

**VODAFONE NEW ZEALAND LIMITED**  
**SUBMISSION TO THE NEW ZEALAND COMMERCE COMMISSION**



**SUBMISSION ON ASSESSING CHORUS' NEW UBA VARIANTS –  
BOOST HD AND BOOST VDSL: ISSUES PAPER**

**Public version**

**18 JULY 2014**

## Introduction

- A1 Vodafone welcomes the opportunity to submit on the Commission's issues paper for Chorus' proposed new Boost HD and Boost VDSL copper services (**Issues Paper**).
- A2 As the Commission observed in its 2010 decision on the application of VDSL technologies to the UBA Standard Terms Determination, "the dynamic efficiency benefits associated with investment in new technologies are significant".<sup>1</sup> As such, as a point of principle, Vodafone supports a regulatory framework that incentivises Chorus to invest in new commercial services that are distinct from regulated services and enable higher quality telecommunications services for New Zealanders.
- A3 Chorus' proposed Boost HD and Boost VDSL services (together, the **Boost Services**) represent this kind of opportunity. However, there are still a number of matters that need to be resolved by the Commission, Chorus and the industry before a final conclusion can be made about the impact of their introduction, and their value to end-users of telecommunications services. Reflecting this, our submissions sets out:
- (a) an overview of the consultation and service development process so far;
  - (b) an endorsement of the Commission's existing framework for assessing new UBA variants;
  - (c) why we think Chorus should finalise its industry consultation and commercial offering before the Commission is required to reach conclusions on the Boost Services;
  - (d) our support for the Commission looking beyond the simple question of whether the Boost Services are permitted as new UBA variants (i.e., looking also at the proposed changes to regulated UBA and the proposed withdrawal of the existing VDSL service);
  - (e) our views on Chorus' obligations in relation to the regulated UBA service; and
  - (f) our views on the proposed withdrawal of the existing VDSL service.
- A4 We are grateful for the Commission's extension of the timeline for consultation on this Issues Paper, both for substantive submissions and cross-submissions. We believe this will allow the Commission and industry to make a fuller and better informed assessment of the Boost Services.

## B Consultation so far

- B1 Chorus announced its intention to launch the Boost Services in May 2014. Further information has been provided to industry through various bilateral engagements and industry briefings, as part of the ongoing industry consultation process. The consequence of this process is that, like any proposed commercial offering, the scope of the Boost Services has continued to move as Chorus works to develop services that offer useful innovations beyond the regulatory framework.
- B2 While we have concerns about some phases of this consultation process (e.g., essential details, including in relation to price and the relationship of the Boost Services to other Chorus services, have been slow to extract), we see this consultation as an essential step for Chorus to develop

---

<sup>1</sup> Commerce Commission *Final decision on the application of VDSL technologies to the Unbundled Bitstream Access Standard Terms Determination* (16 April 2010) at [7].

services that are genuinely beneficial for both RSPs and our customers. We are encouraged by the positive steps that Chorus has taken in relation to its latest changes to the Boost Services.<sup>2</sup> Our view is that Chorus should have determined the final scope of proposed commercial services (through consultation with industry) prior to commencing a New UBA Variants process with the Commission. It is clearly undesirable that the Commission and industry are forced to conclude on the merits of the Boost Services in circumstances where their description and terms of supply remain protean.

- B3 The current timeline appears to be driven by Chorus' own commercial timeframes: a proposed "soft launch" for the Boost Services in September 2014, with a fully-fledged launch (including withdrawal of the existing VDSL service) in December 2014. The factors that have determined this timeline are not clear to us. But we have difficulty with the suggestion that services, which Chorus says are provided for the benefit of industry and responsive to industry demand, should be forced into market without Vodafone and other customers having had a full opportunity to shape these services.
- B4 As set out below, the current process makes it difficult for industry to effectively comment on, or evaluate the impact on end-users of, the proposed Boost Services. It also appears difficult for the Commission to reach any conclusion on the quality of those services while the potential service descriptions continue to evolve. As the Commission is aware, as recently as last Thursday, Chorus made significant changes to its proposed services. We expect that the consultation process may yet still deliver further, material changes to the Boost Services.
- B5 Given the circumstances before the Commission, we strongly support its approach to consultation so far, including its decision to hold an informal workshop, and to publish this Issues Paper ahead of its draft decision.

