



Fibre Input Methodologies – Regulatory processes and rules

Submission to Commerce Commission

PUBLIC VERSION

9th September 2019

INTRODUCTION

1. Vocus welcomes the opportunity to submit in relation to the development of a Regulatory Processes and Rules (RP&R) Input Methodology (IM).
2. If you would like any further information about the topics in our submissions or have any queries about this submission, please contact:

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SUMMARY OF VOCUS' VIEWS

3. Vocus' views on the RP&R IM include that:
 - (i) As a general principle, regulatory processes and rules should be prescribed in the IM unless it would be desirable for the Commission to have flexibility to enable different approaches to be taken at each reset:
 - The wash-up mechanism should be prescribed in the RP&R IM; in particular restrictions on the extent of wash-up that is permissible.
 - We would like to hear from the Commission about the extent it considers the need for flexibility, outside of the IMs, means price-quality path proposal requirements should be excluded from the RP&R IM.
 - The initial version of the RP&R IM should not prescribe a revenue cap, and the form of control component of the IM should be reviewed immediately after the first price-quality determination.
 - (ii) The Commission should be able to re-open a price-quality determination where the information provided by Chorus is materially incorrect and the impact of the incorrect information on the determination adversely impacts or disadvantages end-users.
 - (iii) The Commission should ensure the Chorus' fibre regulatory period does not coincide with gas pipelines, electricity distribution and/or electricity transmission regulatory periods. We also support Chorus and the LFCs "*all ... hav[ing] the same disclosure year so interested parties (including the Commission) can assess performance more easily*".

PRINCIPLES FOR DETERMINING WHAT IS AND WHAT IS NOT INCLUDED IN THE INPUT METHODOLOGIES

4. When determining what should be included in an IM or what should be determined as part of the price-quality determination, a key test should be whether it would be desirable

for the Commission to have flexibility to enable different approaches to be taken at reset. The setting of service quality standards is a good example as they will need to change at each regulatory resets.

5. It is not clear why the Commission would need flexibility to vary its approach to wash-up between regulatory periods. The Commission has asserted wash-up “*would be more effectively dealt with outside of the current IM-setting process*” but has not substantiated why it holds this view. The same point holds in relation to form of control and price-quality proposal requirements.
6. The Commission has stated “*We do not consider it necessary to cover wash-up mechanisms ... in the regulatory processes and rules IM because the PQR requirements of the Act (subpart 5 of Part 6) provide sufficient certainty as to how these rules must be applied by the Commission or regulated suppliers*”. Chorus has disproved this with its assertion that “*Our interpretation of the Act is that a symmetric, unconstrained wash-up should be applied to FFLAS for the first regulatory period (RP)*”.¹ If Part 6 is open to the interpretation that unconstrained wash-up is permissible then it clearly does not “*provide sufficient certainty as to how these rules must be applied*”.
7. Vocus considers inclusion of wash-up in the Electricity Distribution IMs, particularly the restrictions on the extent of wash-up that is permissible, is directly relevant precedent which should be considered for the fibre IMs.

THRESHOLDS FOR RE-OPENERS

8. We consider the proposed threshold for a re-opener that “*false or misleading information has been knowingly provided by a regulated supplier to the Commission*” is too high. A better threshold would simply be that the information is materially incorrect and the impact of the incorrect information on the price-quality determination adversely impacts or disadvantages end-users.
9. The Commission should be able to re-open the price-quality determination regardless of whether Chorus knowingly or unwittingly provided false or misleading information, or information that is simply incorrect.
10. A good test for the Commission’s proposed re-opener threshold is whether the Commission considers Chorus’ grossly inflated copper TSLRIC modelling estimates would satisfy the threshold or not.

SETTING THE REGULATORY BALANCE DATES

11. We would like the Commission to ensure the Chorus’ fibre regulatory period does not coincide with gas pipelines, electricity distribution and/or electricity transmission regulatory periods.

¹ Chorus, Submission in response to the Commerce Commission’s fibre regulation emerging views dated 21 May 2019, 16 July 2019, paragraph 46.3.

12. We consider it suboptimal that Part 4 Commerce Act electricity distribution DPP and Transpower IPP reset determinations are set at the same time. We note, for example, ENA's comments about the overlap between the DPP and IPP determinations:²

ENA believes that the ability of its members to properly scrutinise Transpower's IPP is significantly constrained by the timing of this consultation, which coincides with the reset of the default price path (DPP) for electricity distribution businesses. The importance of the next regulatory control period focuses EDBs' efforts on the DPP reset and away from the Transpower IPP.

13. As a retailer which operates in both electricity and telecommunications we would face similar challenges in trying to engage in both electricity and fibre price determination processes.
14. We also support Chorus and the LFCs "*all ... hav[ing] the same disclosure year so interested parties (including the Commission) can assess performance more easily*".

FORM OF CONTROL

15. The RP&R consultation paper states that "*Consistent with s 195, we propose that the IM for specification of price will prescribe that a revenue cap will apply from implementation date*" and "*Given we do not have the choice of the form of control [price cap versus revenue cap] we use for the first period, we do not consider it necessary to cover the issue of the form of control in the initial regulatory processes and rules IM*".
16. It isn't entirely clear these statements are consistent. The consultation paper appears to say that the Commission plans to prescribe a revenue cap in the IM because that is prescribed in legislation, but also that it doesn't need to prescribe a revenue cap because it is prescribed in legislation.
17. We acknowledge that given the Commission doesn't have choice of the form of control for the first period (the legislation prescribes that a revenue cap be adopted), it isn't "*necessary to cover the issue of the form of control in the initial regulatory processes and rules IM*" [emphasis added]. We consider that the IMs should reflect that a revenue cap may not necessarily be applied in future regulatory periods and therefore the IMs should not prescribe a revenue cap (at least beyond the first price-quality determination).
18. Given the specific legislative restrictions on the way the Commission can set price-quality regulation for the first regulatory period, we consider that the form of control component of the IMs should be reviewed immediately after the first determination.

PRICE-QUALITY PATH PROPOSALS

19. We question the Commission reason that matters relating to price-quality path proposals shouldn't be included in the IMs. The Commission stated "*it would be difficult to consult on the draft IMs for proposal/evaluations when we have not yet begun the consultation*

² ENA, Transpower's individual price-quality path from April 2020, 27 June 2019.

process for PQR. Currently, we plan to begin consulting on PQR towards the end of 2019". With respect, this reason is just a matter of administrative convenience. The Commission could determine the price-quality path proposal element of the IMs in parallel with its PQR consultations.

20. Whether or not the price-quality path proposal requirements, in part or in whole, should be outside the RP&R IM depends on the extent to which the Commission would need flexibility to evolve the requirements between regulatory periods.
21. We would like to hear from the Commission about the extent it considers the need for flexibility, outside of the IMs, means price-quality Plath proposal requirements should be excluded from the RP&R IM.