

Section 30R review of the UBA standard terms determination

Industry workshop on process and issues paper

Summary of views expressed

Date of publication: 27 June 2016

Purpose

1. This paper provides a summary of views expressed by participants of the industry workshop on the process and issues paper for the section 30R review of the unbundled bitstream access (UBA) standard terms determination (STD).

Workshop purpose and objectives

2. The purpose of the workshop was to hold an open discussion of the key issues arising from submissions to assist parties in developing solutions for proposed amendments to the UBA STD in their cross-submissions.
3. The objectives of the workshop were:
 - 3.1. provide participants with the opportunity to present their views on solutions to amending the UBA STD in line with their submissions on our process and issues paper; and
 - 3.2. to help us understand the changes that participants consider necessary to make the UBA STD fit for purpose.

Workshop format and process

4. The workshop used a round table format to allow an open discussion and exchange of information between workshop participants. A full range of views was provided during discussions with workshop participants as well as through presentations from participants.
5. The presentations from Spark, Trustpower and the Commission can be found on our website.¹
6. Any views expressed by our staff at the workshop were for the purpose of stimulating discussion, and were not intended to reflect the views of the Commission. The Commission's position will be provided in the draft decision.

Role of workshop in the consultation process

7. This workshop was the next step in the consultation process for considering amendments to the UBA STD and preparation of our draft determination following the process and issues paper.
8. The workshop focussed on seeking participant's views on the key issues that have been identified through submissions on the process and issues paper, to assist parties

¹ <http://www.comcom.govt.nz/regulated-industries/telecommunications/regulated-services/standard-terms-determinations/unbundled-bitstream-access-uba-services/uba-30r-review-of-non-price-terms/>

in developing solutions for proposed amendments to the UBA STD in their cross-submissions.

9. Views expressed at the workshop will inform our draft determination, which we expect to release for consultation in August 2016.
10. We intend to complete the section 30R review of the UBA STD by December 2016.

Workshop date and venue

11. The workshop was held on 15 June from 9.00am – 1pm, at the Royal Society, 11 Turnbull Street, Thorndon, Wellington.

Outcome of the workshop

12. The workshop was attended by key stakeholders who made submissions on the process and issues paper.²
13. The workshop generally followed the agenda and the discussions were supported by the industry presentations.³ Due to the interrelated nature of the topics, issues were sometimes discussed and addressed in an alternative order to what was outlined in the agenda.
14. Commission staff appreciated the open discussion, and we would like to thank participants for their contribution to the outcome of the workshop.
15. A summary of views expressed at the workshop is included in Attachment C.

² The list of attendees is attached to this document as Attachment A.

³ The agenda is attached to this document as Attachment B. The presentations can be found on our website at <http://www.comcom.govt.nz/regulated-industries/telecommunications/regulated-services/standard-terms-determinations/unbundled-bitstream-access-uba-services/uba-30r-review-of-non-price-terms/>

Attachment A: Workshop attendees

No.	Representing	Name	Role
1	2Degrees	Sara Lipanovic	Regulatory Policy Manager
2	2Degrees	Mark Petrie	
3	Chorus	Andrew Kerr	Regulatory Affairs Manager
4	Chorus	Anna Moodie	Assistant General Counsel, Regulatory & Competition
5	Chorus	Martin Sharrock	
6	Chorus	Alan Mitford-Taylor	
7	Chorus	Elliot Bonnett	
8	Chorus	Tim Smith	
9	Chorus	Nicola Gaffaney	
10	Commerce Commission	Matthew Clark	Senior Analyst
11	Commerce Commission	Luana D'Appollonio	Senior Legal Counsel
12	Commerce Commission	Stephen Hudson	Senior Economist
13	Commerce Commission	Julian Kersey	Principal Advisor
14	Commerce Commission	Sam Norman	Analyst
15	Commerce Commission	Vannessa Turner	Acting Manager
16	InternetNZ	Andrew Cushen	Work Programme Director
17	InternetNZ	Reg Hammond	Policy Consultant
18	InternetNZ	Michael Wigley	Principal, Wigley and Company
19	Spark	Daniel Aldersley	
20	Spark	Sasha Daniels	Senior Counsel, Competition and Regulation
21	Spark	Matt Harris	
22	Spark	Nick Haywood	Senior Manager, Industry and Regulatory Affairs
23	Spark	Bruce Hurley	
24	Spark	Stuart Lusk	

No.	Representing	Name	Role
25	Spark	John Wesley-Smith	GM, Public Policy & Regulatory affairs
26	Trustpower	Jessica Bevin	Regulatory Advisor
27	Trustpower	Peter Gregory	Business Manager - Telecommunications
28	Trustpower	James Tipping	Manager Strategy and Regulation
29	Vodafone	Chris Abbott	General Manager Public Policy
30	Vodafone	Mitchell Cooper	Senior Government Relations Advisor