## **C Framework for assessing New UBA Variants**

- C1 We endorse the Commission's approach to assessing New UBA Variants as applied in its assessment of the specific component of Telecom's wholesale VDSL2 service in 2010. In our view, this is the right starting point for assessing whether proposed new copper services from Chorus should be permitted to be offered over and above the STD.
- C2 In particular, we support the principle that:
- (a) Chorus has the ability to develop new bitstream services incorporating features not included in the UBA service description and offer those services on a commercial basis;
  - (b) if Chorus proposes a new commercial copper service, the Commission should consider whether the new service is captured within the regulated UBA terms (i.e., whether the service offering is distinguishable from the regulated UBA service);
  - (c) if the service does stand apart from the regulated service, the Commission should consider whether there are grounds to include it in the UBA service description as a new regulated service through a s 30R process (but that this is not necessarily the default outcome). The Commission should only take this step if there is a clear requirement for intervention, supported by a conclusion that differentiation between new commercial

---

<sup>2</sup> Chorus *Boost Update Dialogue* (10 July 2014).

services and existing regulated services does not promote competition for the benefit of end-users.

## **D The Boost Services have potential, but should be finalised**

- D1 The Boost Services, in our view, offer the potential for new and superior services to be offered to end-users of telecommunications services.<sup>3</sup> We consider that the Boost Services have the potential to be useful complements to the regulated product suite, supporting a more vibrant range of products and expanded consumer choice in retail markets.
- D2 However, as the consultation for these services is ongoing (with Chorus communicating a clear intention to us to discuss substantive changes to the service descriptions that RSPs would value), we are concerned that an assessment by the Commission and industry of whether the *potential* of the Boost Services will *actually* be realised risks being built on shifting sands.
- D3 Taking the wider proposals alongside the Boost Services into account, our strong view is that the relevant consultation processes (both regulatory and commercial) and the consequential timeline for the commencement or withdrawal of any services (or any change to Chorus' past practices) must provide for a reasonable transition period. This is required to enable RSPs to implement and manage any changes that could impact end-user customer experience, and to permit RSPs to make commercial or operational (investment) choices in a reasonable manner. This is especially the case given the shifting or incomplete information (in particular, in relation to the treatment of the existing VDSL service after December 2014) that has characterised this process so far.
- D4 We recommend that the Commission should work with Chorus and industry to agree a revised timeline for industry consultation and the Commission's process. A revised timeline should enable the Commission to complete its process with reference to finalised service description, and for Chorus to launch any new commercial services to a timeline which minimises any potential for negative impacts on RSPs and end-users.

## **E It is appropriate that the Commission is considering the additional changes outside of the introduction of new services**

- E1 We agree with the Commission's approach in considering whether any potential changes to Chorus' past practice in provisioning the regulated UBA service, or any withdrawal of the existing VDSL service, is appropriate.
- E2 The Commission has a discrete task triggered by Chorus' notice of proposed new UBA variants (to consider whether those services can or cannot be offered separately from the UBA STD). However, this exercise cannot be neatly separated from its assessment of whether Chorus' changes to past practice or withdrawal of a current service are permissible. To the extent that Chorus' offer of the Boost Services is contingent on these steps also being taken, then they must

---

<sup>3</sup> We note that some of the proposed new service commitments which are recorded in the service descriptions supplied to the Commission, such as the "best efforts" line speed commitments for the Boost Services, may not be sufficient to provide a sufficient distinction between the regulated services on the terms applied by the Commission in its assessment of WVS in 2010. In our view, given Chorus is seeking to extract a premium over the regulated services for its Boost Services, its consultation process with RSPs is the appropriate "first gate" to ensuring a product suite is presented which provides material enhancements over and above the regulated UBA service.

be considered as necessary collateral for the delivery of end-user benefits derived from the Boost Services.

