.3.8 and 2.3.9(2)-(3)

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<sup>76</sup> When referring to the regulated business we mean the EDB, GDB or GTB, as applicable, in the appropriate determinations. When referring to regulated services we mean the electricity distribution services or gas pipelines services, as applicable, in the appropriate determination. Full proposed drafting detail can be found by following the references column.

Area	Overview <sup>76</sup>	Reference
<b>Practical application of the procurement policies and processes</b>	<p>Where the regulated supplier transacts with related parties, disclose consistency of the practical application with the procurement policy through a representative example from each of the opex and capex categories with a consideration for a materiality threshold.</p> <p>We propose this disclosure of consistency is supported with detail of how the directors have decided that the current procurement policy or alternative documentation is largely applied in practice. We also propose an auditor opinion to confirm consistency of these examples in practice.</p>	ID clauses 2.3.9(4)-(5) and 2.8.1(2)
<b>Most recent examples of market testing of transaction terms</b>	<p>Where the regulated supplier transacts with related parties, how and when the regulated business last tested the arm's-length terms, by reference to market transactions in all of its major opex and capex categories.</p> <p>We propose to the audit report also includes auditor opinion on whether the market testing examples are representative of the methodology applied by the regulated business in establishing the terms for each category.</p>	ID clauses 2.3.9(6) and 2.8.1(2)
<b>Map of anticipated network expenditure and network constraints</b>	Where the regulated supplier transacts with related parties in any of the opex and capex categories, disclosure with the AMP or AMP update, a map of the regulated suppliers service territory which describes anticipated future expenditure and constraints on the network in the AMP planning period for each of those opex and capex categories. We consider this better ensures that the regulated service is being supplied with the most efficient input costs.	ID clauses 2.3.10-2.3.11

## Reasoning for our proposed disclosure areas

### *Related party relationship*

- 5.5 We propose a requirement to publish a diagram showing the relationships between the related party and the supplier of regulated services to provide the Commission and interested parties with an overview of the business structure. In response to submissions received which support additional transparency, we propose that such disclosure will provide interested parties with a high level overview of these regulatory structures.<sup>77</sup>
- 5.6 The relationships intended to be covered would be ownership, governance and, senior management between the parties. We consider such disclosure should be low cost for suppliers of regulated services to provide, as most will already have this information internally.

### *Procurement policies and processes*

- 5.7 The disclosure of procurement policies and processes behind the procurement of assets and services from the related party helps to provide the required level of disclosures for interested persons to assess whether the related party transactions are meeting the related party policy intent and meet the Part 4 purpose. That is, that related party transactions do not adversely affect efficiency, profit, price and quality regulatory objectives.
- 5.8 We have included this area of disclosure in response to submissions which suggest that our proposed solution to request procurement policy detail supports greater visibility, transparency and verification that regulated suppliers are delivering cost efficient assets and services.<sup>78</sup>

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<sup>77</sup> We agree with Pioneer's comment that if the regulated EDB selects a related party to be the supplier, and not a third party, the related party provisions must make the details of a related party transaction transparent. Pioneer Energy "Re: Related party transactions - invitation to contribute to problem definition" (17 May 2017), page 2.

<sup>78</sup> The consideration for procurement policies is included in the following submissions on the problem definition paper: Asplundh "Input methodologies review - related party transactions - Invitation to contribute to problem definition / initial findings" (17 May 2017), p.1. Genesis Energy "Input methodologies review - Related party transactions - Invitation to contribute to problem definition" (17 May 2017), page 2.

5.9 We have considered the following point from the Genesis submission on our current TIDY 2017 ID amendments process:<sup>79</sup>

**3. Mandate disclosure of procurement processes generally and actual disclosure of the details of the process where an investment is over a specified threshold**

This would increase the ability of interested persons to ascertain whether a robust procurement process was adhered to, particularly when procuring non-network solutions. At present, it is difficult to ascertain the extent to which EDBs give proper consideration to non-network solutions to deal with forecasted constraints and, in particular, whether EDBs adequately consider the use of customer-sited batteries.

5.10 Although the submission has a technology solution angle, we agree with Genesis' general point about the transparency of procurement processes and we propose to factor this into our proposed solutions in a technology agnostic way.

5.11 We propose requiring a summary of the procurement policy information to be disclosed publicly with a full version of such documentation to be provided to the Commission. We consider this approach:

5.11.1 allows interested persons to identify whether a supplier has a procurement policy or not, and to examine any procurement policy; and

5.11.2 deals with any potential commercial confidentiality issues.

