

Commentary on the proposed information disclosure regime

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1. Summary and recommendations

The Commerce Commission recently published its draft decision on the information disclosure (ID) regulation that should apply to Transpower¹. The purpose of this report is to comment on the Commission's proposed approach to ID regulation with reference to regulatory practice in the UK and Australia.

ID regulation is a light handed form of regulation, which operates by requiring the regulated company to publish data on its financial and service performance. The publication of comprehensive and consistent data enables customers to be better equipped to negotiate terms and conditions with the regulated company. Alternatively, the published data may indicate that a more heavy-handed form of regulation is required in order to deliver outcomes that are consistent with a workably competitive market.

For Transpower, however, a complication arises because the company is already subject to a more heavy-handed form of regulation, known in New Zealand as the Individual Price-Quality Path (IPP). IPP is a formal 'building block' approach to regulation in which prices and service quality are regulated by the Commission and subject to periodic (five-yearly) review. The IPP regime applies to the majority of Transpower's activities as owner and operator of the Grid.²

It is unusual for a regulated company to be subject to both light handed regulation and explicit price control³ at the same time. Moreover, the Commission's approach to combining these forms of regulation is likely to lead to worse outcomes for consumers.

If ID regulation were simply an additional reporting requirement or a 'belt and braces' approach to implementing IPP regulation, this conclusion may appear counter-intuitive. In our view, however, there is a fundamental difference in the mechanisms used by ID and IPP regulation to deliver efficient outcomes. At a most basic level, light handed and heavy-handed forms of regulation such as price control are alternatives to one another, and there is a risk that their effectiveness will be undermined if they are used simultaneously to achieve the same ends.

To illustrate our concern, it is instructive to consider the issue of sharing efficiency gains with customers. The IPP regime has been designed to provide "fair sharing" of efficiency gains through periodic reviews of price and quality performance, and the operation of the Incremental

¹ Commerce Commission, Information Disclosure Requirements for Electricity Transmission and the System Operator: Transpower New Zealand Limited, 21 October 2013.

² The IPP regime does not apply to revenue earned from New Investment Contracts; the provision of unregulated services; or revenue relating to services provided by Transpower as system operator.

³ The term "price control" is used a generic sense to denote forms of regulation that place explicit price or revenue caps on firms, and that typically also provide for the regulation of service quality.



Rolling Incentive Scheme (IRIS). The Commission explained that IRIS will provide Transpower with incentives to make efficiency gains and share those efficiency gains with consumers over time⁴.

Good regulatory practice requires that network companies have confidence that these types of incentive arrangements will operate as intended, and not be reviewed and amended ahead of time. However, the Commission's approach to ID regulation invites interested persons to conduct annual assessments of whether Transpower is sharing efficiency gains with customers. By its nature, the Commission's formulation of ID regulation will question the legitimacy of the IRIS, which will have the unintended consequence of undermining the incentive properties of the IPP regime.

In our view, the Commission's approach to ID regulation may be appropriate if a default price path were to apply, as is the case for electricity distribution businesses. Default price path regulation is a more 'light handed' approach to regulating price and quality outcomes. As such, this form of regulation is more likely to be augmented by ID regulation, rather than being undermined by it. This observation leads us to conclude that the design of ID regulation should have regard to the other forms of regulation (if any) that apply to the provision of regulated services.

While we do not support the Commission's approach to ID regulation for Transpower, we do not underestimate the importance of providing timely, accurate and detailed information to the Commission and interested persons. In this regard, we have reviewed the regulatory approaches in the UK and Australia, as these jurisdictions often provide useful reference points for good regulatory practice. Three principal lessons arise from this review:

- The form of customer engagement is a matter for the regulated company, not the regulator.
- Regulators have established detailed information requirements to inform the setting and operation of price controls and to facilitate consumer engagement.
- There is no attempt to combine ID and formal price control regulation in the manner contemplated by the Commission.

In Transpower's case, it is also important to recognise that different forms of regulation apply to different categories of services. In particular, IPP regulation does not apply to System Operator

⁴ Commerce Commission, Input Methodologies (Transpower), Reasons Paper, December 2010, paragraph 7.1.5, page 76.



services and New Investment Contracts. For these services, therefore, the difficulties identified in relation to the parallel operation of ID and IPP regulation do not apply.

Nevertheless, the design of ID regulation should still be tailored to reflect the current IPP arrangements for regulating the quality and price of the transmission services provided by Transpower. In our view, the Commission's approach does not recognise that regulatory mechanisms are already in place to ensure that the price-quality outcomes for these activities are consistent with the Part 4 purpose.

In light of the discussion set out in this report, we recommend that the Commission should adopt the following approach to ID regulation:

- (a) For those transmission services where IPP regulation applies, mandatory templates should not be a feature of ID regulation. For those transmission services, ID regulation should be viewed primarily as a customer engagement exercise. Transpower would drive the customer engagement, which would have two purposes:
 - (i) For Transpower to present information and supporting narrative to explain how its recent performance and future plans, set in the context of IPP regulation, accord with the Part 4 purpose in the Commerce Act.
 - (ii) For customers to provide feedback on Transpower's performance and plans, which will inform the company's expenditure and service delivery plans for the next regulatory control period (RCP3).
- (b) For System Operator services and New Investment Contracts, the Commission and Transpower should develop a package of information that explains both the mechanisms by which the price and quality of these services are currently regulated, and the performance of these services in relation to the Part 4 purpose in the Commerce Act.
- (c) In consultation with Transpower, the Commission should develop its information requirements for the purpose of setting and implementing price-quality controls in accordance with its input methodologies for IPP regulation. These information requirements should be determined independently from the ID regulatory requirements.



2. Purpose and structure of this report

The Commission has recently published its draft decision⁵ on the ID regulation that should apply to Transpower, and has invited submissions from interested parties. Transpower has engaged Harding Katz Pty Ltd to provide an independent analysis of the Commission's proposed approach with reference to regulatory arrangements in the UK and Australia. Harding Katz Pty Ltd is a consultancy specialising in regulatory economics.

