



Fibre Input Methodologies: Process Update

4 March 2019

Purpose

1. The purpose of this paper is to provide parties with an update on the process and timing of the development of input methodologies (**IMs**) for the new regulatory regime for fibre.

We have not significantly changed our process

2. We published our invitation to comment on our proposed approach to the new regulatory framework for fibre (**proposed approach paper**) on 9 November 2018.¹ This paper included our proposed process for setting the IMs, including:
 - 2.1 publishing an emerging views paper in May 2019;
 - 2.2 publishing our draft decisions in November 2019;
 - 2.3 publishing our final decisions in June 2020;
 - 2.4 setting the first price-quality path for Chorus by Q2 2021; and
 - 2.5 setting information disclosure requirements for all local fibre companies (**LFCs**) including Chorus by Q4 2021.
3. We indicated that for both the emerging views and draft decisions papers, stakeholders would have six weeks to make written submissions and two weeks for cross submissions.
4. The process for the development of the IMs for fibre will remain the same as specified in the original Notice of Intention published 19 November 2018,² and as outlined in our new regulatory framework for fibre paper. However, we are extending the consultation period on the emerging views paper by two weeks to allow eight weeks for submissions.
5. In coming to this decision, we considered submissions received on our proposed approach paper. We received submissions on our proposed approach paper on 21 December 2018 and cross submissions on 1 February 2019.

¹ See [proposed approach paper](#)

² See [notice of intention](#)

6. In its cross-submission, Chorus requested us to provide early direction on, among other things, whether we would be bringing forward any work on the IMs. This paper seeks to provide stakeholders with clarity with regards to our process timeframes in light of the submissions we have received.
7. In reaching our decision to not substantially change our process, we considered several alternate options including:
 - 7.1 progressing certain IMs in advance of others;
 - 7.2 taking longer to develop the IMs; and
 - 7.3 staggering the publication of our emerging views paper.

We considered progressing some IMs more quickly than others.

8. We received several submissions suggesting we progress some IMs more quickly than others.
 - 8.1 Chorus proposed bringing forward the cost of capital and initial RAB IMs to promote stakeholder certainty. They also proposed bringing forward the IMs relating to price-quality path requirements to improve their ability to plan for the Commission's anticipated requirements for price-quality path proposals.³ This view was supported by LFCs.⁴
 - 8.2 2degrees noted that some IMs will take longer to develop than others and that it would prefer us to stagger our consultation by consulting on some IMs before others, so that interested persons would not have to wait for drafts of all IMs to be completed.⁵
 - 8.3 Vocus also suggested that we should prioritise development of IMs based on how complex and contentious they are, and how much work is required.⁶

³ Chorus *Submission on new regulatory framework for fibre* (21 December 2018), page 57 - 58

⁴ Enable, Ultrafast and Northpower *Fibre Submission on new regulatory framework for fibre* (21 December 2018), page 10

⁵ 2degrees *Submission on new regulatory framework for fibre* (21 December 2018), page 7 - 8

⁶ Vocus *Cross-submission on new regulatory framework for fibre* (1 February 2019), para 8 – 10

9. Other submitters cautioned against progressing some IMs more quickly than others.
- 9.1 Vodafone considers that bringing forward key decisions would come with considerable risk as certain decisions such as the initial asset base are intertwined with other parts of the input methodologies. For example, it is critical that the losses calculation is consistent with other methodologies, such as cost allocation. They also noted that it is better to take the time now to get it right than rush a decision as this may lead to greater uncertainty by opening the decision to legal challenge.⁷
- 9.2 Spark agreed that it was difficult to see how some decisions could be made before others. They emphasised the fact that providing early information on certain aspects of the framework can have unintended and undesirable consequences.⁸
- 9.3 2degrees also noted that faster determinations are likely to favour Chorus and that implementing the regime faster than the Commission is already proposing could result in a less robust process. 2degrees argued that while the policy process has been extended, this did not warrant the implementation of the regime being further fast-tracked.⁹
10. We considered progressing some IMs more quickly, but it is difficult to advance certain IMs without considering the impact on the package of IMs as a whole. Many of the IMs are interrelated and cannot be considered in isolation. For example, decisions about cost allocation will have a significant impact on the valuation of assets.
11. It is also unclear how much additional certainty could be provided to stakeholders (particularly Chorus and LFCs) by advancing the emerging views or draft decisions on certain topics given the decisions may change and decisions on a number of key topics will still be outstanding. Stakeholders have generally supported final decisions being made as a package. It should also be noted that IMs do not necessarily give certainty of outcomes, just certainty of process and rules.