Attachment B: Workshop agenda

Ref	Start	Session topic and discussion points	Duration
1	9.10	Welcome and agenda	10 min
2	9.20	Industry presentations <ul style="list-style-type: none"> • Chorus • Spark • Trustpower 	40 min
3	10.00	Framework for review (making the UBA service fit for purpose) <ul style="list-style-type: none"> • What the regulated service is/isn't • Section 18 considerations 	30 min
	10.30	Morning tea	20 min
4	10.50	Framework for review (making the UBA service fit for purpose) – continued	30 min
5	11.20	Amendments, if required, to make the UBA service description fit for purpose <ul style="list-style-type: none"> • Key features of the UBA service • How to reflect evolving UBA service in STD • Relevance of FPP inputs • Role of international best practice 	60 min
6	12.20	Transparency of Chorus systems for ancillary charges (for example, connection and no fault found) <ul style="list-style-type: none"> • Current reporting process for ancillary charges • Application of ancillary charges • Relevance of FPP to application of ancillary charges 	50 min

Ref	Start	Session topic and discussion points	Duration
7	1.10	Other matters (if time allows) <ul style="list-style-type: none">• How to price 10GigE handover, if added to the UBA STD• Updating clause 10 of the General Terms to provide clarity to the assessment of new commercial variants	15 min
8	1.25	Final comments and next steps	5 min

Attachment C: Summary of views

Introduction

1. This attachment is a summary of the views expressed at the workshop. The summary of views has been grouped by topic. However, due to the interrelationship of the problems identified in this review, the views as outlined below may have been covered off in an alternative order during the workshop.

Summary of industry presentations

Chorus' presentation

2. Chorus presented its view on the UBA service – that fibre is the future, but the copper network will remain relevant for a transitional period. Chorus is actively managing bandwidth growth of unprecedented levels in the fibre-fed network (excluding ATM).
3. Chorus view the current service as a full speed/full speed service, but acknowledge that there is no guaranteed speed with speed varying based on a number of factors including ATM equipment in some parts of the network. Chorus implement a management plan where fibre-fed links will never reach 100% capacity, except in exceptional circumstances. For the ATM part of the network, which represents approximately 1.5% of lines, minimum throughput is currently just above 32 kbps, as specified in the current STD, with a far higher average in the rest of the country. Chorus noted that it is planning further upgrades of the ATM network this year. Chorus will make these plans available (subject to any commercial sensitivity issues being addressed) as it already does for cabinet upgrades.
4. Chorus noted that it considered VDSL a part of the current service, and encouraged a less prescriptive approach to amending the STD to maintain flexibility going forward.
5. In terms of the FPP, Chorus saw no value from using the FPP to describe the 'fit for purpose' current service. Chorus are actively managing the network as it currently stands in response to the real world, they are not planning for modelled outcomes.
6. Chorus detailed a monthly report that can be made available to detail utilisation of links, within specific bands, to improve transparency around levels of congestion and capacity growth in the network.
7. In terms of transparency of their systems, Chorus acknowledged that is worth having the discussion of what is and is not available, but this discussion is best suited to the Telecommunications Carriers' Forum (TCF).

Spark's presentation

8. Spark presented its view that the regulated UBA service is a mix of current and legacy technology and that the copper-based service is now a third or fourth choice for RSPs

(after fibre, mobile, and HFC). The copper-based service is less strategically important than it was in 2007 when the STD was first developed.

9. However, Spark acknowledged that many customers will only ever have access to the current copper-based service, and the importance of keeping the service up-to-date for these customers who have no choice. Spark believe that it is essential that Chorus has the correct incentives to upgrade technology for these customers and that the focus should be on the customers experience rather than market structure of competition.
10. Spark noted that the market structure is fundamentally different to when the STD was first developed. Telecom was a vertically integrated supplier which saw end-user demand and demand signals from its retail customers. Chorus is now separated from these signals. The question is how to best align Chorus' incentives with customer outcomes.
11. The regulated UBA service will be the only copper-based service in the future, and it is unlikely that there will be much demand for commercial variants. Spark believe it is essential to focus on setting:
 - 11.1. a speed standard that reflects the fastest speeds that any one line will support;
 - 11.2. a throughput standard that reflects that network and link demand should be met in any given 15 minute period;
 - 11.3. a 10 GigE handover should be offered throughout the network; and
 - 11.4. non-price terms should incentivise Chorus to upgrade ATM networks overtime.
12. Spark stated that the STD should also promote effective Chorus network management practices and investment. Chorus should bear the additional costs for continuing to use legacy technologies, rather than RSPs or customers. Where there is no choice but to use these technologies, RSPs and customers typically end up paying more than they otherwise would because of Chorus' investment decisions.
13. Spark sees the benefit from better access to Chorus' network information. This will allow RSPs to deliver a better customer experience through setting upfront expectations of: what is and isn't available to a customer, service expectations, and booking fault appointments. In addition, consumers should have confidence that they will only pay for faults that they are responsible for. In Spark's view, these are significant pain points for customers, and resolving these issues is essential to improve customer outcomes.