The remainder of this report is structured as follows:

- Section 3 discusses ID and individual price-quality path (IPP) regulation with reference to Part 4 of the Commerce Act and the Commission's input methodologies.
- Section 4 provides an overview of the Commission's proposed approach to ID regulation.
- Section 5 highlights a number of difficulties with the Commission's proposed approach to ID regulation.
- Section 6 discusses the role of information provision in network regulation in the UK and Australia, and the growing emphasis on effective consumer engagement.
- Section 7 sets out concluding comments, focusing in particular on how ID regulation can best contribute to the achievement of the Part 4 purpose in the Commerce Act.

⁵ Commerce Commission, Information Disclosure Requirements for Electricity Transmission and the System Operator: Transpower New Zealand Limited, 21 October 2013.



3. Role of information disclosure and individual price path regulation

Before examining the Commission's approach to ID regulation it is important to comment on the legislative framework in New Zealand, which is set out in the Commerce Act 1986. In addition, it is also helpful to recap on the decisions already taken by the Commission in relation to the form of price-quality regulation that should apply to Transpower. This section discusses each of these matters in turn.

3.1. Overview of the legislative framework

The regulatory objective (or 'purpose') is set out in Part 4 of the Commerce Act as follows⁶:

“...to promote the long-term benefit of consumers in markets referred to in section 52 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.”

There are three categories of regulatory tools available to the Commission to achieve the Part 4 purpose⁷:

- ID regulation, under which regulated suppliers are required to disclose information in accordance with requirements determined by the Commission.
- Negotiate/arbitrate regulation, under which regulated suppliers are required to negotiate with other parties on prices and quality, and, if negotiation is unsuccessful, to enter into binding arbitration.
- Price-quality regulation, of which there are 2 types:

⁶ Section 52A, Part 4, Commerce Act 1986.

⁷ Section 52B(2), Part 4, Commerce Act 1986.



- (i) default/customised price-quality path regulation, under which default price-quality paths are set for regulated suppliers, but individual suppliers may seek a customised price-quality path instead; and
- (ii) individual price-quality path (IPP) regulation, under which the Commission sets a price-quality path for an individual regulated supplier.

The Commerce Act also states that the electricity lines businesses, including Transpower, must be subject to ID regulation⁸. ID regulation has a specific purpose, which is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 is being met⁹.

3.2. Decision to apply to IPP regulation to Transpower

In April 2010, the Commission advised the Minister that:

- IPP regulation is the most appropriate type of regulation to be applied to Transpower¹⁰.
- Transpower provides System Operator services in accordance with the terms of a contract between the Electricity Authority and Transpower, and should therefore be excluded from IPP regulation¹¹.
- Services provided by Transpower to a designated transmission customer under a new investment contract (NIC) should not be subject to IPP regulation, providing that certain conditions are met¹². These conditions are¹³:
 - (a) The customer agrees in writing that the terms and conditions are reasonable or reflect workable or effective competition for the provision of the goods and services; or
 - (b) Transpower demonstrates that the customer had an opportunity for the competitive provision of the new investment by parties other than Transpower.

⁸ Section 54F, Part 4, Commerce Act 1986.

⁹ Section 53A, Part 4, Commerce Act 1986.

¹⁰ Commerce Commission, Recommendation to the Minister of Commerce regarding the type of regulation to apply to Transpower, 13 April 2010, paragraph 134, page 25.

¹¹ Ibid, paragraph A22, page 31.

¹² Ibid, paragraph A18, page 31.

¹³ Commerce Commission, Input Methodologies (Transpower), Reasons Paper, December 2010, paragraph 4.4.5, pages 33 and 34.



In its advice to the Minister, the Commission explained that a default price-quality path (which applies to electricity distribution businesses) is set in a relatively low-cost way, using readily available information. However, the Commission highlighted the following difficulties in applying default price-quality regulation to Transpower¹⁴:

"The Commission considers that it is unlikely that a low-cost partial building blocks type approach would be able to take into account Transpower's specific capital expenditure requirements, including providing a mechanism that addresses the large Transpower projects that are uncertain with respect to timing and cost. If the price-quality path does not adequately reflect Transpower's forecast revenue requirement, this may adversely affect Transpower's incentives to invest in regulated services, including replacing and upgrading assets."

In contrast, under IPP regulation the Commission noted that it may set a range of long-term performance incentives and processes designed to improve capital expenditure efficiency. In making its recommendation, the Commission explained that the application of IPP regulation would provide more certainty to Transpower and its customers¹⁵. The Minister accepted the Commission's advice that IPP should apply to Transpower, excluding system operator and new investment contracts as already noted.

The Commission subsequently completed an extensive exercise to establish input methodologies (IMs) for the IPP regime. In broad terms, the IMs provide a comprehensive description of how the regime will operate in order to deliver outcomes consistent with the Part 4 purpose.

In the context of the Commission's draft decision on ID regulation, which we address shortly, it is important to note that the Commission considered that it had designed IPP regulation to promote the achievement of the Part 4 purpose. In particular, the Commission noted that:¹⁶

"The Capex IM, in combination with the IPP and other input methodologies that apply, will ensure that Transpower's revenue provides an opportunity to earn an appropriate return on investments, consistent with s 52A(1). Together, over the long-term, the IPP and Capex IM promote the overall objectives of the Act as set out in s 52A(1)(a)-(d)."

In concluding this section, we note that the Commission's finding that IPP regulation should apply to Transpower is neither controversial, nor surprising. In many countries around the world,

¹⁴ Commerce Commission, Recommendation to the Minister of Commerce regarding the type of regulation to apply to Transpower, 13 April 2010, paragraph 93, page 18.

¹⁵ Ibid, page 20.

¹⁶ Commerce Commission, Transpower Capital Expenditure Input Methodology, Reasons Paper, 31 January 2012, page 7.



it would be expected that the electricity transmission network service provider would be subject to a building block form of regulation, such as IPP. Furthermore, the building block regime would be designed to give full effect to the regulatory objectives specified in the governing legislation.

It is not the case that the building block regime should be designed with some 'gaps' or deficiencies, which are to be filled by another form of regulation, such as ID regulation. There would be no logical purpose in leaving gaps to be filled, and we have no reason to suppose that the IPP regulation designed by the Commission contains any such gaps or deficiencies. However, as we discuss in the next two sections of this report, this observation raises important questions regarding the purpose of ID regulation in circumstances where IPP regulation applies, and whether combining ID and IPP regulation in the manner contemplated by the Commission is likely to promote the achievement of the Part 4 purpose, or undermine it.



