



InternetNZ

InternetNZ Submission: New UBA Variants Issues Paper

18 July 2014

Public Version
(there is no confidential version)

1. Thank you for the opportunity to submit on the Issues Paper. We particularly welcome the addition of this consultation round on what is an important issue with long term implications.
2. We encourage and welcome Chorus providing innovative solutions, as has happened with the introduction of the *Chorus Accelerate Fibre products*. These are innovative products that seek to meet the demand of both consumers and the Internet Service Providers (ISPs) that service them. We continue to encourage Chorus to seek to innovate as a solution to meeting its financial objectives, and delivering to both their market and investor expectations.
3. Intentions and effects are not the same thing. In this submission we have no comment about Chorus and their intentions with respect to these products: we are instead concerned with the effects their introduction could have on the market and thus on consumers.
4. In its consultations, Chorus has positioned the introduction of the Boost products as the introduction of a new “tier” of copper-based service; that ISPs will be able to meet market demand better by being able to differentiate between those customers that demand video-capable services versus those that do not.
5. This may well be the case – indeed, we can see scenarios where such a distinction would indeed be useful and beneficial to end-users. Regrettably, however, the distinction that is created with regard to the Boost products (compared with regulated UBA) that this consultation concerns though is an artificial and undesirable one:
 - a. Artificial, in that our analysis supports the conclusion that the Boost products are not significantly different from the current products based on regulated UBA; and
 - b. Undesirable, in that the distinction is created more by diminishing the capability and performance of the regulated UBA service than it is through investment and innovation.
6. Rather than innovations designed to meet market demand, these products instead give cause for concern that whatever Chorus’ motivation may be, the effect of implementation alongside changes to how regulated UBA evolves is to raise prices to end-users above what the regulatory settings allow – for substantially similar services.

7. As noted above, product innovation and a more commercial approach by Chorus are to be welcomed. The combination of new products and changes to existing products that Boost represents appears to us to increase Chorus revenue, without improving the situation for users.
8. We are concerned that Chorus is, in essence, seeking to diminish its exposure to regulated UBA pricing, and instead move the market to unregulated commercial products. That it is doing this by effectively degrading the performance of the regulated product, while rhetorically appealing to new products driven by new investment, appears simply to be a creative manner of justifying an attempt to undermine the regulatory foundation of the current product structure.
9. Chorus's approach became particularly apparent at the recent workshop convened by the Commission, as Chorus explained their reasons for taking the steps, focussing particularly on meeting what it says is a funding gap from other sources. No provider facing competitive constraints could do what Chorus is trying to do. Therefore, regulatory oversight is wholly appropriate.
10. In our view, based on discussions with Chorus, there is a real commitment to innovating and delivering new products. That is why we are not questioning the motivations involved or what Chorus's intent might be: we are simply identifying the effect of what they propose in this instance. Motivations are never the right test in regulatory proceedings: effects are.
11. We are aware that some RSPs take the view that copper based services, being equally available to all RSPs, largely do not impact RSPs' returns. All RSPs rise and fall with the tide, it is said. There is an element of truth to this but it does not tell the whole story – especially given different investment decisions over time in UBA versus UCLL services and access or otherwise to other technology options on the part of various RSPs.
12. The problem in any case is that consumers would be the losers as they end up paying some or all of the price of the rising tide. With a \$5 uplift per month, with little benefit for end users from Boost, higher prices will be costly to consumers, even if pass-through is limited.
13. We have asked Wigley & Company to provide a more detailed legal submission on our behalf. Briefly summarising some key points in that submission:
 - a. Chorus cannot traffic manage regulated UBA: the service description does not permit that. Chorus must supply UBA at maximum line speeds;
 - b. Chorus cannot have separate handovers for regulated UBA and Boost: again, the service description does not permit this;

- c. On a proper interpretation of the service description, Chorus must supply regulated VDSL to VDSL capable lines. It cannot withdraw that service. The Commission erred in its decision on this point in 2010, but it is the court and/or the arbitrator that ultimately decide this point – at the instigation of the Commission and/or parties – not the Commission.
 - d. When the Boost service layers are unpeeled, and compared with what should be supplied as regulated UBA (eg maximum line speeds, etc), there is little difference between regulated UBA and Boost. In particular, over Boost capable lines (that is, the lines that can achieve the Boost speed metrics), regulated UBA will achieve the same speeds. The Boost offering only applies to lines that are capable of meeting Boost speeds (so that other lines are triaged out).
 - e. If regulated UBA is correctly provided (eg with maximum line speeds and VDSL capability), regulatory intervention may not be required. Boost likely would have little uptake. Otherwise, there should be regulatory intervention such as a s30R review.
14. There is an alternative approach available to Chorus.
15. The alternative approach would resolve our and others' concerns and allow Chorus to proceed with these new product variants.
16. The alternative is for Chorus to continue to provide the regulated UBA service in the same manner that they have over the life of the STD to date. That means with ongoing growth in the handover rate, continued investment, availability of VDSL after UFB is available and continually improving services. If Chorus intends this to be a new basic service tier, then ongoing growth and improvement remains desirable.
17. If the Boost products are innovative in the manner Chorus believes them to be, then there should remain sufficient differentiation between them and a regulated UBA service that continues to evolve, as it has done since the STD was created. This simple commitment would make all the difference to our position on this issue.
18. If this alternative approach isn't economically viable for Chorus, then it is clear the primary intended effect of these products is the revenue increase postulated above.
19. In summary, we welcome and encourage innovative solutions from Chorus; but this initiative has effects that show very little upside, but rather higher prices for end-users, higher revenue for Chorus, and a diminishment of regulatory production.
20. The simple alternative is for Chorus to innovate whilst protecting and preserving the current STD-based UBA product, and committing to its ongoing development alongside these commercial alternatives.

21. We hope that one example of an innovative approach not playing out in a way that is desirable does not discourage Chorus from future efforts. As with the fibre products, we will join others in celebrating new ideas which add real value for all in the market.
22. We urge the Commission to be vigilant in considering how these products protect the long-term interests of end-users in New Zealand in considering the ramifications of these Boost products.

With many thanks for your consideration,

A handwritten signature in black ink, appearing to read 'Jordan Carter', with a stylized flourish at the end.

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