5.12 We agree with ERANZ that the documentation of procurement practises and related entity transactions should already be being compiled as a routine part of a regulated supplier's internal processes to demonstrate their compliance with the provisions and intent of the Act.<sup>80</sup> We expect under good governance practices, suppliers would be expected to have these policies and existing documentation.

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<sup>79</sup> Submission received from Genesis on "Commerce Commission Proposed amendments to information disclosure determinations for airport services, electricity distribution services, and gas pipeline services, Draft companion paper" (30 June 2017). Genesis Energy Limited "Proposed amendments to information disclosure determinations" (28 July 2017), page 5.

<sup>80</sup> ERANZ "Related party transactions - Invitation to contribute to problem definition" (17 May 2017), para 4.5.



- 5.13 A submission received from Asplundh on the problem definition paper has noted that contestable procurement processes can also support the development of local markets for providing these same services to the community.<sup>81</sup> Where the opportunity exists for service providers to contest for service contracts, this supports the development (or establishment) of operations that can not only service the regulated business but also the wider community in a region.
- 5.14 It is feasible that regulated suppliers might set policies which constrain who may be permitted to undertake work on their network and who may directly charge consumers for that work. If the related party exploits such a policy, it could lead to an individual consumer ultimately effectively paying excessive prices. This could adversely affect the long-term benefit of consumers by promoting outcomes inconsistent with outcomes produced in competitive markets.<sup>82</sup>
- 5.15 In order to reveal situations like this in which consumer harm might arise, we propose the disclosure of policies or technical requirements which result in these kinds of constraints which adversely affect the consumers of regulated services.

*Practical application of procurement policies and processes*

- 5.16 In order to assure interested parties that such procurement policies and processes are applied in practice, we seek to gain assurance from both:
- 5.16.1 the director in the ID director certification; and
  - 5.16.2 the auditor in completing the ID independent audit assurance engagement.
- 5.17 We propose this disclosure requirement as to provide assurance to interested parties that the procurement policies and processes are a true representation of what is being consistently applied in practice in regards to related party transactions.
- 5.18 We propose this additional assurance is supported by an addition to the audit assurance opinion to state whether the auditor has (or has been unable) to assure themselves that the procurement policies and processes disclosed are consistent with the regulated supplier's general practice.

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<sup>81</sup> Asplundh "Input methodologies review - related party transactions - Invitation to contribute to problem definition / initial findings" (17 May 2017).

<sup>82</sup> As outlined in s 52A of the Act.

*Most recent examples of market testing of transaction terms*

- 5.19 We propose including the following disclosure requirements:
- 5.19.1 details of how and when the regulated supplier last tested the market terms of transactions (eg, by way of tendering, benchmarking or other method) in each of the related party opex and capex categories used above; and
  - 5.19.2 auditor assurance opinion on whether audit testing indicates terms are consistent with the terms used in the valuation methodology across each of the opex and capex categories.
- 5.20 This further proposed disclosure will enable interested parties to assess whether the excess profits and efficiency dimensions of the regulatory objectives of Part 4 have been adversely affected by a related party relationship. In particular, whether the related party transactions reflect prudent and efficient costs on arm's-length terms that a supplier of electricity lines services would require to meet or manage expected demand for its services, at appropriate service standards.
- 5.21 The proposed disclosure would also enable us to assess whether the related party transactions are consistently based on a demonstrated and objective measure as outlined in the policy intent. This will enable the Commission and other interested parties to gain an understanding of whether the related party transactions values entering the regulated business have been tested to ensure efficient input costs for the regulated service.
- 5.22 We propose this additional assurance is supported by an addition to the audit assurance opinion to state whether the auditor has (or has been unable) to assure themselves that the examples disclosed of market testing of transaction terms are representative of the methodology applied by the supplier of the regulated service in establishing the terms for each expenditure category.
- 5.23 This will enable us, and interested parties, to determine whether market testing of transaction terms completed by the supplier of the regulated service provides assurance that the efficiency of the input costs in each expenditure category is reasonable.