4. Overview of the Commission's proposed ID regime

The Commission's draft decision provides the following description of ID regulation¹⁷:

"Information disclosure is a form of light handed regulation that provides incentives for organisations to improve their performance such that outcomes are consistent with those found in workably competitive markets. It operates by requiring the regulated organisation to regularly and consistently make information about its business available to people outside the organisation. This creates transparency about how a supplier is performing."

We will return to this description of ID regulation in the next section of this report.

In the meantime however, it is worth reiterating that Section 53A of the Commerce Act states that the purpose of ID regulation is to ensure that sufficient information is readily available to interested persons to assess whether the Part 4 purpose is being met. In this regard, the Commission's draft decision makes the following observations¹⁸:

"To understand whether the relevant outcomes consistent with workably competitive markets are occurring, interested persons should have sufficient information to assess the performance of suppliers.

The Part 4 purpose highlights the importance of incentives: incentives to innovate and to invest (s 52A(1)(a)), and incentives to improve efficiency and provide services at a quality that reflects consumer demands (s 52A(1)(b)).

We consider that the practical test of whether incentives are working is whether suppliers are responding to those incentives. We therefore believe that interested persons can only assess whether these elements of the Part 4 purpose are being met by examining evidence of their performance—both historical performance and expected future performance."

The Commission also argues that consistent disclosure is important to ensure that information is useful in assessing whether the IPP regulation that applies to Transpower is effective in meeting the Part 4 purpose¹⁹. Although the Commission acknowledges that Transpower has been innovative in providing information to interested persons, the Commission argues that ID regulation should ensure that the necessary information is readily accessible²⁰. It is also worth

¹⁷ Commerce Commission, Information Disclosure Requirements for Electricity Transmission and the System Operator: Transpower New Zealand Limited, 21 October 2013, paragraph 2.3, page 16.

¹⁸ Ibid, paragraphs 2.9 to 2.11, page 17.

¹⁹ Ibid, paragraph 2.18, page 18.

²⁰ Ibid, paragraph 2.20, page 18.



noting that the Commission includes itself and Transpower as “interested persons” for the purpose of Section 53A of the Commerce Act.

To ensure consistency amongst regulated suppliers, the Commission has developed Transpower's ID requirements by using the approach it adopted for the electricity distribution businesses (EDBs) and airport regimes as a starting point²¹. However, the Commission acknowledges that Transpower differs from the EDBs in terms of the size and the nature of its operations, as well as its regulatory environment²². The Commission states that it has tailored the ID requirements to Transpower's particular circumstances²³.

The Commission describes a two stage process for determining Transpower's ID regulatory reporting requirements:

1. The first stage is to produce a set of ID requirements for Transpower that meet the purpose of ID regulation as set out in the Act.
2. The second stage is to consolidate Transpower's ID and compliance reporting requirements.

The Commission explains that the purpose of the second stage is to reduce compliance costs and to provide one information source for all of the Commission's reporting requirements for Transpower²⁴. However, the Commission notes that this stage cannot be completed until the IPP for the next regulatory period and the associated compliance requirements have been determined²⁵.

In developing Transpower's ID requirements, the Commission sought to identify the information that an interested person would require to determine whether Transpower's performance is consistent with a workably competitive market. Accordingly, the Commission adopted the following steps:

- a. Consider the performance outcomes one would expect to find in a workably competitive market, with reference to the Part 4 purpose.
- b. Identify the key questions interested persons would need to answer in order to assess whether these outcomes are being promoted.

²¹ Ibid, paragraph 2.24, page 19.

²² Ibid, paragraph 2.26, page 19.

²³ Ibid, paragraph 2.27, page 19.

²⁴ Ibid, paragraph 2.30, page 20.

²⁵ Ibid, paragraph 2.33, page 20.



- c. Determine the information interested persons would need to answer those questions.

In accordance with these steps, the Commission developed the following six questions (which are closely aligned to those applied in the development of ID regulation for the airport sector²⁶) to determine Transpower's ID requirements:

1. Is Transpower operating and investing in its assets efficiently?
2. Is Transpower innovating where appropriate?
3. Is Transpower providing services at a quality that reflects consumer demands?
4. Is Transpower sharing the benefits of efficiency gains with consumers, including through lower prices?
5. Do the prices charged by Transpower promote efficiency?
6. Is Transpower earning an appropriate economic return over time?

In addressing these questions, the Commission developed a spreadsheet comprising 28 individual sheets covering the following categories of information that should be disclosed by Transpower:

- historical financial performance;
- revenue;
- expenditure;
- composition of the Grid;
- asset management;
- quality; and
- system operator activities.

The Commission has not drawn a specific linkage between its 6 questions and the data that it proposes to collect. Some of the data requested, for example, operating expenditure for routine maintenance training or transmission line insulators, appear to be comparatively detailed compared to the questions posed. As already noted, however, a more fundamental issue is

²⁶ Commerce Commission, Information Disclosure (Airport services) Draft Reasons Paper, May 2010, Figure 2, page 28.



whether the Commission's approach to ID regulation is more likely to promote or undermine the achievement of the Part 4 purpose. We address this question in the next section.



5. Difficulties with the Commission's approach

5.1. Introduction

Before turning to examine the difficulties with the Commission's approach to ID regulation, it is important to note that we regard information provision to customers and other interested persons as an essential feature of a well-functioning regulatory regime. In particular, customers should be engaged in the regulatory process, and information is critical in this regard. The question, therefore, is not whether information should be provided to customers, but rather the appropriate type of information and the purpose of its provision.

In addition, we are also cognisant of the requirements of the Commerce Act in relation to ID regulation. In particular, there is no doubt that the purpose of ID regulation as specified in section 53A of the Commerce Act is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 is being met. In this sense, as section 54F of the Commerce Act requires ID regulation to apply to Transpower, the Commission has no choice but to develop ID regulation that accords with the requirements of section 53A.

From a regulatory policy perspective, however, combining a light handed form of regulation with a formal building block approach, such as IPP regulation, is highly unusual. A formal building block approach is usually applied because lighter handed forms of regulation have either proved to be ineffective or are expected to be ineffective in regulating price and quality outcomes.