14. Spark considered that the 3OR process should set the terms to deliver diagnostic tools that will allow greater visibility of the network. This work has been discussed by Chorus previously.
15. Spark also provided a handout of detailed suggested amendments to the STD which was handed out to parties during the workshop.

Trustpower's presentation

16. In its presentation, Trustpower outlined its expectation of the workshop and desired outcomes.
17. Trustpower outlined its view of the regulated service as a full speed/full speed service that evolves over time to meet the needs of end-users. Access to a high quality layer 2 service allows RSPs to create differentiated services to best meet the needs of end-users. Trustpower support Chorus' development of commercial variants, but only if this is done in a way that does not degrade the current regulated service.
18. In terms of specific changes to the STD, Trustpower presented that it would like the Commission to confirm that VDSL falls under the regulated service, and that the service will evolve over time. Trustpower noted that these changes may already be required under the 'international best practice' and 'good faith' obligations under the current STD.
19. Trustpower also acknowledged that, while it would like to be specific about a required service level, it recognised the constraints this could place on the service in a fast-paced industry, and noted the difficulty of being overly prescriptive without risking adverse side effects. However, it noted that there might be scope for the working party to determine an appropriate service level or measure of end-user experience to be included in the service description.
20. Another change to the STD that Trustpower would like to see is a clarification to clause 10. Trustpower's view is that clause 10 should detail the application process for adding, amending or withdrawing UBA variants and retain the option to amend the UBA STD as a result of these processes.
21. Trustpower agreed that a TCF working party should be formed to facilitate the specific discussions around greater transparency. Trustpower believe the Commission should be a part of these discussions and keep the 3OR review open until recommendations have been made.

Making the UBA service fit for purpose

22. We presented briefly our view of what the current UBA service is, and asked for parties' views on the current UBA service in response to this.

23. In general parties supported the idea that the current UBA service is a full speed/full speed service suitable for general internet use that evolves over time.
24. Chorus expressed concern at being too prescriptive in the STD. Difficulties arise around the use of different technologies in the network and comparing New Zealand's network to international networks with different infrastructure. Chorus also expressed concern that the STD should not be used to force inefficient investment in the network by obligating them to upgrade legacy technology. Chorus emphasised that the STD should reflect what is currently happening – the maintenance of a congestion-free network. Chorus are happy to increase transparency where possible to improve clarity around congestion and capacity of network links and plans to upgrade the ATM network, where possible.
25. Spark agreed that Chorus should not be obligated to upgrade the ATM parts of the network, but rather incentives should be aligned so that the STD does not impede Chorus upgrading these parts of the network efficiently. The STD currently provides an incentive to defer network upgrades. Spark expressed concern that RSPs face higher costs in ATM areas that they would not otherwise face as a result of Chorus' network decisions. Spark noted that increased transparency is crucial to resolving these issues with clear information around congestion and trigger points for action to invest.
26. Chorus stated that the correct incentives to invest already exist, for example, business decisions around upgrading legacy equipment to reduce costs and other policy decisions around RBI investments.
27. Vodafone agreed that there is no need to force investment in the ATM network and suggested that in many of these areas Chorus has the right incentives to upgrade due to competition from fixed wireless and RBI technologies. Vodafone agree with Chorus that it is currently meeting the requirements under the current STD.
28. InternetNZ expressed concern that although there are customers in areas with competitive pressures, there will still be some in areas with no competitive pressures. These customers are paying for a service that they will never be able to receive. InternetNZ support a minimum service unilaterally that will provide a suitable service to meet the demands and needs to all consumers, including these at risk consumers. Vodafone also suggested that there is a need to better understand the scale of the issue in terms of the number of customers on ATM-based services in areas where there are no competitive pressures.

Updating the UBA service description

29. Clarification was sought about parties' views on specific metrics that need to be updated for the UBA service to be fit for purpose.