- E3 As it stands, the steps that Chorus may take in relation to the current VDSL service in particular do not appear to be settled and remain subject to discussion. Given the significant new detail (and potential changes) in relation to both regulated UBA and the existing VDSL service that were presented to industry last week, we consider it may be appropriate for the Commission to also delay this part of the process until industry consultation on the Boost Services has been completed. This would allow Chorus to provide a clearer explanation of the steps it may take with respect to the current VDSL service. Absent a final position on this point and subject to any further changes, we provide our initial views on these wider changes below.

## **F Future treatment of regulated UBA**

### **Chorus cannot degrade user experience**

- F1 It is not acceptable for Chorus to undertake any action to the current UBA service that would materially degrade the service experience it delivers today. In particular, while the UBA STD sets out a minimum standard of 32kbps, throttling the regulated UBA service to this level should not be permitted.<sup>4</sup> In our view, such a change would be inconsistent with the STD when read as a whole, as well as international best practice and good faith requirements to which the STD is subject.
- F2 The 32kbps minimum service requirement simply does not reflect current practice or reasonable end-user expectation. This service requirement metric is entirely historic and reflects the expectations set over a decade ago during the Commission's consideration of whether local loop unbundling should be regulated. At that time, broadband demand was in its infancy: many New Zealanders remained on dial-up internet. During that period, the Commission ultimately recommended that a basic broadband service should be designated (as opposed to requiring full local loop unbundling).<sup>5</sup> The subsequent TelstraClear Unbundled Bitstream (UBS) decision<sup>6</sup> reflected the prescribed access limitation.<sup>7</sup> However, the 2006 amendments to the Telecommunications Act 2001 (**the Act**)<sup>8</sup> changed the bitstream service description, notably removing the access limitation of 32kbps.
- F3 Leaving aside the particular history of the 32kbps minimum service requirement however, we note that:
- (a) actively degrading the regulated UBA service to this level would result in substantial detriment to end-users of telecommunications services;
  - (b) any such degradation by Chorus to this level would rely on Chorus' market power and is unlikely to reflect a decision that would be taken by a service provider in a workably

---

<sup>4</sup> We note, for the avoidance of doubt, that this is not our understanding of Chorus' proposal.

<sup>5</sup> <http://www.comcom.govt.nz/regulated-industries/telecommunications/archive/determinations-archive/service-deregulation-reviews-archive/local-loop-unbundling/>

<sup>6</sup> Decision 568 (December 2005).

<sup>7</sup> <http://www.comcom.govt.nz/regulated-industries/telecommunications/archive/determinations-archive/interconnection-archive/wholesale-determinations/2004-telstraclear-wholesale-bitstream-service-application/>

<sup>8</sup> Telecommunications Amendment Act (No 2) 2006

competitive market (given the extent to which it is clearly inconsistent with the interests of RSPs as customers and end-users, and would not be accepted in any competitive scenario);

- (c) the Commission is appropriately empowered (at least from 1 December 2014) to review the UBA STD, including its service description, to ensure that the regulated product is fit for purpose.

F4 For the avoidance of doubt, we note that Chorus' most recent proposal (as set out in more detail below) is not to degrade regulated UBA to 32kbps.

**Ongoing obligation to further invest in copper and improve today's UBA end-user service experience is unclear**

F5 The UBA STD provides a clear obligation for Chorus to provide regulated bitstream access to access seekers (and, as noted above, the Commission is empowered to amend the STD from time to time, if required). The underlying purpose of Chorus' obligations as a regulated access provider should be considered in this context. We also note that significant, transformative investment is continuing with major network investments in UFB, RBI and through 4G mobile networks.

F6 While RSPs will remain reliant on copper services in the medium term, newer networks with greater capability are being developed and represent the long-term future for access technology in New Zealand. Ultimately, there is an assumption that the UFB (where built) will supersede and replace copper networks. In the long term, it is acknowledged that it will be uneconomic to sustain duplicate copper and fibre networks. Imposing a requirement for Chorus to continue significant investment in its copper network does pose genuine, far-reaching policy questions that may have flow on effects for the type and pace of investment in new access services.

