

AMENDED NOTICE OF INTENTION

19 AUGUST 2021

(Amending the Notice of Intention dated 29 April 2021 -

Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments)

1. The purpose of this amended notice of intention is to advise that we have amended our indicative process and time frames outlined in our Notice of Intention (**NOI**) dated 29 April 2021 and to advise further potential amendments to the *Fibre Input Methodologies Determination 2020* [2020] NZCC 21 (**fibre IMs**) being considered in order to implement our proposed approach to determining Chorus Limited's (**Chorus**) initial price-quality regulatory asset base (**PQ RAB**) and transitional initial PQ RAB.¹
2. In accordance with section 179 of the Telecommunications Act 2001 (**Act**), this notice outlines the scope of the further proposed fibre IMs amendments under consideration and indicative timeframes for considering and consulting on these amendments.

Background: Process for determining Chorus' initial PQ RAB and transitional initial PQ RAB

3. In our NOI dated 29 April 2021, we indicated we were considering the following potential fibre IMs amendments:²
 - a. amendments to clause 3.1.1 of the Specification of Price and Revenues fibre IM, which would specify that the “wash-up amount” for each regulatory year of the second regulatory period onwards would include a wash-up account balance available to draw down, including a true-up for differences in revenue due to differences between the initial PQ RAB and the transitional initial PQ RAB;
 - b. amendments to clause 3.3.1(8) and clause B1.1.5(1) of Schedule B of the Asset Valuation fibre IM, which would specify that our transitional initial PQ RAB is determined, in part, on “estimates of historic values”, rather than “actual values”;
 - c. amendments to clause 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d) of the Cost of Capital fibre IM, which would specify that the transitional initial PQ RAB inputs to the “term credit spread differential allowance” and “term credit spread differential” for the first regulatory period (1 January 2022 until 31 December 2024) would be determined, in part, on “relevant estimates of historic values”, rather than “relevant actual values”;
 - d. amendments which would correct the following technical errors in the fibre IMs:

¹ Commerce Commission “Notice of Intention: Proposal to Make Potential Amendments to the Input Methodologies for Fibre – potential August 2021 amendments” (29 April 2021). We note that this notice was published on 30 April 2021.

² Commerce Commission “Notice of Intention: Proposal to Make Potential Amendments to the Input Methodologies for Fibre – potential August 2021 amendments” (29 April 2021), paras 5-6.

- i. errors in our formulae in clause B1.1.2(5)-(6) of Schedule B of the fibre IMs for determining the “present value benefit of Crown financing” - at present, the formulae do not match the definitions of “financial loss year 2012” and “financial loss year 2022” in clause 1.1.4(2) of the fibre IMs; and
 - ii. errors in our use of the terms “commissioned”, “commissioned for FFLAS”, “commissioning date”, “FFLAS commissioning date”, “regulated provider” and “regulated fibre service provider”, as defined in clause 1.1.4(2) of the fibre IMs; and
- e. amendments to the Capital Expenditure fibre IM to change the date by when we must determine a “base capex allowance” and “connection capex baseline allowance” for the first regulatory period, which would:
- i. recognise anticipated changes to the time frame for this process; and
 - ii. ensure that cost allocation assessments across Chorus’ transitional initial PQ RAB and forecast capital expenditure for the first price-quality path (**PQ path**) are aligned.
4. On 30 April 2021 we provided interested persons with an update on the process and timing of determining Chorus’ initial PQ RAB and transitional initial PQ RAB and explained how it fits within the process for determining the first PQ path for Chorus.³
5. On 27 May 2021, we published draft decisions on the potential amendments outlined in our NOI dated 29 April 2021.⁴
6. On 29 June 2021, we updated the process for determining Chorus’ transitional initial price-quality regulatory asset base (**transitional initial PQ RAB**).⁵ We will now make a final decision on Chorus’ transitional initial PQ RAB in December 2021, rather than August 2021.
7. Having changed the date when we will make a final decision on Chorus’ transitional initial PQ RAB, we have decided to amend the indicative process and time frames for our consideration of certain fibre IMs amendments as follows:
- a. publish a final decision on potential fibre IMs amendments in respect of the matters referred to in paragraph 3.a. to 3.d. in November 2021, rather than August 2021; and
 - b. publish a final decision on potential fibre IMs amendments in respect of the matters referred to in paragraph 3.e. in September 2021, rather than August 2021.

Further potential amendments to the fibre IMs applying to the initial RAB under consideration

8. Alongside this notice, we have made draft decisions on matters related to Chorus’ initial PQ RAB on 19 August 2021, including our draft decision on the quantum of Chorus’ tax losses and the impact of these losses on Chorus’ total initial PQ RAB value. In order to

³ Commerce Commission “Determining Chorus’ first fibre price-quality path: Process update” (30 April 2021).

⁴ Commerce Commission “Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper” (27 May 2021).

⁵ Commerce Commission “Determining Chorus’ PQ RAB – Process update (29 June 2021)” (29 June 2021).

implement our proposed approach to these draft decisions, we are considering further amendments to the fibre IMs as outlined in paragraphs 9-16.