In section 3.2 of this report, we noted the Commission's advice to the Minister that IPP regulation is the most appropriate form of price-quality regulation for Transpower (subject to the exclusion of System Operator services and New Investment Contracts). The question, therefore, is whether the combination of light handed and building block regulation proposed by the Commission for Transpower – whilst highly unusual – is likely to be detrimental to the achievement of the Part 4 purpose. It could be argued that combining different forms of regulation is simply a "belt and braces" approach that will not have any adverse consequences in terms of regulatory outcomes. As explained in section 5.2 below, however, this is not a view that we share.

The remainder of this section is structured as follows:

- Section 5.2 discusses the combination of ID and IPP regulation contemplated by the Commission;



- Section 5.3 discusses the scope of ID regulation for those services that are not subject to the IPP regime; and
- Section 5.4 comments on the Commission's definition of interested persons.

5.2. Conflicting forms of regulation

Light handed forms of regulation, such as ID regulation, encourage companies to deliver efficient outcomes and share these efficiencies with customers. ID regulation promotes these outcomes by subjecting the performance of the regulated company to annual scrutiny, and exposing the company to the threat (either implicitly or explicitly) of more heavy-handed regulation. In addition, in some sectors, the provision of information enables customers to engage more effectively in negotiation with the regulated company (by exercising countervailing market power) and this further improves the prospect of efficient outcomes in the absence of more formal regulation.

The New Zealand airport sector is an example where ID regulation is relied upon to deliver outcomes consistent with the Part 4 purpose. The light handed form of regulation in this sector reflects its particular characteristics, which are more conducive to delivering negotiated outcomes that accord with workably competitive markets. Airport regulation in Australia is similarly light handed.

In contrast with the New Zealand airport sector, Transpower's IPP regime cannot be regarded as a light handed form of regulation. In fact, IPP regulation is a formal building block approach that regulates price and service quality through periodic reviews of performance, and by setting incentive mechanisms to promote efficient outcomes. The incentive mechanisms are designed to provide "fair sharing" of the benefits of service and cost efficiency improvements between the company and its customers over time.

It is important to note that while ID and IPP regulation employ different mechanisms to deliver efficient outcomes, both share the common objective of promoting the achievement of the Part 4 purpose. An examination of the Commission's approach to ID and IPP regulation illustrates this common objective. In particular, the Commission's design of ID regulation is based on addressing a number of questions, including:

- Is Transpower providing services at a quality that reflects consumer demands?
- Is Transpower sharing the benefits of efficiency gains with consumers, including through lower prices?



- Is Transpower earning an appropriate economic return over time?

In relation to each of these questions, the excerpts below illustrate that the Commission's IPP regime for Transpower has already been designed to ensure that each outcome accords with the Part 4 purpose.

- For quality of service, the Commission described IPP regulation in the following terms²⁷:

"An output mechanism has been developed to counter any incentives for Transpower to under-invest. This will help ensure the appropriate level of service is delivered. The mechanism links Transpower's actual delivery of outputs to those outputs agreed at the time the Commission sets the Base capex allowance or approves a Major capex project. This will also provide visibility to stakeholders of the outputs delivered."

- In relation to sharing efficiency gains over time, the Commission described IPP regulation in the following terms²⁸:

"Including an IRIS [incremental rolling incentive scheme] in IMs will promote the Part 4 Purpose by promoting certainty for Transpower and its customers as to how efficiency gains made by Transpower will be treated. Transpower will therefore face incentives to make efficiency gains in the supply of regulated services (s 52A(1)(b)) and, over time, share those efficiency gains with consumers (s 52A(1)(c))."

- In relation to the economic return (weighted average cost of capital, or WACC), the Commission made the following observations in relation to the IPP regulation applying to Transpower²⁹:

"For application to the IPP, the IM specifies that the 75th percentile of the estimated WACC distribution should be used. This is higher than the mid-point estimate of the cost of capital, but the Commission considers this choice is prudent to ensure, by allowing for possible errors in the estimation of WACC, that Transpower has incentives to invest, because efficient investment is to the long-term benefit of consumers.

The Commission has tested the estimates of the cost of capital produced by the cost of capital IM to ensure it is reasonable and commercially realistic. [...]

²⁷ Commerce Commission, Transpower Capital Expenditure Input Methodology, Reasons Paper, 31 January 2012, paragraph X9, page vi.

²⁸ Commerce Commission, Input Methodologies (Transpower), Reasons Paper, December 2010, paragraph 7.1.5, page 76.

²⁹ Ibid, paragraphs X29-X31, pages v and vi.



These tests confirm that the IM provides estimates of the cost of capital that are expected to provide all suppliers of regulated services, including Transpower, with sufficient returns to incentivise innovation and investment, while ensuring suppliers are limited in their ability to extract excessive profits.”

It is evident from the above excerpts that the IPP regime applying to Transpower has been carefully designed to deliver outcomes consistent with the Part 4 purpose. As already noted, the effectiveness of IPP regulation depends on network companies having confidence that the regime will not be reviewed or re-opened ahead of schedule. The Commission made the following observations in relation to this issue³⁰:

“Once price-quality paths are determined, the Commission may not re-open the price-quality path during an RCP due to a changing input methodology except in the event of a successful appeal. This limitation promotes certainty for regulated parties and other interested persons.”

IPP regulation is therefore concerned with establishing a “regulatory compact” that can only be amended in exceptional circumstances. It is important to note that five-yearly regulatory reviews provide an opportunity for all stakeholders to scrutinise the network company’s performance, and its plans for the next period. In contrast, however, ID regulation is focused on annual scrutiny to promote efficient outcomes in the absence of direct regulatory price-quality control, with the implicit or explicit threat of tougher regulation if efficient outcomes do not eventuate.

Annual scrutiny of the performance of IPP regulation necessarily introduces the prospect of change and creates uncertainty regarding the future operation of the IPP regime. Uncertainty undermines the power of any incentive arrangement, and therefore will tend to produce poorer outcomes for customers, both in the short and longer term. For this reason, the combination of ID and IPP regulation contemplated by the Commission is likely to prove less effective in meeting the Part 4 purpose than IPP regulation alone.

Applying light handed and building block regulation in combination is problematic because the mechanisms that each form of regulation relies upon to deliver efficient outcomes are fundamentally different. In particular, the type of annual scrutiny that is part of the light handed regime is inappropriate for building block regulation, which is designed around periodic (typically, five-yearly) reviews rather than annual assessments.

