



Fibre Input Methodologies – Regulatory processes and rules

Cross-submission to Commerce Commission

PUBLIC VERSION

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INTRODUCTION

1. Vocus welcomes the opportunity to cross-submit in relation to the development of a Regulatory Processes and Rules (RP&R) Input Methodology (IM).
2. If you would like any further information about the topics in our submissions or have any queries about this submission, please contact:

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REPETITION OF CHORUS' MISUNDERSTANDING ABOUT REGULATORY UNCERTAINTY

3. Chorus has repeated its views on regulatory certainty from its December 2018 new regulatory framework submission:

There is considerable uncertainty about the implications for Chorus and other stakeholders of transitioning to a price-quality path (PQP) for fibre fixed line access services (FFLAS). Delivering this certainty through the process and rules IM (P&R IM) should be a key priority for the Commission as it has consequences for Chorus, other local fibre companies (LFCs) and the wider industry. Flexibility and certainty can be balanced under a constrained timetable by utilising a principles based approach to setting IMs (where this makes sense), with the details specified in price quality determinations (PQDs).

4. For the Commission's convenience, we repeat in summary our cross-submission response to these points. Specifically, we noted "*The High Court and the Commerce Commission have been clear certainty is something that will develop over-time*" i.e. regulatory certainty isn't something that instantly emerges from the initial establishment of transition to the new regulatory framework.
5. We also noted "*Part 4 and Court precedent makes it clear that greater regulatory certainty is achieved by more prescriptive (where possible) Input Methodologies. Chorus cannot credibly claim to both advocate regulatory certainty and flexible, principle-based Input Methodologies*".
6. Chorus has had ample opportunity to respond to these points if it disagrees with them.

PRINCIPLES FOR DETERMINING WHAT IS AND WHAT IS NOT INCLUDED IN THE INPUT METHODOLOGIES

7. As a general principle, regulatory processes and rules should not be prescribed in the IMs unless it would be desirable for the Commission to have flexibility to enable different approaches to be taken at each reset.
8. This is consistent with the joint submission from Enable Fibre Broadband and Ultrafast Fibre: "*The IMs are intended to apply across regulatory periods, which is critical for promoting regulatory certainty for long life infrastructure*".

9. Consistent with these views, we support Chorus position that the IMs should include a wash-up mechanism but not their view that expenditure incentives should necessarily be included in the IMs. We note that incentive mechanisms are an area where the Commission's approach under Part 4 has developed and evolved over-time, which may necessitate more flexibility than would be possible if the arrangements are locked in under an IM.

THRESHOLDS FOR RE-OPENERS

10. We consider the thresholds for re-openers should simply provide that a price-quality determination will be reopened where the information the regulated supply has provided is materially incorrect and the impact of the incorrect information on the price-quality determination adversely impacts or disadvantages end-users. We note that 2degrees and Spark are the only other parties that submitted on the proposed "*false and misleading*" re-opener provision and share our view.

FORM OF CONTROL

11. Given the specific legislative restrictions on the way the Commission can set price-quality regulation for the first regulatory period, we consider that the form of control component of the IMs should be reviewed immediately after the first determination.
12. This is consistent with the views expressed by 2degrees, and Enable Fibre Broadband and Ultrafast Fibre in their joint submission. Enable Fibre Broadband and Ultrafast Fibre, for example, submitted that the Commission should specify, upfront, "the process and timing for determining whether the form of control and duration of regulatory period should change for subsequent regulatory periods".