- 5.24 We note that submissions have commented on the importance of open and competitive tendering processes when procuring goods or services from contestable markets.<sup>83</sup> However, we also understand the flipside of that, which is that unnecessary external contracting, can create inefficient transaction costs.<sup>84</sup>
- 5.25 We do not propose providing prescriptive requirements as to how the supplier of the regulated service chooses to test the market. This is at the regulated supplier's discretion and may be through benchmarking, open tender process, market testing of transaction terms, or another preferred process which sufficiently satisfies the auditor.
- 5.26 We consider this to be a low-cost approach as this should be information which the regulated supplier already has on record. Detailed disclosures will be on a sample basis that demonstrates the supplier's approach to each expenditure category, which should limit the collation effort required by the regulated supplier.

*Map of anticipated network expenditure and network constraints*

- 5.27 We propose that if a regulated supplier has related party transactions in one or more of the outlined opex and capex categories, then future opex and capex expenditure projects or possible projects with related parties should be disclosed on a map of anticipated network expenditure and network constraints.
- 5.28 We consider this disclosure requirement has a potential to support suppliers of the regulated service by enabling third party providers to potentially provide cost-effective (and potentially non-network) solutions. This proposed disclosure requirement is intended to assist in the assessment of whether input costs are efficient.<sup>85</sup>
- 5.29 With new developments happening in the energy distribution sectors, an easily digestible disclosure of network projects and constraints would also enable the supplier of the regulated service to identify potential alternative solutions.

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<sup>83</sup> ERANZ "Related party transactions - Invitation to contribute to problem definition" (17 May 2017), para 4.6.

<sup>84</sup> As submitted by Vector "Submission on related party transactions invitation to contribute to problem definition" (17 May 2017), para 10.

<sup>85</sup> That is, the price charged to consumers is based on efficient input costs and the presence of related party transactions does not adversely affect the ability to constrain prices to the benefit of consumers. This is outlined further in Table 2.1 of this paper.

- 5.30 We note the ERANZ submission on this, that more extensive information about planning and implementation of EDB network development projects is required for third parties to ascertain whether they could compete to participate in those projects or offer alternatives that might defer or reduce the costs of those projects, for the long-term benefit of the regulated consumer.<sup>86</sup>
- 5.31 As identified in the ERANZ submission, Powerco has recently provided this type of user-friendly information in maps of its proposed investments in its regional areas for its public consultations on its CPP application to the Commission.<sup>87</sup>
- 5.32 Similar disclosures are provided in most AMPs. However, we consider the AMP to be a more technical document and believe that a simplified high level summary of such information would better enable interested parties to offer new services. This should enable interested parties to determine whether the regulated service is supplied with assets and services at the most efficient input costs.

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<sup>86</sup> ERANZ "Related party transactions - Invitation to contribute to problem definition" (17 May 2017), para 7.1.

<sup>87</sup> ERANZ "Related party transactions - Invitation to contribute to problem definition" (17 May 2017), para 7.1. See Powerco website at: <http://www.yourenergyfuture.co.nz/in-your-area/>.

## Attachment A Worked examples of arm's-length and non-arm's-length transactions

### Purpose of this attachment

- A1 This attachment is intended to provide guidance to suppliers and other stakeholders on how a related party transaction may (or may not) meet the general valuation rule.
- A2 This is not intended to replace the valuation methodology, and is only intended to support the application of the general valuation rule in the body of the IM and ID determinations.<sup>88</sup>

### Examples of related party transactions which would and would not be considered on arm's-length terms

- A3 Table A1 provides a non-exhaustive list of indicative transactions on arm's-length terms to support regulated suppliers with their understanding of the proposed valuation methodology.

**Table A1 Non-exhaustive list of examples of indicative arm's-length transactions**

Method	Brief description
<b>Open tendering process</b>	Regulated supplier follows an open tendering process with the following indicative attributes to determine the arm's-length terms: (i) all relevant terms are accessible by third parties prior to providing a tender; (ii) the regulated supplier assesses all tenders which are equally the most advantageous to the supplier of the regulated service equally; and (iii) in considering the term of the contracts of services, the regulated supplier considers the industry best practice for that service and the materiality of the service in determining the acceptable contract length and renewal process.