It is also inappropriate to regard ID regulation as a mechanism for reviewing the effectiveness of IPP regulation. The nature of IPP regulation is to provide long term incentive arrangements to

³⁰

Commerce Commission, Input Methodologies (Transpower), Reasons Paper, December 2010, paragraph 1.2.18, page 5.



deliver efficiency improvements. It follows that the effectiveness of such a regime can only be assessed over the long term, not through the annual scrutiny that is the basis of ID regulation. In this regard, it is worth noting that the UK energy regulator, Ofgem, reviewed the effectiveness of RPI-X regulation following 20 years of operation, which is equivalent to four regulatory control periods.

In Transpower's case, we have no reason to suppose that IPP regulation will not prove highly effective in delivering outcomes consistent with the Part 4 purpose. It is evident that the Commission has not intentionally designed IPP regulation with gaps or deficiencies that need to be plugged by ID regulation. In these circumstances, it is valid to query the purpose and value that ID regulation is able to provide if transmission services are already subject to formal building block regulation, such as IPP.

Although ID regulation has a statutory purpose under the Commerce Act, there is a broader requirement that regulation should be directed at achieving the Part 4 purpose. For the reasons set out above, in our view the form of ID regulation proposed by the Commission is not likely to promote the achievement of the Part 4 purpose.

It is worth noting that the Commission's approach to ID regulation may be more appropriate under a default price path, which applies to electricity distribution businesses. This is because the default price path is a more 'light handed' approach to regulating price and quality outcomes. As such, this form of regulation is more likely to be successfully augmented by ID regulation, rather than being undermined by it. This observation reinforces our view that the design of ID regulation should have regard to the other forms of regulation (if any) that apply to the provision of regulated services.

5.3. ID regulation for services not subject to IPP

A further question arises regarding the form of ID regulation in relation to Transpower's System Operator services and New Investment Contracts (NICs), which are not subject to IPP regulation. For these services, the problems described above in operating ID and IPP regulation in parallel do not arise. It follows, therefore, that disclosing information along the lines contemplated by the Commission for System Operator services and New Investment Contracts is more likely to be consistent with the achievement of the Part 4 purpose.

Having said that, we still regard it important that ID regulation is tailored to the particular forms of regulation that apply to System Operator services and NICs. In particular, conditions already apply in relation to NICs to ensure that the price and service outcomes are consistent with



workably competitive markets, in accordance with the Part 4 purpose. In these circumstances, it is difficult to see why interested persons should be in a better position than the relevant customer to assess whether the agreed outcomes are consistent with the Part 4 purpose. This issue does not appear to have been considered by the Commission in the draft decision for ID regulation, although the Commission made the following observation regarding the regulation of NICs in its December 2010 IM decision for Transpower³¹:

“The Commission sought industry participants’ views on the need to include regulation around the negotiating framework for NICs applied by Transpower. MEUG submitted that the Commission should consider providing back-stop regulation. The Commission’s view is that the need for back-stop regulation is negated by the provision that if Transpower and the customer fail to negotiate a contract then Transpower has the option of asking the Commission to consider the new investment under the grid upgrade proposal. For this reason, the Commission’s decision is that it will not interpose itself between Transpower and its customers during contract negotiations.”

The Commission made similar observations in relation to System Operator services³²:

“The Commission’s view is that where there is an agreement in respect of the provision of system operator services (such as the SOSPA between the Electricity Authority and Transpower) it should not interpose itself between the parties by requiring the revenue associated with the agreement to be included in the IPP. In reaching this view, the Commission has considered the following factors:

- a. the Electricity Industry Act confirms that contracting for system operator services is a function of the Electricity Authority, hence the regulated revenue for the system operator services will continue to be set via the system operator services contract administered by the Electricity Authority through the SOSPA
- b. changes to system operator arrangements enacted by the Electricity Industry Act 2010 are not material in terms of this decision; and
- c. the 2009 SOSPA has changed substantially from the 2003 agreement which it supplanted, but having reviewed the terms of the 2009 SOSPA, including the fee arrangements and regulatory oversight of capex, the Commission considers that the new agreement includes adequate safeguards and regulatory oversight of system operator services.”

³¹ Ibid, paragraph 4.4.13, page 35.

³² Ibid, paragraph 4.4.21, page 37.



The System Operator provides an annual report, the 'System Operator Annual Review and Assessment', to the Electricity Authority as a self-review of its annual performance. The Authority has a legal obligation under Part 7 of the Electricity Industry Participation Code 2010 to review and assess the annual performance of the System Operator. This is related to the Authority's role as funder of the System Operator.

The performance of the System Operator is reviewed and assessed in accordance with requirements in the Code. The System Operator's self-review period, and feedback from Authority staff that have dealt with the System Operator during the review period, are the key inputs to this annual review.

The nature of these disclosures appears entirely consistent with the purpose of ID regulation. In light of the above observations, and the Commission's rationale for excluding System Operator services from the IPP regime, it is doubtful whether the addition of formal ID regulation (over and above the existing reporting requirements) would further promote the achievement of the Part 4 purpose.

In our view, the Commission and Transpower should develop an ID regime that provides interested persons with an appropriate mix of qualitative and quantitative information to understand the current arrangements for ensuring that System Operator services and New Investment Contracts accord with the Part 4 purpose. In both instances, the ID regime is likely to be substantially based on information that is already made publicly available.

5.4. Clarifying the definition of interested persons

As noted in section 4, the Commission commenced its considerations of ID regulation by defining the "interested persons" that are the subject of Section 53A of the Commerce Act. A particular point of interest is that the Commission has included both itself and Transpower in its definition of interested persons.

We recognise that the Commission must obtain relevant and timely information from Transpower in order to determine and apply IPP regulation. In our view, however, the Commission should not need to rely on another form of regulation – namely ID regulation – in order to give effect to the IPP regime. Furthermore, the notion that Transpower is an interested person for the purpose of section 53A of the Commerce Act, and therefore must obtain information from itself in order to assess whether the Part 4 purpose is being met, is unlikely to serve any practical purpose.



Having said that, the definition of “interested persons” for the purpose of section 53A of the Commerce Act is, in our view, a secondary issue compared to the potentially adverse consequences of seeking to combine ID and IPP regulation in the manner contemplated by the Commission. In view of these considerations, a key remaining issue is the appropriate scope of ID regulation given the design of the IPP regime and the Commerce Act requirements to apply both ID and IPP regulation to Transpower. In addressing this issue, it is useful to have regard to arrangements in other jurisdictions. In the next section, we therefore examine the use of information in the regulatory regimes in the UK and Australia.