Alternative methodology with equivalent effect or substantially the same effect that may be applied in determining the financial losses

9. Chorus has advised the Commission that in several instances, it is unable to comply with the Asset Valuation, Cost Allocation and Taxation fibre IMs in Schedule B of the fibre IMs. Chorus advises this is due to limitations in Chorus' information, the way in which it has recorded information in its accounting systems, and the design of its initial asset valuation model. We are considering adding a new IM to Schedule B of the fibre IMs that allows us to adopt an alternative methodology as proposed (or applied) by a regulated fibre service provider where the alternative methodology produces either an equivalent effect or substantially the same effect as the Asset Valuation, Cost Allocation and Taxation fibre IMs in Schedule B of the fibre IMs and does not detract from the purpose of Part 6 of the Act and (where relevant) the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

Amendments to correct errors and improve the workability of provisions related to the initial RAB

10. We are considering amendments to the following provisions within the Asset Valuation and Cost Allocation fibre IMs and Schedule B of the fibre IMs to correct errors and improve the workability of provisions related to the initial RAB:
 - a. clause 2.1.1(5)-(6);
 - b. clause 2.2.3(2);
 - c. clause 3.2.1;
 - d. clause 3.3.1;
 - e. clause B1.1.5 of Schedule B;
 - f. clause B1.1.6(1)(b) of Schedule B;
 - g. clause B1.1.6(2)(c) of Schedule B; and
 - h. clause B1.1.6(4) of Schedule B.

Amendments to correct for the effect of tax losses

11. In our fibre input methodologies: Financial loss asset final decision – reasons paper, we explained that in using a post-tax weighted average cost of capital (**WACC**) to discount pre-implementation date cash flows, in the event of substantial tax losses, we would make a correction to account for the difference in the time value of money of these losses and would consider implementing an adjustment to true up these amounts, for example through an IM amendment.⁶ As part of our determination of the initial RAB value of the financial loss asset (**FLA**) for Chorus, we have assessed the quantum of Chorus' tax losses. As our assessment of the tax losses at this time indicates that these

⁶ Commerce Commission "Fibre input methodologies: Financial loss asset final decision – reasons paper (3 November 2020), para 3.402.

losses are substantial, we are considering the following amendments to the fibre IMs to account for the difference in the time value of money of these losses:

- a. clause B1.1.10(1)-(4) and B1.1.11(2) of Schedule B of the fibre IMs to specify the use of a vanilla WACC, rather than a post-tax WACC in the determination of the initial RAB value of the FLA; and
- b. clauses B1.1.2(5) and B1.1.2(6) of Schedule B of the fibre IMs to remove the tax term (1-Tc) from the relevant formula used to calculate the finance rate used for the avoided cost of crown financing; and
- c. clause 2.3.3(3) of the Taxation fibre IM to insert the opening carry-forward value of tax losses at the implementation date arising from applying a method that sums the annual values of notional deductible interest associated with financing privately commissioned assets in calculating the UFB tax costs cashflow over the pre-implementation period.

Amendments to correct errors in the present value benefit of Crown financing formulae, as used to determine the financial losses

12. We are considering amendments to clause B1.1.2(5) of Schedule B of the fibre IMs to correct errors in the 'present value benefit of Crown financing' formulae.

Clarification of other allocator types that may be applied by the Commission in determining the financial losses

13. To clarify that the Commission may substitute its own allocator types when determining the initial RAB value of the FLA, we are considering amending clause B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of the fibre IMs to read "any other allocator type as determined by the Commission".

Amendments to correct errors in formulae for "UFB cost allocation adjustment cash flow", as used to determine the financial losses

14. We are considering amending clause B1.1.2(4)(a) of Schedule B of the fibre IMs to correct an error in the formulae for determining the "UFB cost allocation adjustment cash flow".

Amendments to correct errors in formulae for 'revenue date compounding factor', as used to determine the financial losses

15. We are considering amending clause B1.1.2(7)(b) of Schedule B of the fibre IMs to correct an error in the "revenue date compounding factor".

Potential amendments to the fibre IMs to correct errors and improve the workability of certain Cost Allocation and Cost of Capital provisions

16. We are considering amendments to the following provisions to correct errors and improve the workability of certain Cost Allocation and Cost of Capital provisions in the fibre IMs:

- a. clause 2.1.2(5)-(6);
- b. clause 2.1.3(5);
- c. clause 3.5.7(2)(c)-(d); and
- d. clause 3.5.10(1)(d).

17. We will publish draft decisions on the matters referred to in paragraphs 9-16 in August 2021 and make our final decisions on these potential amendments in November 2021.

Proposed process and indicative time frames for potential fibre IMs amendments

Process		29 April 2021 Indicative timeframe	Amended indicative time frame
1.	Draft decisions by the Commission Draft decision on potential fibre IMs amendments in respect of matters referred to in paragraph 3.a-3.e	27 May 2021	No change - completed
2.	Submissions due from interested persons on potential fibre IMs amendments in respect of matters referred to in paragraph 3.a-3.e (4 weeks)	24 June 2021	No change - completed
3.	Cross-submissions due from interested persons on potential fibre IMs amendments in respect of matters referred to in paragraph 3.a-3.e (2 weeks)	8 July 2021	No change - completed
4.	Final decisions by the Commission Publication of final decisions on potential fibre IMs amendments in respect of matters referred to in paragraph 3.e	August 2021 in respect of matters referred to in paragraph 3.e	September 2021
5.	Draft decisions by the Commission Publication of draft decisions in respect of matters referred to in paragraph 8-16	New	By the end of August 2021
6.	Submissions due from interested persons in respect of matters referred to in paragraphs 8-16 (2 weeks, 1 day)	New	16 September 2021
7.	Cross-submissions due from interested persons in respect of matters referred to in paragraph 8-16 (2 weeks)	New	30 September 2021

8.	Final decisions by the Commission Publication of final decisions on potential fibre IMs amendments in respect of matters referred to in paragraph 3.a-3.d and paragraphs 8-16	August 2021 in respect of matters referred to in paragraph 3.a-3.d	November 2021
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