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<sup>88</sup> See [DRAFT] Electricity Distribution Services Input Methodologies Amendments Determination 2017, clauses 2.2.11(1)(g), 2.2.11(5), 5.3.11(1)(g) and 5.3.11(7), [DRAFT] Gas Distribution Services Input Methodologies Amendments Determination 2017, clauses 2.2.11(1)(g), 2.2.11(5), 5.3.11(1)(g) and 5.3.11(7), [DRAFT] Gas Transmission Services Input Methodologies Amendments Determination 2017, clauses 2.2.11(1)(g), 2.2.11(5), 5.3.11(1)(g) and 5.3.11(7), [DRAFT] Electricity Distribution Information Disclosure Amendments Determination (No.2) 2017, clause 2.3.6, [DRAFT] Gas Distribution Information Disclosure Amendments Determination (No.3) 2017, clause 2.3.6, and [DRAFT] Gas Transmission Information Disclosure Amendments Determination (No.3) 2017, clause 2.3.6.

Method	Brief description
<b>Comparable pricing</b>	Regulated supplier uses comparable pricing with the following indicative attributes to determine the arm's-length terms when majority of its related party's sales are to third parties: (i) third parties may purchase the same or substantially similar assets from the related party on substantially the same terms, including price; or (ii) over time that price is substantially the same as the price paid for substantially similar assets or services from a party other than a related party.
<b>Independent market valuation</b>	Recorded at its market value as at the date of acquisition as determined by an independent valuation.

A4 Table A2 provides a non-exhaustive list of examples of transactions which on their own would not meet the arm's-length requirement or would not demonstrate the valuation is based on an objective and independent measure.

A5 We note that depending on the individual situation, auditors may be able to complete additional testing to verify that such methods meet the requirements of the general valuation rule.

**Table A2 Non-exhaustive list of examples of indicative non-arm's-length transactions**

Method	Brief description
<b>Internal sign off</b>	Where the director or internal manager of the supplier of the regulated service has verified the transaction as arm's-length without ensuring that there has been consideration for the open market. This would not demonstrate objective and independent measurement.
<b>Long term contracts with no review period or termination provisions</b>	The supplier of the regulated service enters into long term contracts with no considered review period. Such transactions could become out of date with current market practices and prices.  We note that contracts with longer terms can be important to underpin large investments by suppliers and promote competition. However, the appropriate contract length will depend on the type of asset or service being provided.
<b>No documented procurement policy in place</b>	Without a clear procurement policy, on its own, this would make it harder for the auditor to assess that the arm's-length principle would be met.

## Worked examples

- A6 The following are indicative worked examples which show how related party transactions could meet the general valuation rule:
- A6.1 The Big City Lines Limited (**BCLL**) situation where there is clear opportunity to benchmark against an existing arm's-length contractor; and
  - A6.2 The Regional Lines division situation where there is an imperfect regional market for contracting services and a greater depth of audit scrutiny might be expected.

### *Example 1: Big City Lines Limited's situation*

- A7 BCLL provides electricity lines services to a large region of 250,000 consumers and owns related party Big City Vegetation Limited, which provides vegetation management services to BCLL.
- A8 BCLL requires \$150,000 of vegetation management work over the next year and would like Big City Vegetation Limited to undertake most of the work, as they are able to ensure a guaranteed level of service.
- A9 For vegetation management services, approximately 60% of this work is completed by Big City Vegetation Limited. The remainder is completed by an independent third party contractor that operates in the region.
- A10 BCLL has internal procurement policies which require that market testing of transaction terms is routinely completed to ensure that the price charged by Big City Vegetation Limited is consistent with those charged by the other third party contractor.
- A11 With clear procurement policies and internal practices, the external auditor has cited sufficient evidence to test that BCLL procures the services from Big City Vegetation Limited at terms consistent with those provided by the other third party contractor. On that basis, the auditor is likely to have enough information to be able to form the assurance opinion.

### *Example 2: Regional Lines' division situation*

- A12 Regional Lines provides electricity lines services to a regional town of 40,000 consumers and operates related party Regional Lines Engineering, which is a division of Regional Lines. Regional Lines Engineering provides electrical engineering services for Regional Lines' lines service and other EDBs in nearby regions.
- A13 There are currently no other electrical engineering providers in the region of sufficient scale to carry out the work that Regional Lines requires.
- A14 Regional Lines requires electrical engineering services, and has contracted its division Regional Lines Engineering to complete the work.

