

Cross- submission on Amendments to the Input Methodologies for fibre

22 July 2021

C H ● R U S

Consultation process

1. The Commission has published a number of documents under the heading “Submissions on potential November 2021 Input Methodologies amendments”. However, many of these documents appear to be submissions on the potential August 2021 Input Methodologies amendments (submitted after the deadline) and/or cross-submissions on our submission on the potential August 2021 Input Methodologies amendments (when no primary submission was made).
2. For the purposes of this cross-submission, we have considered the documents published by the Commission and set out our views on some of the issues raised. However, we request that when the Commission makes its decisions on the proposed amendments to the input methodologies (**IMs**) (in both August and November tranches) that it be clear on the submissions it has considered.
3. During the process to set the IMs the Commission published detailed records of the submissions it did not consider because it believed they were out of scope.¹ We think the Commission should do the same for this amendment process.

Issues raised in submissions

Amendments for determining the initial RAB

4. 2degrees, Vocus and Spark have expressed their support for continued consideration of the initial asset value (**I**AV) into 2022. The points made essentially restate the Commission’s assertion that it does not have time to complete the IAV evaluation exercise, and describe issues they have with the IAV. We disagree with the arguments advanced and do not believe they are new or compelling.
5. Our view remains as expressed in our submission on the potential August 2021 Input Methodologies amendments.²

Wash-ups

6. Vocus and 2degrees have expressed support for more detail around wash-ups being included in the IMs. We agree this additional detail in the IMs, which provides certainty as to how wash-ups will apply, is welcome.
7. However, Vocus and 2degrees also state they do not support a wash-up mechanism which doesn’t limit the amount of under recovery that may be added to a wash-up balance (referred to as “unlimited” wash-up). The submitters cite examples of limited wash-ups under Part 4 of the Commerce Act and state they do not believe there are reasons for departing from that approach. The simple answer to this is that s 196 is unique to Part 6 of the Telecommunications Act and explicitly requires

¹ See for example: Commission, *Out of scope material received as part of submissions on the FLA further consultation paper (published on 13 August 2020)*, 3 November 2020

² Chorus, *Submission on proposed amendments to the IMs for Fibre – August 2021 amendments*, 24 June 2021, paras 9-20

an “unlimited” wash-up. A wash-up that limited the amount of under recovery that could be added to a wash-up balance would be inconsistent with s 196(2).

8. We have commented further on the issue of wash-ups in our cross-submission on the draft PQ determination.

Pricing IM

9. 2degrees and Vocus have requested the addition of a pricing input methodology to constrain Chorus’ ability to price fibre services within its portfolio. Both have recognised the Commission has definitively rejected this for PQP1 and prior to a ‘reset’ being declared under s 225, but seek the addition of a new IM in case it is needed in future regulatory periods.
10. We submitted extensively on why a pricing input methodology was unnecessary and inconsistent with the Act during development of the IMs.³ From that discussion we reiterate the comments of Vogelsang & Cave in their report for the Commission on competition (emphasis added):⁴

In our pricing report (Vogelsang & Cave, 2019) we recommended that at this time the Commission not introduce additional pricing principles/methods besides those already available via the current tool set. We did this, because we felt that the LFCs already face a bewildering set of pricing constraints and that such principles would only address those services not already fully covered by currently available constraints.

11. For the purposes of this process it is clear the addition of such an IM fails the Commission’s criteria for IMs amendments out of cycle: It would not support incremental improvements to PQ paths; it would not enhance certainty about – or correct technical errors in – the existing IMs; it is clearly fundamental; and there is no compelling or urgent rationale given the Commission could not use such an IM unless and until a reset is declared for future regulatory periods.
12. Also, the Commission should not pre-empt the outcome of a price-quality review under s 209 or the declaration of a reset (which can only be made following completion of a price-quality review) by deciding now to change the IMs to accommodate forms of control inconsistent with current statutory requirements.

³ See for example: Chorus, *Cross-submission in response to Fibre Regulation Emerging Views*, 31 July 2019, paras 15-27

⁴ Vogelsang and Cave 2019, *Framework for promoting competition*, 19 November 2019, at p 17