6. Customer engagement and information in other jurisdictions

6.1. Introduction

While it is always constructive to consider regulatory arrangements in other jurisdictions, it is also important to recognise the differences in the legislative frameworks. At the outset, therefore, we note that the Commerce Act requires ID regulation to apply to Transpower in combination with IPP regulation. While the UK and Australian regimes apply similar forms of regulation to the IPP regime, neither jurisdiction applies ID regulation in the form contemplated by the Commerce Act.

Nevertheless, in the context of ID regulation it is useful to examine how information disclosure is used in the UK and Australian regulatory regimes. The lessons learnt from these regimes, and the recent developments in regulatory thinking in those jurisdictions, may be useful in informing the Commission's approach to ID regulation. We therefore address the UK and Australian regimes in turn.

6.2. UK regime

The regulatory arrangements in the UK were substantially overhauled as a result of the RPI-X@20 review, which marked the 20th anniversary of price control regulation in the electricity industry in England, Wales and Scotland. The UK electricity regulator, Ofgem, developed an improved regulatory model known as RIIO - which is an acronym for setting Revenue using Incentives to deliver Innovation and Outputs. An important aspect of the new regulatory regime is enhanced stakeholder engagement. In explaining what is meant by 'stakeholders', Ofgem commented as follows³³:

"In our discussions on enhanced engagement we widen the group of parties that we and network companies may need to engage with beyond consumers. Government could have a key role in providing updates on the direction of government policy while local authorities could provide insight on the needs of consumers of network services. In addition, stakeholders could include parties that are affected by, or represent those affected by, decisions made by network companies and Ofgem that are not (in that role) direct consumers of network services. A key example is organisations representing environmental interests that are interested in ensuring that the impact of network services on the environment is consistent with broader environmental goals, such as reduction in greenhouse gases and protection of landscape."

³³

Ofgem, Handbook for implementing the RIIO model, 4 October 2010, page 3.



In explaining the scope of consumer engagement, Ofgem made the following observations³⁴:

“The onus is on the network companies to determine their strategy for engagement, and to demonstrate how this engagement influences their thinking on what needs to be delivered and how it should be delivered. It will be important that there is scope for this engagement to impact on the business plans developed by the network companies. Where effective engagement takes place this will provide opportunities for (a) stakeholders to drive changes to the regulatory regime, (b) network companies to explore and get stakeholder buy-in to proposed approaches for the delivery of primary outputs, and (c) network companies and stakeholders to identify delivery solutions that involve them working together. Where any of these effects is evident this will provide persuasive evidence to the Authority of the need for change.

In some cases, it may prove difficult for network companies to accommodate the needs of stakeholders given that many network activities are mandated through licence conditions. Where network companies encounter any such obstacles to the delivery of network services in line with stakeholder expectations, they should approach us setting out the apparent inconsistency between their licence conditions and stakeholder needs, emphasising where stakeholder views differ and proposing a way forward that is consistent with the relevant statutory obligations.”

In relation to the level of information to be provided by network companies in justifying their business plans, Ofgem made the following observations³⁵:

“We expect network companies to take responsibility for providing relevant information and evidence to justify their proposals on what is being delivered, how best to deliver and hence on the revenue they wish to raise from consumers. We expect the network companies to take a proportionate approach to developing their business plans, placing emphasis where it adds most value. The type and level of information required will vary by type of expenditure. For example, we might expect more specific justification and evidence for high value projects, projects where there is uncertainty about what needs to be delivered (or when), activities relating to meeting the needs of future consumers and/or new types of activities. At the other end of the spectrum, we do not expect network companies to justify every pound spend on maintenance separately. It is the overall approach or strategy to maintenance that we expect to be justified, closely linked to network risk.”

Ofgem also noted that it would streamline its information requirements at price review time to take account of information that is reported on an annual basis³⁶:

³⁴ Ibid, pages 16 and 17.

³⁵ Ibid, page 49.

³⁶ Ibid, page 80.



"It is therefore important that we collect relevant data in a consistent format and, to facilitate this, we will issue a data template to all companies, for submission at the same time as business plans. The data will need to be consistent with what is included in the business plan. We will aim to limit the scale of the data requirement by making use of information obtained through annual reporting packs and streamlining data requirements necessary for our output, cost assessments and other areas in which we may request data to inform the price control. This may mean we will need to ask for more data at a later stage in the price control review period if we find that required data was not included in the original request."

In terms of monitoring performance, Ofgem made the following observations³⁷:

"To facilitate application of the incentives developed for primary outputs, it will be important for us to have a clear understanding of the performance of the network companies in delivering against the primary outputs and secondary deliverables throughout the course of the price control period. Arrangements will need to be implemented to facilitate this monitoring. As far as possible, we will build on the existing information provisions in place for regulatory reporting packs (RRPs) and regulatory instructions and guidance (RIGs). To ensure we have a clear understanding of the additional information requirements, we will review the information already collected during the period at each price control review."

Ofgem also proposed reporting against a balanced scorecard³⁸:

"To facilitate a meaningful comparison of network company performance, we will develop a balanced score card for output delivery in each of the network sectors. This will enable comparisons to be made across companies, so long as performance in delivering primary outputs is measured relative to a normalised baseline. The use of a balanced scorecard should facilitate reputational incentives and the information could be used to inform our approach to proportionate assessment."

Ofgem recently published the first RIG for electricity transmission owners. Ofgem explained the scope and purpose of the RIG as follows³⁹:

"The Regulatory Instructions and Guidance (RIGs) provide a framework which enables Ofgem to collect data from the transmission owners (TOs) during the RIIO-T1 period. We collect data to enable us to administer the Special Conditions of the TOs' licences (the conditions which relate to the price control) and our price control Final Proposals. For example, the RIGs allow us to monitor TOs' performance against the outputs that they are required to deliver, to calculate any

³⁷ Ibid, page 55.

³⁸ Ibid, page 55.

