

## AMENDED NOTICE OF INTENTION

23 SEPTEMBER 2021

**(Amending the Notice of Intention dated 19 August 2021 -  
Proposed Amendments to the Input Methodologies for Fibre – potential  
August 2021 amendments)**

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1. The purpose of this amended notice of intention is to advise that we have further amended our indicative process and time frames outlined in our Notice of Intention dated 29 April 2021 (**29 April 2021 NOI**),<sup>1</sup> which was amended 19 August 2021 (**August 2021 NOI**),<sup>2</sup> and to advise further potential amendments to the *Fibre Input Methodologies Determination 2020* [2020] NZCC 21 (**fibre IMs**) being considered in order to implement our proposed approach to determining Chorus Limited's (**Chorus**) initial price-quality regulatory asset base (**initial PQ RAB**) and transitional initial PQ RAB.
2. In accordance with section 179 of the Telecommunications Act 2001 (**Act**), this notice outlines the scope of the further proposed fibre IMs amendments under consideration and the updated process and indicative time frames for considering and consulting on these amendments.

### **Background: Process for determining Chorus Limited's initial PQ RAB and transitional initial PQ RAB**

3. In our 29 April 2021 NOI, we indicated we were considering the following potential fibre IMs amendments:<sup>3</sup>
  - a. amendments to clause 3.1.1 of the Specification of Price and Revenues fibre IM, which would specify that the “wash-up amount” for each regulatory year of the second regulatory period onwards would include a wash-up account balance available to draw down, including a true-up for differences in revenue due to differences between the initial price-quality regulatory asset base (**initial PQ RAB**) and the transitional initial price-quality regulatory asset base (**transitional initial PQ RAB**);
  - b. amendments to clause 3.3.1(8) and clause B1.1.5(1) of Schedule B of the Asset Valuation fibre IM, which would specify that our transitional initial PQ RAB is determined, in part, on “estimates of historic values”, rather than “actual values”;

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<sup>1</sup> Commerce Commission “Notice of Intention: Proposal to Make Potential Amendments to the Input Methodologies for Fibre – potential August 2021 amendments” (29 April 2021). We note that this notice was published on 30 April 2021

<sup>2</sup> Commerce Commission “Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021).

<sup>3</sup> Commerce Commission “Notice of Intention: Proposal to Make Potential Amendments to the Input Methodologies for Fibre – potential August 2021 amendments” (29 April 2021), paras 5-6.

- c. amendments to clause 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d) of the Cost of Capital fibre IM, which would specify that the transitional initial PQ RAB inputs to the “term credit spread differential allowance” and “term credit spread differential” for the first regulatory period (1 January 2022 until 31 December 2024) would be determined, in part, on “relevant estimates of historic values”, rather than “relevant actual values”;
  - d. amendments which would correct the following technical errors in the fibre IMs:
    - i. errors in our formulae in clause B1.1.2(5)-(6) of Schedule B of the fibre IMs for determining the “present value benefit of Crown financing” - at present, the formulae do not match the definitions of “financial loss year 2012” and “financial loss year 2022” in clause 1.1.4(2) of the fibre IMs; and
    - ii. errors in our use of the terms “commissioned”, “commissioned for FFLAS”, “commissioning date”, “FFLAS commissioning date”, “regulated provider” and “regulated fibre service provider”, as defined in clause 1.1.4(2) of the fibre IMs; and
  - e. amendments to the Capital Expenditure fibre IM to change the date by when we must determine a “base capex allowance” and “connection capex baseline allowance” for the first regulatory period, which would:
    - i. recognise anticipated changes to the time frame for this process; and
    - ii. ensure that cost allocation assessments across Chorus Limited’s (**Chorus**) transitional initial PQ RAB and forecast capital expenditure for the first price-quality path (**PQ path**) are aligned.
4. On 30 April 2021 we provided interested persons with an update on the process and timing of determining Chorus’ initial PQ RAB and transitional initial PQ RAB and explained how it fits within the process for determining the first PQ path for Chorus.<sup>4</sup>
  5. On 27 May 2021, we published draft decisions on the potential amendments outlined in our 29 April 2021 NOI.<sup>5</sup>
  6. On 24 June 2021, 8 July 2021 and 22 July 2021, we received submissions and cross-submissions on our proposed August IM amendments, which included a number of suggested changes to the matters referred to in paragraph 3.a (**the wash-up mechanism**).<sup>6</sup>

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<sup>4</sup> Commerce Commission “Determining Chorus’ first fibre price-quality path: Process update” (30 April 2021).

