

28 October 2020

Incorporation of auditing and accounting standard by reference into Fibre Input Methodologies Determination 2020 [2020] NZCC 21

Purpose of this document

1. This document provides an overview of how the Commerce Commission (**Commission**) has incorporated by reference a relevant auditing and accounting standard into the Fibre Input Methodologies Determination 2020 [2020] NZCC 21 (**IM determination**), in accordance with section 223 of the Telecommunications Act 2001 (**Telecommunications Act**) and Schedule 5 of the Commerce Act 1986 (**Commerce Act**).¹

Incorporation by reference process

2. The Commission has previously incorporated by reference the *New Zealand Equivalent to International Accounting Standard 24, Related Party Disclosures (NZ IAS 24)*, issued by the New Zealand Accounting Standards Board of the External Reporting Board in November 2009, incorporating amendments to 31 December 2015, under s 24(1)(a) of the Financial Reporting Act 1993 (**NZ IAS 24**), into its determinations.²
3. In our Intended implementation approach for [Draft] Fibre Input Methodologies Determination 2020 paper, published on 11 December 2019, the Commission consulted on the incorporation of the NZ IAS 24 by reference into the draft IM determination.³ We did not receive any submissions or cross-submissions on this proposal.
4. We have incorporated the IZ IAS 24 by reference into the IM determination in accordance with the process set out in Schedule 5 of the Commerce Act in order to provide:
 - (a) greater clarity around the requirements for related party disclosures; and
 - (b) greater consistency between the IM determination and New Zealand auditing and accounting standards.

¹ Pursuant to s 223 of the Telecommunications Act 2001, Schedule 5 of the Commerce Act 1986 applies (with any necessary modifications) to an input methodology determined under the Telecommunications Act 2001.

² See, for example, the Electricity Distribution Services Input Methodologies Determination 2012, clause 1.1.4(2), definition of “related party”.

³ Commerce Commission “Intended implementation approach for [Draft] Fibre Input Methodologies Determination 2020” (11 December 2019), paragraphs 18-24.

5. Schedule 5 of the Commerce Act sets out the process for incorporating material by reference into a determination. Schedule 5 applies, with any necessary modifications, to an input methodology determined under Part 6 of the Telecommunications Act.⁴
6. We can incorporate material by reference into a determination or input methodology if:⁵
 - (a) the material deals with technical matters; and
 - (b) it is impractical to include it in or publish it as part of, the determination or input methodology.
7. We consider that the NZ IAS 24 is technical in nature because it deals with technical auditing and accounting matters. We also consider that it would be impractical to include the NZ IAS 24 in the IM determination itself due to the length of the NZ IAS 24.
8. The NZ IAS 24 must be incorporated into the IM determination as it exists at the time the IM determination is published and has legal effect as part of the IM determination.⁶
9. Accordingly, we incorporated the NZ IAS 24 into the IM determination when we published the IM determination on 13 October 2020.
10. The NZ IAS 24 is available to view on the XRB publication website: www.xrb.govt.nz. It is also available for inspection during the hours of 8:30am to 5:00pm, Monday to Friday, by appointment, at the Commerce Commission, Level 9, 44 The Terrace, Wellington.

Future amendments to or replacements of the NZ IAS 24

11. Later amendments to or replacements of the NZ IAS 24 are not automatically incorporated into, nor have legal effect as part of, the IM determination. This will only occur if:⁷
 - (a) the amendment or replacement is made by the person or organisation that made the original material;
 - (b) the amendment or replacement is of the same general character as the original material; and
 - (c) either:
 - (i) a subsequent determination states that the amendment or replacement has legal effect as part of the IM determination; or

⁴ Section 223 of the Telecommunications Act.

⁵ Clause 2(1) of Schedule 5 of the Commerce Act.

⁶ Clause 2(3) of Schedule 5 of the Commerce Act.

⁷ Clause 5 of Schedule 5 of the Commerce Act.

- (ii) the Chairperson of the Commission adopts the amendment or replacement as having legal effect as part of the IM determination by notice in the *Gazette*.

12. Our intention is to adopt any amendments or replacements to the NZ IAS 24 to the extent they are consistent with our related party disclosures policy intent and have legal effect as part of the IM determination. This will ensure that the requirements in our IM determination reflect the most up-to-date auditing and accounting standards.