

## ENABLE NETWORKS LIMITED AND ULTRAFAST FIBRE LIMITED

# SUBMISSION ON NZCC PROPOSED ADDITIONAL AMENDMENTS TO FIBRE INPUT METHODOLOGIES DRAFT DECISIONS DATED 31 AUGUST 2021

16 SEPTEMBER 2021

### 1. Introduction

- 1.1 This submission is made by Enable Networks Limited (**Enable**) and Ultrafast Fibre Limited (**Ultrafast Fibre**) (collectively referred to in this submission as **we** or **us**) in response to the Commerce Commission's (**Commission**) *Proposed Additional Amendments to Fibre Input Methodologies: Draft Decisions Reasons Paper* dated 31 August 2021 (**Reasons Paper**).
- 1.2 The proposed amendments to the input methodologies (IMs) are intended to assist with the implementation of the price-quality (PQ) path for Chorus Limited (Chorus) and to correct for errors and improve the workability of the IMs for all regulated providers.
- 1.3 This submission responds to the proposals which are relevant to the information disclosure (ID) regulation applicable to us.

### 2. Amending IMs

- 2.1 In principle we support technical amendments to the IMs which improve the workability of regulation, because such amendments promote regulatory certainty, reduce compliance costs and reduce regulatory complexity. We note that such amendments may be more common for a new regulatory regime, as the core regulatory methodologies are implemented for the first time.
- 2.2 Consultation with stakeholders on proposed IM amendments is important prior to the changes being introduced. We therefore appreciate the opportunity to respond to the Reasons Paper.

### 3. Alternative methodologies with equivalent effect

- 3.1 In order to accommodate historical data limits, it is proposed that regulated providers will be able to apply an alternative, but equivalent approach to certain aspects of the financial loss asset (FLA) IM. This provision will not apply after implementation date and is subject to the approval of the Commission.
- 3.2 We support this proposal which is a pragmatic response to data limits which arise because the regulatory methods are to be applied retrospectively. We note that there is precedent for alternative methods in the IMs under Part 4 regulation and these have been applied to good effect in customised price-path regulation.

### 4. Impact of tax losses

- 4.1 We acknowledge there is an unresolved issue in the IMs for the time value of money impact of tax losses during the pre-implementation period. We therefore support the proposed IM changes to:
  - (a) modify the cost of capital compounding factor, from a post-tax WACC to a vanilla WACC for the FLA

- (b) include notional deductible interest in the tax cashflows for the FLA, by adjusting the financing rate to exclude the tax adjustment in the benefit of Crown financing formula
  - (c) adjust the ID taxation IM to include a carry forward value of tax losses at implementation date.
- 4.2 It is proposed that the Commission will specify the opening value of tax losses at implementation date for each regulated provider. The Reasons Paper states that this will occur for the LFCs at the same time as the final decisions on the LFC initial ID RABs in 2022.
- 4.3 We consider that this is a pragmatic solution given the extensive IM changes that would be required to specify how to derive the opening tax loss values. However, to support the regulatory certainty objective of the IMs we encourage the Commission to include in its final reasons paper a concise description of its approach to deriving the opening tax loss values.
- 4.4 We have little information about the Commission's proposed process for finalising the LFC ID RABs. We request clarification about this process, including the timing and the requirements of LFCs, as soon as possible.
- 5. FLA IM corrections**
- 5.1 We support the following proposed corrections to the FLA IMs:
  - (a) application of allocation types applied by Commission
  - (b) corrections to the cost allocation adjustment cashflow
  - (c) corrections to the revenue date compounding factor provisions
  - (d) corrections to the cost allocation provisions for costs and assets not directly attributable
  - (e) clarification of the value of the FLA to be applied at implementation date.
- 5.2 They are consistent with the policy intent for the financial loss asset, and will help to reduce regulatory complexity and uncertainty.