<sup>5</sup> Commerce Commission “Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper” (27 May 2021).

<sup>6</sup> 2degrees “Proposed amendments to fibre input methodologies: draft decisions reasons paper” (8 July 2021); Chorus “Amendments to the Input Methodologies for Fibre: August 2021 amendments” (24 June 2021); Chorus “Amendments to the Input Methodologies for Fibre: November 2021 amendments” (8 July 2021); Chorus “Cross-submission on Amendments to the Input Methodologies for fibre” (22 July 2021); Spark “Proposed amendments to the IM for fibre: Cross-submission” (8 July 2021); Spark “Fibre ID and PQ draft decisions: Cross-submission” (22 July 2021); Vocus “Consultation on proposed amendments to fibre input methodologies: draft decisions” (8 July 2021).

7. On 29 June 2021, we updated the process for determining Chorus' transitional initial PQ RAB.<sup>7</sup> We will now make a final decision on Chorus' transitional initial PQ RAB in December 2021, rather than August 2021.
8. On 19 August 2021, we published our August 2021 NOI which explained our decision to amend the indicative process and time frames for our consideration of certain fibre IMs amendments as follows:
  - a. we decided to publish a final decision on potential fibre IMs amendments in respect of the matters referred to in paragraph 3.a-3.d in November 2021, rather than August 2021; and
  - b. we decided to publish a final decision on potential fibre IMs amendments in respect of the matter referred to in paragraph 3.e in September 2021, rather than August 2021.<sup>8</sup>
9. Our August 2021 NOI also explained that we were considering the following further amendments in order to implement our proposed approach to our draft decisions on matters related to Chorus initial PQ RAB:
  - a. alternative methodologies with equivalent effect or substantially the same effect that may be applied in determining the financial losses;<sup>9</sup>
  - b. amendments to correct errors and improve the workability of provisions related to the initial RAB;<sup>10</sup>
  - c. amendments to correct for the effect of tax losses;<sup>11</sup>
  - d. amendments to correct errors in the present value benefit of Crown financing formulae, as used to determine the financial losses;<sup>12</sup>
  - e. clarification of other allocator types that may be applied by the Commission in determining the financial losses;<sup>13</sup>
  - f. amendments to correct errors in formulae for "UFB cost allocation adjustment cash flow", as used to determine the financial losses;<sup>14</sup> and

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<sup>7</sup> Commerce Commission "Determining Chorus' PQ RAB – Process update (29 June 2021)" (29 June 2021).

<sup>8</sup> Commerce Commission "Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 7.

<sup>9</sup> Commerce Commission "Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 9.

<sup>10</sup> Commerce Commission "Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 10.

<sup>11</sup> Commerce Commission "Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 11.

<sup>12</sup> Commerce Commission "Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 12.

<sup>13</sup> Commerce Commission "Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 13.

<sup>14</sup> Commerce Commission "Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 14.

- g. amendments to correct errors in formulae for ‘revenue date compounding factor’, as used to determine the financial losses.<sup>15</sup>
10. Our August 2021 NOI also explained that we were considering amendments to the following provisions to correct errors and improve the workability of certain Cost Allocation and Cost of Capital provisions in the fibre IMs:
- a. clause 2.1.2(5)-(6);
  - b. clause 2.1.3(5);
  - c. clause 3.5.7(2)(c)-(d); and
  - d. clause 3.5.10(1)(d).<sup>16</sup>
11. Our August 2021 NOI also explained that we would publish draft decisions on the matters referred to in paragraphs 9-10 in August 2021 and make final decisions on these potential amendments in November 2021.<sup>17</sup>
12. On 19 August 2021 we published our draft decisions on matters related to Chorus’ initial PQ RAB.<sup>18</sup>
13. On 31 August 2021, we published our draft decisions on the matters referred to in paragraphs 9-10.<sup>19</sup>

