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[Draft] Fibre Input Methodologies (Tranches 1b and 2) Amendment Determination 2024

[2024] NZCC XX

The Commission:	Tristan Gilbertson
	Vhari McWha
	Nathan Strong
Date of decision:	[day] [month] 2024

[signature]

[name], Commissioner

Dated at Wellington this [day] of [month] 2024

COMMERCE COMMISSION

Wellington, New Zealand

[Draft] Fibre Input Methodologies (Tranches 1b and 2) Amendment Determination 2024

Determination history		
Determination date	**Decision number**	**Determination name**
13 October 2020	[2020] NZCC 21	Fibre Input Methodologies Determination 2020
3 November 2020	[2020] NZCC 24	Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020
29 September 2021	[2021] NZCC 17	Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021
29 November 2021	[2021] NZCC 25	Fibre Input Methodologies Amendment Determination (No.2) 2021
28 June 2023	[2023] NZCC 13	Fibre Input Methodologies Amendment Determination 2023
28 May 2024	[2024] NZCC 11	Fibre Input Methodologies (tax-adjusted market risk premium) Amendment Determination 2024
[day] [month] 2024	[2024] NZCC [XX]	Fibre Input Methodologies (Tranches 1b and 2) Amendment Determination 2024

[Draft] Fibre Input Methodologies (Tranches 1b and 2) Amendment Determination 2024

[Drafting notes:

- This amendment determination amends the Fibre Input Methodologies Determination 2020, as previously amended ('principal determination').
- The included amendments which are secondary legislation are made under the Legislation Act 2019 and Part 6 of the Telecommunications Act 2001.]

[Draft] Fibre Input Methodologies (Tranches 1b and 2) Amendment Determination 2024

Under Part 6 of the Telecommunications Act 2001, the Commerce Commission makes the following determination:

1.   TITLE

1.1   This determination is the Fibre Input Methodologies (Tranches 1b and 2) Amendment Determination 2024.

2.   DETERMINATION AMENDED

2.1   This determination amends the *Fibre Input Methodologies Determination 2020* [2020] NZCC 21.

3.   INTERPRETATION

3.1   In this determination, the words or phrases in bold type bear the following meanings:

3.1.1   **Act** means the Telecommunications Act 2001;

3.1.2   **Commission** has the same meaning as in the **principal determination**;

3.1.3   **disclosure year** has the same meaning as in the **principal determination**;

3.1.4   **PQ determination** has the same meaning as in the **principal determination**; and

3.1.5   **principal determination** means the *Fibre Input Methodologies Determination 2020* [2020] NZCC 21.

4.   COMMENCEMENT AND APPLICATION

4.1   This determination comes into force on [date], being the day after which notice of it is given in the New Zealand Gazette under the Legislation Act 2019 in accordance with s 180 of the **Act**.

4.2   Despite clause 4.1,—

4.2.1   clause 1.1.4 of the **principal determination** applies as amended by this determination on and from 1 January 2025;

4.2.2   Part 2 of the **principal determination** applies as amended by this determination on and from the commencement of **disclosure year** 2026; and

4.2.3   Part 3 of the **principal determination** applies as amended by this determination for a **PQ determination** that commences on 1 January 2025.

4.3   For the avoidance of doubt, if the **Commission** determines that any forecast values must be calculated consistently with Part 3 of the **principal determination** for the

determination of a **PQ determination** which commences on 1 January 2025, the provisions in Part 3 of the **principal determination** apply as amended by this determination to the setting of the forecast values.

5.   FIBRE IM AMENDMENTS

5.1   In clause 1.1.4(2) of the **principal determination**, replace the definition of **outage** with:

"**outage**   means a cessation in the supply of-

(a)   **ID FFLAS** (for the purpose of Part 2); or

(b)   **PQ FFLAS** (for the purpose of Part 3),

that is identified by the **regulated provider** or in respect of which the **regulated provider** has received an **outage notification** (*see* also clause 1.1.4(3));

outage notification   is a notification of a cessation in the supply of **ID FFLAS** or **PQ FFLAS** that gives the **regulated provider** sufficient information to identify the cessation in supply and which may include:

(a)   the name and contact details of the person reporting the cessation in supply;

(b)   the name and contact details of the **end-user** (if known) who is experiencing the cessation in supply;

(c)   the cause of the cessation in supply;

(d)   the date and time that the cessation in supply occurred or became known; and

(e)   the site of the cessation in supply (if known);"

5.2   After clause 1.1.4(2) of the **principal determination**, insert:

"(3)   An **outage** occurs at the earlier of the following times:

(a)   when the **outage** is identified by the **regulated provider**; or

(b)   when the **regulated provider** has received an **outage notification** in respect of the **outage**."