F7 As a preliminary observation, our view is that during this transitional period the Commission will need to ensure that the regulated UBA service remains available as a wholesale input of sufficient quality to support competition in downstream retail markets. This does not imply that the regulated UBA service must be equal to other wholesale bitstream inputs that Chorus may choose to make available. It simply requires that the regulated UBA service is of sufficient quality to provide a route for entry and ongoing participation in downstream markets. The Act appropriately empowers the Commission to define the regulated UBA service with reference to these considerations. While this type of inquiry could well conclude that Chorus is required to undertake further investment in copper services in order to ensure that the regulated UBA service remains of sufficient quality to deliver these outcomes, the UBA STD does not specifically commit Chorus to undertaking ongoing and open ended investment in the regulated UBA service.<sup>9</sup> We do not think such an obligation should be read in and doing so would, in our view, operate to prevent Chorus from investing in any new and clearly distinct wholesale service that may support higher quality retail services (because it knows that RSPs will not buy an input that cannot support truly differentiated retail services capable of driving customer demand). Finally, we note that the Commission is, of course, not permitted to revisit this question formally until 1 December this year.

---

<sup>9</sup> Chorus has made clear its intention to cease further investment in copper services. See, for example, slides 33&34 of: <http://www.chorus.co.nz/file/42818/Investor-Presentation.pdf>

- F8 As such, Chorus' proposal to alter its past practice of provisioning the network such that it will continue to ensure 250kbps of available bandwidth per circuit (which reflects Chorus' assessment of current average throughput availability) but no more, does not appear to us to breach the UBA STD. These changes are integral to the offer of the proposed Boost Services, the introduction of which is likely to encourage consumer demand for and uptake of higher quality services with increased functionality, such as UFB services. In this sense, Boost Services should be seen as an important element of the pathway to a long-term, ubiquitous fibre solution for New Zealand.
- F9 Finally, we note that any change in the quality of regulated UBA service should be appropriately reflected in the regulated price for that service. Any amendment to the UBA STD to require specific provisioning investments would have to be very carefully considered with reference to the FPP review for the UBA service price currently underway.

## **G Withdrawal of VDSL**

- G1 In our view, it is clear that the current VDSL service is offered under the terms of the STD.<sup>10</sup> On that basis, it is less clear whether Chorus can unilaterally withdraw provision of the existing VDSL service. While we acknowledge that the current service was not formally brought within the ambit of regulation (as required by Part 2 of the Act), a decision by Chorus to unilaterally withdraw provision of the service would have a significant impact on industry (and end-users).
- G2 This is because, on the basis of the existing service and the undertakings from Chorus associated with it, including an understanding that it would be withdrawn only in particular circumstances,<sup>11</sup> industry has made a substantial investment in promoting VDSL services and, together with end-users, has supported a significant migration to the new service.
- G3 We note that Chorus has indicated in its latest round of industry consultation that it is considering grandfathering the existing VDSL service or permitting its consumption on regulated handovers (which would avoid "forcing" RSPs to consume additional handovers just to continue supplying VDSL).<sup>12</sup> These changes would have a material effect on the impact of Chorus' proposed changes on RSPs and end-users. As such, in our view, Chorus should finalise this position to enable a proper and meaningful assessment of any regulatory, competitive or commercial concerns with the proposal.
- G4 However, to be clear, without some adjustment (either through grandfathering existing services or at least permitting RSPs to continue to consume the VDSL service on the regulated UBA handovers as suggested above), we are concerned that the proposed changes will have a significant impact on RSPs and, ultimately, end-user service experience. In our view, proceeding with the original proposal in relation to the existing VDSL service may only be possible by virtue of Chorus' position in the market, and would not likely be in the long-term benefit of end-users of telecommunications services in New Zealand.

---

<sup>10</sup> See, for example, comments from counsel for Chorus during the UBA Price Review Conference (12 June 2013) at pp 100 - 101, as well as Chorus' comments in its latest *Boost Update Dialogue* (10 July 2014) at p 48.

<sup>11</sup> Chorus indicated that the current VDSL service would continue to be available and be withdrawn only in specific locations following the completion fibre deployment in Chorus UFB areas (see Chorus factsheet: *Information about Chorus VDSL* at <http://customer.chorus.co.nz/chorus-vdsl>).

<sup>12</sup> Chorus *Boost Update Dialogue* (10 July 2014).

G5 We look forward to working further with Chorus to identify an approach which appropriately manages these concerns, and are encouraged by the positive changes suggested in its most recent industry dialogue.