#### **Changes to process, timeframes and scope of proposed amendments relating to the wash-up mechanism**

14. Having considered submissions received on the wash-up mechanism referred to in paragraph 3.a, we have now decided to publish a revised draft decision on the wash-up mechanism by the end of September 2021. As part of this revised draft decision on the wash-up mechanism, we are considering further amendments to the fibre IMs as follows:
- a. amendments to clause 3.1.1 of the Specification of Price and Revenues fibre IM that include in the wash-up mechanism the differences between forecast allocator values and actual allocator values for operating costs and asset values;
  - b. amendments to clause 3.1.1 of the Specification of Price and Revenues fibre IM that include in the wash-up mechanism the residual differences between the actual and updated forecast consumer price index (**CPI**); and

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<sup>15</sup> Commerce Commission “Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 15.

<sup>16</sup> Commerce Commission “Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 16.

<sup>17</sup> Commerce Commission “Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), para 17.

<sup>18</sup> Commerce Commission “Chorus’ initial regulatory asset base as at 1 January 2022 – Draft Decisions: Reasons paper (19 August 2021).

<sup>19</sup> Commerce Commission “Proposed Additional Amendments to Fibre Input Methodologies: draft decisions – Reasons paper” (31 August 2021).

- c. amendments to clause 3.1.1 of the Specification of Price and Revenues fibre IM to improve the workability of the wash-up mechanism.

15. We will continue to make a final decision on the matter referred to in paragraph 14 and the other matters referred to in our August 2021 NOI in November 2021.

#### Proposed process and indicative time frames for potential fibre IMs amendments

| Process |   | 19 August 2021<br>Indicative<br>timeframe | Amended<br>indicative time<br>frame |
|---------|---|---|-------------------------------------|
| 1.      | <b>Draft decisions by the Commission</b><br>Draft decision on potential fibre IMs amendments in respect of matters referred to in paragraph 3.a-3.e             | 27 May 2021                               | No change - completed               |
| 2.      | Submissions due from interested persons on potential fibre IMs amendments in respect of matters referred to in paragraph 3.a-3.e (4 weeks)                      | 24 June 2021                              | No change - completed               |
| 3.      | Cross-submissions due from interested persons on potential fibre IMs amendments in respect of matters referred to in paragraph 3.a-3.e (2 weeks)                | 8 July 2021                               | No change - completed               |
| 4.      | <b>Final decisions by the Commission</b><br>Publication of final decisions on potential fibre IMs amendments in respect of matters referred to in paragraph 3.e | September 2021                            | No change                           |
| 5.      | <b>Draft decisions by the Commission</b><br>Publication of draft decisions in respect of matters referred to in paragraph 9-10                                  | August 2021                               | No change - completed               |
| 6.      | Submissions due from interested persons in respect of matters referred to in paragraphs 9-10 (2 weeks, 1 day)   | 16 September 2021                         | No change - completed               |
| 7.      | Cross-submissions due from interested persons in respect of matters referred to in paragraph 9-10 (2 weeks)   | 30 September 2021                         | No change                           |
| 8.      | <b>Revised draft decisions by the Commission</b>  | New                                       | 30 September 2021                   |

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|-----|---|---------------|-----------------|
|     | Publication of revised draft decisions in respect of the matter referred to in paragraph 14   |               |                 |
| 9.  | Submissions due from interested persons in respect of the matter referred to in paragraph 14 (3 weeks)  | New           | 21 October 2021 |
| 10. | Cross-submissions due from interested persons in respect of the matter referred to in paragraph 14 (1 week)   | New           | 28 October 2021 |
| 11. | <b>Final decisions by the Commission</b><br>Publication of final decisions on potential fibre IMs amendments in respect of matters referred to in paragraphs 3.a-3.d, 9-10 and 14 | November 2021 | No change/New   |