5.3   Replace clause 2.4.10 with

"2.4.10   Annotation_benefit of Crown financing building block for regulated fibre service
           providers subject to both information disclosure regulation and price-
           quality regulation

(1)   In respect of **regulated fibre service providers** subject to both information
        disclosure regulation and price-quality regulation in regulations made
        under s 226 of the **Act**, 'annual benefit of Crown financing building block'
        for a **disclosure year** is the sum of the amounts calculated for each day of
        the **disclosure year** in accordance with the following formula:

$$(A \times B) + (C \times D)$$

where:

(a) A is the amount determined in accordance with the following
        formula:

$$[(\textit{proportion of 'B' that is senior debt} \times \textbf{cost of debt} \textit{ for that} \\ \textbf{disclosure year}) + (\textit{proportion of 'B' that is subordinated debt} \\ \times (\textbf{cost of debt} \textit{ for that } \textbf{disclosure year} + 0.41\%))] \times E;$$

(b) B is the amount of **Crown financing** outstanding in respect of the
        regulated provider (or related party as referred to in section 164
        of the **Act**) at the start of the day that is debt (whether senior or
        subordinated);

(c) C is the amount determined in accordance with the following
        formula:

$$[(0.75 \times \textbf{cost of equity} \textit{ for that } \textbf{disclosure year}) + (0.25 \times \textbf{cost} \\ \textbf{of debt} \textit{ for that } \textbf{disclosure year})] \times E;$$

(d) D is the amount of **Crown financing** outstanding in respect of the
        regulated provider (or related party as referred to in section 164
        of the **Act**) at the start of the day that is equity; and

(e) E is determined in accordance with the following formula:

$$1 \div \textit{ number of days in the } \textbf{disclosure year}."$$

5.4   Replace clause 2.4.11 with:

"2.4.11   Annual benefit of Crown financing building block for regulated providers
           subject only to information disclosure regulation

(1)   In respect of **regulated providers** subject only to information disclosure
        regulation in regulations made under s 226 of the **Act**, 'annual benefit of

Crown financing building block' for a **disclosure year** is the sum of the amounts calculated for each day of the **disclosure year** in accordance with the following formula:

$$A \times B$$

where:

(a) A is:

(i) where **Crown financing** is provided, in substance, by way of a combination of debt and equity, the amount calculated in accordance with the following formula:

$$[(C \times D) + ((1 - C) \times E)] \times F$$

where:

C is the proportion of **Crown financing** outstanding at the start of the day which, in substance, is debt;
D is the **cost of debt** for that **disclosure year**;
E is the **cost of equity** for that **disclosure year**; and
F is determined in accordance with the following formula:

$$1 \div number\ of\ days\ in\ the\ \textbf{disclosure year};$$

(ii) where **Crown financing** is provided, in substance, by way of debt, the **cost of debt** for that **disclosure year**; and

(iii) where **Crown financing** is provided, in substance, by way of equity, the **cost of equity** for that **disclosure year**; and

(b) B is the amount of **Crown financing** outstanding in respect of the **regulated provider** (or related party as referred to in section 164 of the **Act**) at the start of the day."

5.5 Replace clause 3.5.11 with:

"3.5.11 <u>Annual benefit of Crown financing building block</u>

(1) For the purposes of specifying a price-quality path, "annual benefit of Crown financing building block" for a **regulatory year** in a **regulatory period** is the sum of the amounts determined for each day of the **regulatory year** in accordance with the following formula -

$$(A \times B) + (C \times D)$$

where:

(a) A is the amount determined in accordance with the following formula:

$$[(\textit{proportion of 'B' that is forecast to be senior debt} \times \textbf{\textit{cost of debt}} \textit{ for that } \textbf{\textit{regulatory period}}) + (\textit{proportion of 'B' that is forecast to be subordinated debt} \times (\textbf{\textit{cost of debt}} \textit{ for that } \textbf{\textit{regulatory period}} + 0.41\%))] \times E;$$

(b) B is the forecast amount of **Crown financing** outstanding in respect of the **regulated provider** (or related party as referred to in section 164 of the **Act**) on the start of the day that is debt (whether senior or subordinated);

(c) C is the amount determined in accordance with the following formula:

$$[(0.75 \times \textbf{\textit{cost of equity}} \textit{ for that } \textbf{\textit{regulatory period}}) + (0.25 \times \textbf{\textit{cost of debt}} \textit{ for that } \textbf{\textit{regulatory period}})] \times E;$$

(d) D is the forecast amount of **Crown financing** outstanding in respect of the **regulated provider** (or related party as referred to in section 164 of the **Act**) at the start of the day that is equity; and

(e) E is determined in accordance with the following formula:

$$1 \div \textit{number of days in the } \textbf{\textit{regulatory year}}.\text{"}$$

5.6   In clause 3.7.24(1) of the **principal determination**, replace "one month" with "three months".