- A15 Regional Lines uses an external consultancy company to complete benchmarking services to ensure that it is acquiring electrical engineering services at a price equivalent to arm's-length. This is outlined in its internal procurement policies.
- A16 As Regional Lines Engineering is the only available electrical engineering service provider in the region capable of carrying out the work, Regional Lines compares the prices charged by Regional Lines Engineering with the benchmarking completed by the external consultancy to ensure consistency with the arm's-length principle.
- A17 The auditor tests the price that Regional Lines pays for services from Regional Lines Engineering by assessing the quality of the benchmarking data and whether this has been consistently applied in practice.
- A18 The auditor also compares the terms of the transactions between Regional Lines Engineering and other unrelated customers (including possibly the other EDBs) with the terms of the transactions between Regional Lines and Regional Lines Engineering. On that basis, the auditor is likely to have enough information to be able to form the assurance opinion.

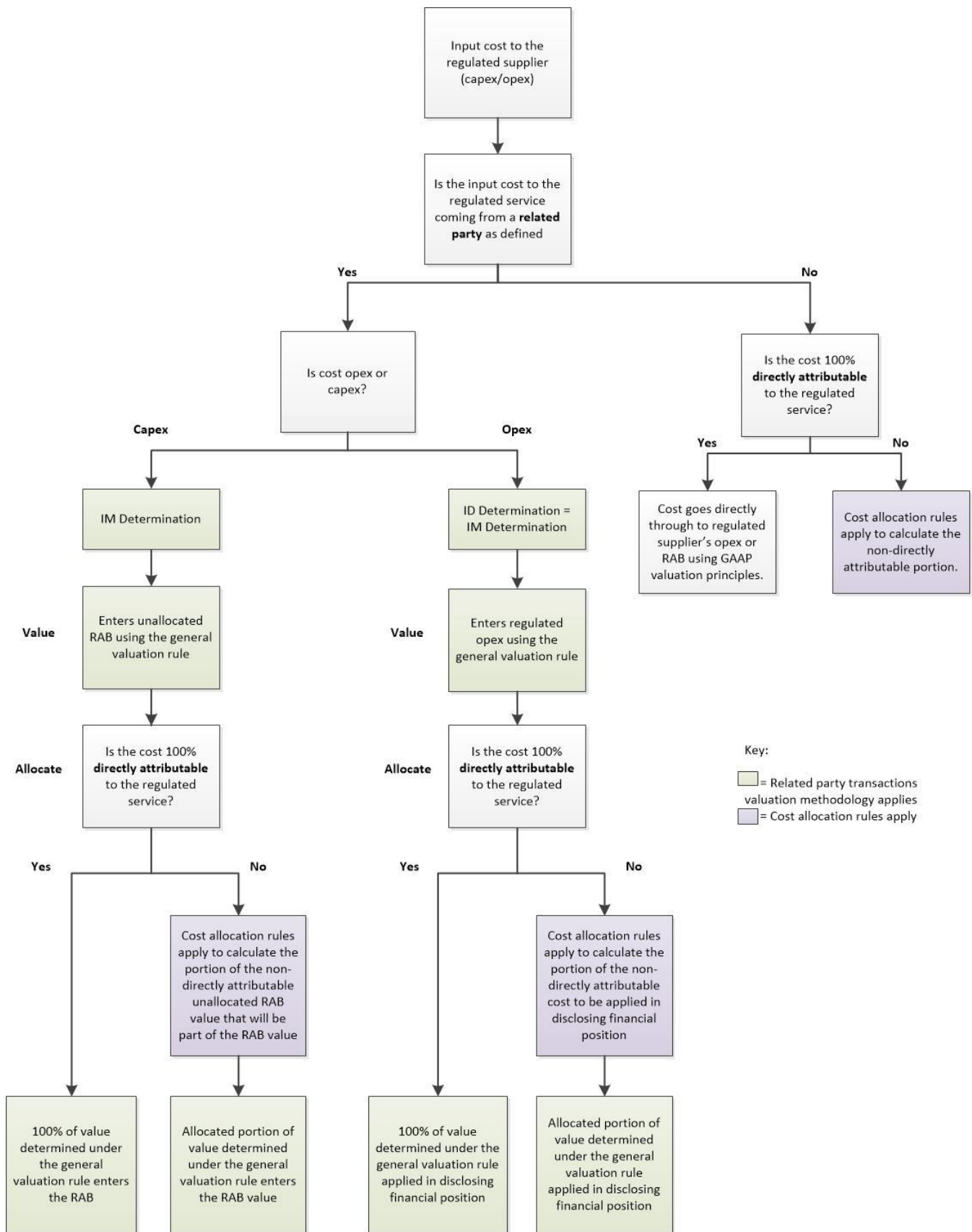


## **Attachment B    Relationship between cost allocation rules and the related party transactions provisions**

### **Purpose of this attachment**

- B1      This attachment provides guidance in Figure B1 on how the draft amended related party transactions rules work with the cost allocation rules under common input cost scenarios. This guidance does not form part of the ID determination and is provided to help you apply the ID requirements.