³⁹ Ofgem, RIIO-T1 Electricity Transmission Price Control – Regulatory Instructions and Guidance: Version 1, August 2013, page 1.



rewards or penalties associated with incentive mechanisms, and to determine adjustments to allowances determined within period, i.e. costs determined through uncertainty mechanisms. The RIGs also provide a database of TO performance which we draw on to set cost proposals at subsequent review periods. The RIGs inform TOs about the information we plan to collect, guide them on how to provide this information and enable licensees to put systems in place to collect the data to the detail we require.”

In summary, Ofgem adopts a systematic approach to the collection of information to inform future price reviews and to monitor performance during a regulatory period. In relation to stakeholder engagement, the emphasis is on allowing the network company to determine its own approach for engaging with customers, understanding their requirements, and developing well-justified expenditure proposals. Importantly, and in contrast to the arrangements contemplated by the Commission in relation to ID regulation, Ofgem does not apply an information disclosure regime with the objective of enabling interested persons to assess the effectiveness of the regulatory regime.

Similar to the approach adopted in New Zealand in relation to IPP regulation, the design of the RIIO regime reflects Ofgem's assessment of the regulatory arrangements that are most likely to deliver outcomes consistent with the Electricity Act 1989 and Ofgem's statutory obligations. It is also important to note that the current regulatory arrangements in the UK reflect the experience of operating price controls for more than 20 years. The extent of information provision and analysis is a function of that lengthy experience of both the network companies and the regulator.

6.3. Australian regime

In September 2011, the Australian Energy Regulator (AER) lodged a proposal to the Australian Energy Market Commission (AEMC) to amend the Rules relating to the economic regulation of energy networks, including transmission network service providers (TNSPs). The AER's rule change request raised a number of issues concerning the AER's ability to challenge the network companies' expenditure forecasts; incentives for delivering efficient capital expenditure; cost of capital provisions; and arrangements for engaging effectively with consumers.

On 29 November 2012, the AEMC published its final rule determination, which included a number of amendments to address the matters raised by the AER. The rule determination specified a number of new regulatory arrangements and guidelines that must be developed by the AER during the course of 2013. The AER is currently in the process of finalising these guidelines, as part of its “Better Regulation” reform program.



In terms of improving consumer engagement, the better regulation reform programme includes the following initiatives:

- On 6 November 2013, the AER finalised its Consumer Engagement Guideline. Its objective is for electricity and gas network companies to better engage with their consumers. In doing so, the network companies are expected to provide services that better align with consumers' long term interests. The guideline sets out how the AER expects network companies to engage with their consumers, but it does not mandate a particular approach. The AER noted the following points that guided its development of the consumer engagement guidelines⁴⁰:

"From our consumer forums, five themes emerged:

- Consumers want an opportunity to influence service provider decision making.
- Service providers should seek continuous improvement. Consumer groups seek a cultural shift in how service providers engage with consumers across their business operations.
- Consumers want their diverse interests to be recognised. Service providers should design engagement, so consumers can contribute meaningfully, for example by identifying the different consumer cohorts.
- The dialogue needs to be transparent. Consumers want to understand how their input affects service providers' business and expenditure proposals.
- Consumers are realistic that service providers need time to develop and implement robust engagement strategies and processes. However, service providers can take steps now to improve consumer engagement."

- In August 2013, the AER published its draft Expenditure Forecast Assessment Guidelines⁴¹, which set out the AER's approach for assessing whether each network company's expenditure forecasts satisfy the National Electricity Rules (NER). In Its Draft Explanatory Statement, the AER made the following observations in relation to its information requirements⁴²:

⁴⁰ Australian Energy Regulator, Consumer Engagement Guideline for Network Service Providers, Explanatory Statement, November 2013, page 10.

⁴¹ The final guideline is expected to be published shortly.

⁴² Australian Energy Regulator, Draft Expenditure Forecast Assessment Guidelines for electricity transmission and distribution, August 2013, page vii.



"To facilitate the techniques specified in the Guidelines, we will require much more information than in the past. We will release templates indicating our proposed data requirements in several stages. We will issue:

- preliminary expenditure information templates (attached to the draft Guidelines in August 2013);
- draft regulatory information notices (RINs) in September 2013 to all NSPs [network service providers] to collect back cast economic benchmarking data to enable a testing and validation process in early 2014;
- RINs in late 2013 to all NSPs for the purposes of gathering information for the 2014 benchmarking report and in assessing regulatory proposals submitted in 2014.

We consulted on and carefully considered the additional cost and burden of this new information (which is ultimately borne by consumers) and balanced this against the significant expected improvements in the robustness of our assessments. In particular, regularly reporting on the relative efficiency of NSPs will assist network users in engaging more effectively in the process of setting efficient expenditure allowances in transmission and distribution determinations. The public scrutiny of NSPs' performance is likely to encourage them to keep improving, and to identify areas the AER is likely to target at the time of their next price review."

- In relation to benchmarking, which forms part the AER's expenditure forecast assessment, the AER made the following observations⁴³:

"The NER now require us to publish annual benchmarking reports, beginning in September 2014. The purpose of these reports is to describe, in reasonably plain language, the relative efficiency of each NSP in providing prescribed transmission services or direct control distribution services over a 12 month period.

Annual benchmarking reports are a key feature of the AEMC's recent rule change determination. It is intended that the reports would be a useful tool for stakeholders (including consumers) to engage in the regulatory process and to have better information about the relative performance of NSPs."

- On 1 July 2013, the AER established its inaugural Consumer Challenge Panel (CCP). The objective of the CCP is to assist the AER to make better regulatory determinations by CCP members providing input on issues that are important to consumers. The expert members of the Panel will bring consumer perspectives to the AER to better balance the range of views considered as part of the AER's decisions. The roles of CCP members include:

⁴³

Ibid, page 4.



- advising the AER on whether the network businesses' proposals are justified in terms of the services to be delivered to customers; whether those services are acceptable to, and valued by, customers; and whether the network businesses' proposals are in the long term interests of consumers; and
- advising the AER on the effectiveness of network businesses' engagement activities with their customers and how this engagement has informed, and been reflected in, the development of their proposals.

In addition to these developments, the AER continues to publish an annual performance report for transmission network service providers. In April 2011, the AER conducted a review of its service performance publications. In that review, the AER explained the rationale for the publication of performance reports as follows⁴⁴:

"The priorities and objectives of NSP performance reports outlined in this paper will be reflected in the AER's future NSP performance reports. The AER considers performance reporting a vital part of its overall functions and powers. Performance reporting is essential to the transparency and accountability necessary to underpin efficiency based regulation. Reporting the performance of regulated entities reduces the asymmetry of information between regulated networks and other stakeholders.