⁷ Vodafone *Cross-submission on new regulatory framework for fibre* (1 February 2019), para 38

⁸ Spark *Cross-submission on new regulatory framework for fibre* (1 February 2019), para 6 - 12

⁹ 2degrees *Cross-submission on new regulatory framework for fibre* (1 February 2019), page 22

We considered taking longer to develop the IMs

12. Spark suggested that we delay our proposed publication of the emerging views and draft decisions paper to better consider our overall approach to incentives, risk allocation and promotion of competition which will have implications across the IMs.¹⁰
13. 2degrees also supported a two-month extension to our process (up to the final price path determination) to facilitate more robust decisions given the tight timeframes.¹¹
14. While not expressly requesting an extension, the LFCs encouraged us to take enough time to fully consider how the FFLAS market differs to the markets regulated under Part 4 of the Commerce Act.¹²
15. We are required to design the IMs and implement both price-quality regulation (**PQR**) and information disclosure (**ID**) by 1 January 2022. Delaying the development of the IMs would compromise our ability to effectively implement the other elements of the regime, which in themselves are complex and time-consuming processes.
16. We also note that delays in developing the IMs would also impact on the ability of Chorus and LFCs to prepare for the implementation of PQR and ID by having systems and processes in place to comply with the ID regime or, in the case of Chorus, develop an IM compliant price path proposal.¹³
17. We consider our existing process provides the best balance for achieving a robust and consultative process on the IMs while still providing enough time to develop a price-quality path for Chorus and an ID regime for all LFCs.

We considered staggering the publication of emerging views

18. Some submitters have noted the challenge of engaging with an emerging views paper that included all of the proposed IMs and suggested releasing this paper in smaller tranches with separate consultation time frames.
 - 18.1 Chorus and LFCs submitted that we should consider preparing and releasing emerging views and draft determinations in staggered tranches.¹⁴

¹⁰ 2degrees *Submission on new regulatory framework for fibre* (21 December 2018), para 11 - 12

¹¹ 2degrees *Submission on new regulatory framework for fibre* (21 December 2018), page 7

¹² Enable, Ultrafast and Northpower Fibre *Submission on new regulatory framework for fibre* (21 December 2018), page 10

¹³ Chorus *Submission on new regulatory framework for fibre* (21 December 2018), page 15, Enable and Ultrafast Fibre Cross-submission *on new regulatory framework for fibre* (1 February 2019), para 8.1

¹⁴ Chorus *Submission on new regulatory framework for fibre* (21 December 2018) page 12, Enable, Ultrafast and Northpower Fibre *Submission on new regulatory framework for fibre* (21 December 2018), page 10

- 18.2 2degrees and Trustpower also support a staggered approach.¹⁵ 2degrees noted that if we were to consult on the draft fibre IMs determinations in their entirety for the first time, the proposed six weeks to make written submissions and two weeks for cross-submissions would be wholly inadequate.¹⁶
19. While many submitters supported the release of small tranches of information at the emerging views and draft decisions stage, many were not interested in seeing final decisions being similarly staged. For example, 2degrees stated that while development of the IMs is likely to progress at different paces, the Commission will need to make its final IM decisions together, as a package, given the important inter-relationships between different components of the IMs.¹⁷ This view was echoed by Spark.¹⁸
20. Alternatively, Vodafone noted that while submitters have asked for decisions to be staggered, effectively to reduce workload, they were concerned that this might result in the process dragging out further, ultimately resulting in a larger workload.
21. We considered the impact of breaking up the emerging views paper into smaller tranches. However, if we were to take this approach, we would not receive submissions on topics released in later tranches in time to influence the draft decision, based on its current timeframe. This would result in the draft decision, and consequently the final decision, being delayed.
22. As noted above, we are concerned that delays to setting the IMs would result in significant challenges in applying PQR and ID by the implementation date of 1 January 2022. However, we recognise the concerns raised by submitters regarding not being able to engage with the volume of information provided in an omnibus paper. Consequently, we have expanded our proposed consultation process for our emerging views by an additional two weeks, to allow eight weeks for submissions.
23. Submissions will now be due eight weeks after the publication of our emerging views with cross submissions due two weeks later. We recognise that 2degrees had suggested a 12-week submission timeframe for an omnibus draft decision package.¹⁹ However, we note that the emerging views is not submitters' only chance to see indicative decisions and will also be receiving a draft decision in November 2019.

¹⁵ 2degrees *Submission on new regulatory framework for fibre* (21 December 2018), page 7; Trustpower *Submission on new regulatory framework for fibre* (21 December 2018), page 8

¹⁶ 2degrees *Submission on new regulatory framework for fibre* (21 December 2018), page 7 - 8

¹⁷ 2degrees *Submission on new regulatory framework for fibre* (21 December 2018), pages 8 and 10

¹⁸ Spark *Cross-submission on new regulatory framework for fibre* (1 February 2019), para 13,

¹⁹ 2degrees *Submission on new regulatory framework for fibre* (21 December 2018), page 7 - 8

Indicative timeline for the development of Fibre IMs

24. A summary of our review process and indicative timings for developing IMs for fibre is set out in Table 1.

Table 1: Indicative timeline for development of fibre IMs

Process step	Indicative timing
Publication of emerging views	21 May 2019
Submissions on emerging views	16 July 2019
Cross submissions on emerging views	30 July 2019
Publication of draft decision	November 2019
Publication of final decisions	June 2020