**Figure B1 Related party transactions and cost allocation**



## Attachment C Incorporation of auditing and accounting standards by reference into determinations

### Purpose of this attachment

- C1 This attachment provides an overview of how we have incorporated relevant auditing and accounting standards into the IM and ID determinations by reference in accordance with the applicable drafting rules set out in Schedule 5 of the Act.

### Incorporation by reference process

- C2 To provide greater alignment and minimise interpretation issues, we have incorporated relevant auditing and accounting standards into the IM and ID determinations.
- C3 We propose incorporating *New Zealand Equivalent to International Accounting Standard 24, Related Party Disclosures (NZ IAS 24)* and *International Standard on Auditing (New Zealand) 550, Related Parties* (auditing and accounting standards) into the determination by reference in accordance with the process set out in Schedule 5 of the Act in order to provide:
- C3.1 greater clarity around the requirements for the review of related party transactions in the ID independent audit assurance engagement; and
- C3.2 greater consistency between our determinations and the auditing and accounting standards.
- C4 We also propose including reference to the applicable auditing standards that set out the different forms of audit opinions. This is to help interested parties better understand what a modified assurance opinion means (i.e. if it is not a 'clean' assurance opinion in some way).
- C5 Schedule 5 of the Act sets out the process for incorporating material by reference into a determination made under s 52P or into an input methodology made under s 52W. We propose to incorporate material by reference into:
- C5.1 the ID determinations,<sup>89</sup> and
- C5.2 the IM determinations.<sup>90</sup>

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<sup>89</sup> Made under s 52P of the Act.

<sup>90</sup> Made under s 52Y of the Act.

- C6 The Act allows us to incorporate material by reference into a determination or input methodology if:
- C6.1 the material deals with technical matters; and
  - C6.2 it is impractical to include it in or publish it as part of, the determination or input methodology.<sup>91</sup>
- C7 We consider that the auditing and accounting standards are technical in nature because they deal with technical accounting and auditing matters. We also consider that it would be impractical to include the auditing or accounting standards in the determinations themselves due to the length of the auditing and accounting standards.
- C8 The auditing and accounting standards must be incorporated into the determinations as they exist at the time the determinations are published and have legal effect as part of the determinations.<sup>92</sup>
- C9 Accordingly, we propose to incorporate *New Zealand Equivalent to International Accounting Standard 24, Related Party Disclosures (NZ IAS 24)* which was issued in November 2009 and amended effective 31 December 2015 and *International Standard on Auditing (New Zealand) 550, Related Parties* which was issued in July 2011 and amended effective 15 December 2016.
- C10 Later amendments to or replacements of the auditing and accounting standards are not automatically incorporated into, and have legal effect as part of, the determinations. This will only occur if a subsequent determination or input methodology states that the amendment or replacement has legal effect as part of the determination or input methodology, or the Chairperson of the Commission adopts the amendment or replacement as having legal effect by notice in the Gazette.<sup>93</sup>
- C11 The amendment or replacement must also be made by the person or organisation that made the original material and must be of the same general character as the original material.
- C12 Our intention is to adopt any amendments or replacements to the auditing and accounting standards to the extent they are consistent with our related party provisions policy intent and have legal effect as part of the determinations. This will ensure that the requirements in our determinations reflect the most up to date auditing and accounting standards.

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<sup>91</sup> Clause 2 of Schedule 5 to the Act.

<sup>92</sup> Clause 2(3) of Schedule 5 of the Act.

<sup>93</sup> Clause 5 of Schedule 5 of the Act.

- C13 We are seeking comments on our proposal to incorporate the accounting and auditing standards by reference into the determinations.<sup>94</sup> The accounting and auditing standards are available on the External Reporting Board web site and are available for inspection at the Commission's head office, and are available for purchase.<sup>95</sup>
- C14 We also intend to publish the accounting and auditing standards with the final version of this paper on our website.<sup>96</sup>

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<sup>94</sup> As required by clause 7(2)(e) of Schedule 5 to the Act.

<sup>95</sup> See <https://www.xrb.govt.nz/>

<sup>96</sup> As required by clause 7(2)(a), (b) and (c) of Schedule 5 to the Act.