Performance reporting may also provide an incentive for regulated businesses to improve their performance. Reporting on the performance of regulated businesses is part of the regulatory cycle and should be viewed as an input into the regulatory determination process. The reporting and explanation of information that will be used in regulatory determinations will assist in making those processes more transparent and accessible to customers and other market participants."

In relation to the National Electricity Objective, the AER made the following observations⁴⁵:

"The national electricity objective promotes efficient investment in, operation and use of electricity services and is framed with the long term interests of electricity consumers in mind. Objective measures of efficiency generally are made by comparisons between NSPs, or by comparing a single NSP's performance over time.

Performance reports will facilitate such comparisons where actual expenditure and financial performance data is made publicly available. Performance reports will also show outcomes of the incentive schemes applying to the NSPs, such as the service target performance incentive

⁴⁴ Australian Energy Regulator, Priorities and objectives of electricity network service provider performance reports, April 2011, page 12.

⁴⁵ Ibid, page 3.



scheme and efficiency benefit sharing scheme (EBSS). The preparation of performance reports by the AER will contribute to achievement of the national electricity objective.”

It is evident from the above excerpts that the AER regards performance reporting as part of the regulatory cycle and as an input to the determination process. In this context, performance reporting is expected to contribute to the achievement of the national electricity objective.

In addition to the publication of performance reports, the new Rules require the AER to publish an annual benchmarking report, which in itself requires annual reporting of information by network companies to the AER. The role of benchmarking is to inform the AER's assessment of each network company's expenditure forecasts, and also to inform consumer engagement. In addition to providing annual benchmarking information to the AER, regulated network companies must also submit template information to the AER as part of the five-yearly price control process.

6.4. Key findings

The following observations from the UK and Australian arrangements are relevant to the Commission's approach to ID regulation:

- The form of customer engagement is a matter for the regulated company, not the regulator.
- Regulators have established detailed information requirements to inform the setting and operation of price controls and to facilitate consumer engagement.
- There is no attempt to combine ID and formal price control regulation in the manner contemplated by the Commission.

It is evident from the information set out above that, as in the UK, there is a growing emphasis in Australia on improving consumer engagement in the regulatory process. A further common development in both jurisdictions is that network companies are given the flexibility to develop their own approach to consumer engagement. The flexibility and the engagement process recognises that genuine engagement must develop to reflect the particular issues, and mandating a “one size fits all” approach is unlikely to deliver the best outcomes.

As noted in relation to the UK regime, performance reporting in Australia is regarded as part of the regulatory cycle and an input to future revenue determinations. As such, performance reporting is designed to contribute to the achievement of the national electricity objective. The National Electricity Rules mandate a building block approach to regulation, and various incentive schemes have been designed to encourage efficient outcomes. While performance reporting



may inform future development of the regime, it cannot alone provide a robust basis for conducting a review of the effectiveness of the regime.

As already noted, the AEMC has recently reviewed the Rules in Australia to ensure that the regulatory framework is designed in a way that best meets the national electricity objective, which is set out in the national electricity law. This objective is broadly similar to the Part 4 purpose in the Commerce Act.



7. Conclusions

This report has analysed the Commission's proposals for Transpower's ID regulation. In our view, the nature of the ID regulation contemplated by the Commission is inconsistent with the design of the IPP regime. This is because ID regulation employs a different philosophy to drive efficient outcomes compared to IPP regulation. In particular:

- Information disclosure is a light handed form of regulation based on the proposition that consumers and the regulated company are able to negotiate or otherwise engage effectively with one another to deliver efficient outcomes. In those circumstances, the provision of information by the regulated company is required to facilitate scrutiny by consumers, and to promote effective negotiation through consequential enhancements to countervailing market power.
- In contrast, IPP regulation is a formal price control, which is an explicit recognition that efficient outcomes consistent with a workably competitive market cannot be achieved in the absence of price-quality regulation.

The effectiveness of ID regulation is derived from the insecurity and uncertainty associated with the possible imposition of more formal regulation where conduct in a regulated sector is judged to be inconsistent with the objectives set out in the law. IPP regulation, on the other hand, will only be effective if all stakeholders, and particularly network companies, are provided with reasonable certainty regarding its operation.

The Commission's proposals for ID regulation involve annual scrutiny by interested persons of information to assess whether the regulatory regime is working as intended. The IPP regulation to which Transpower is now subject has been designed to provide incentives for innovation and improvements in quality and cost efficiency over successive five-yearly regulatory periods. The IPP regime is also intended to provide reasonable certainty to foster efficient investment in long-lived infrastructure. The annual scrutiny of the performance of IPP in the manner suggested by the Commission's current ID proposal appears to be inimical to the provision of certainty, and therefore, in our view, may undermine the effectiveness of IPP regulation.

We also note that for those activities where IPP regulation does not apply – namely, System Operator services and New Investment Contracts – ID regulation should still be designed to reflect the current form of price-quality regulation. While formal IPP regulation does not apply to these activities, this is because other arrangements have been developed to ensure that



outcomes are consistent with the Part 4 purpose. The Commission does not appear to have properly considered the role of ID regulation given these particular circumstances.

In reviewing the arrangements in UK and Australia, we find that enhanced consumer engagement is an important feature of effective price control regulation. The provision of information to consumers remains an important ingredient in facilitating effective consumer engagement. In addition, the regulator will require detailed information in order to make price control determinations and to monitor and enforce those determinations during the price control period.

A question remains, therefore, regarding the appropriate scope of ID regulation in New Zealand given the requirement in the Commerce Act that ID must apply to all lines companies. The formal purpose of ID regulation in the Commerce Act is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 is being met. As already noted, however, a narrow interpretation of this provision is likely to undermine IPP regulation and, most importantly, the achievement of the Part 4 purpose.

At present, there appears to be a significant risk of confusion if a substantial amount of consolidated information is provided to consumers and other interested persons, with the view that interested persons should assess whether the regulatory regime is working as intended. Our view is that Transpower must engage with consumers and provide information as part of that engagement. The recommendations set out in section 1 of this report will provide for a more complementary approach to ID and IPP regulation which will better promote the achievement of the Part 4 purpose.