30. In general parties agreed that the issue with updating the minimum throughput specification is the treatment of the ATM network, with current minimum throughput of just over 32kbps.
31. Chorus explained that in general the path between the DSLAM and the first data switch is one of the least troublesome parts of the network to maintain. In general when link utilisation reaches 60% Chorus will take steps to address capacity. Rather than being too prescriptive, Chorus suggested fibre-fed links could be required to stay below 100% utilisation. If the link definition was different then a limit such as only x% of links can reach 100% utilisation in a year would need to be considered. This is to account for technical limitations on non-fibre links. In either case, catering for exceptional circumstances would be required. Chorus are open to providing a report detailing utilisation information for fibre-fed links.
32. InternetNZ expressed concern that it is likely to always be the same consumers who are the exception, and that these customers will be paying for a level of service which they will never receive. InternetNZ believe that if Chorus is not providing the service for these consumers it should not be able to charge the regulated price for it. Commission staff asked if this meant Chorus could provide a lower cost commercial service. InternetNZ noted that there seemed to be no incentive for Chorus to provide a lower spec / lower price service and it would probably have to be a regulated variant.
33. Spark agreed with InternetNZ that it is likely to be the same consumers each time who are not receiving the same service the STD prescribes. Spark suggested that the same consumers should be visible in Chorus' upgrade plans for the network.
34. Spark stated that the key questions are around link management, designing and planning: how to codify the link throughput measure rather than an average measure per customer?, and at what link capacity must Chorus act to manage the network effectively? There needs to be a move away from average throughput to ensuring that consumers get the fastest speed possible on the links available to them.
35. Spark provided a handout of their presentation to parties, detailing specific suggested amendments to be made to the STD.
36. Spark acknowledged that there are many issues around line speed variability. What it is interested in is being able to detail a minimum service level where customers can feel aggrieved if they are not receiving this level of service. Spark believes that this can be achieved through improved reporting from Chorus on the expected line speeds for customers. This will allow RSPs to indicate a service baseline, and provide certainty to customers that there will be a resolution if service quality falls below this level.
37. Chorus expressed concern that this could be a fundamental change to the STD and that it would be difficult to commit to such a measure due to the many variables

affecting line speed outside Chorus' control – such as premise equipment and RSPs parts of the network.

FPP considerations

38. Clarification was sought regarding parties' views on the relevance of FPP data in updating the UBA service description.
39. Chorus suggested that there is little value to be gained from using FPP modelling assumptions. The FPP process was an exercise to set a price using a hypothetical network set up under TSLRIC, it therefore does not reflect the actual network or the service description. Specific issues around the opex efficiency adjustment and the treatment of capital contributions make the FPP irrelevant and unhelpful for this process.
40. Vodafone agreed with Chorus that there should be no need to revisit the FPP process. The modelled hypothetical network had capacity augmentation costed into it so there should be no new obligations or incentives for Chorus to build capacity, as these have already been factored into the FPP price.
41. Spark acknowledged the difficulties in working with a hypothetical modelled network. However, Spark suggested that there should be consistency between the service performance standard set in the model, and the level which Chorus should be trending towards over time. Spark noted that the purpose of the STD is not to determine the rate at which Chorus must meet the performance standard over time, but it should align the incentives for this to occur.
42. 2Degrees noted that there may be relevant inputs from the FPP modelling that could be useful in updating the service description for the sake of consistency between price and non-price terms, while acknowledging the limitations of the hypothetical network set-up.
43. InternetNZ stated that it was an artificial construct to derive a price for the UBA service using TSLRIC without also defining the service at the same time. In InternetNZ's view the FPP model set a minimum service description of 450kbps increasing by 50% per annum, and it could see the advantages to carrying this aspect of the FPP through to the STD – the alternative would be resetting the service standards through the s 30R review and then re-visiting the FPP price.
44. Parties generally agreed that any guidance from the Commission to help clarify relevant FPP considerations would help them define the service and generate traction on discussion of technical aspects of transparency that could be discussed under the TCF.

10 GigE handover price

45. Commission staff noted that under the Act, the pricing principle to be applied to the UBA service is TSLRIC. Views were sought from parties on the method for determining a price for a 10 GigE handover if it is to be added to the price list through amending the STD.
46. Chorus agreed that the price is required to be determined using the TSLRIC pricing principle, as specified by the Act. However, the current price Chorus is charging for its commercial variant (about \$1400) is lower than the price indicated in the model so there should be no need to update the pricelist for a 10 GigE handover as the service is already being supplied at a lower price. The TSLRIC price was only determined in December 2015, it should not need to be revisited.
47. Vodafone questioned the difference between the UFB 10 GigE handover price and the current commercial price charged by Chorus. Chorus responded that the prices for UFB have been determined as a result of commercial negotiations for those contracts, and so the UFB prices are not cost-based.
48. Spark agreed that the 10 Gig E handover should be priced under the Act, but expressed concern that the focus of the TSLRIC process was not to determine the price for the 10 GigE handover, so the price in the current model have not been fully tested through the submission process. For this reason, looking at alternative pragmatic solutions, outside of TSLRIC, may have merit.
49. Spark also raised the issue that at present they are unable to purchase a 10 GigE handover at all sites where they want, resulting in multiple 1 GigE handovers being purchased. Chorus responded that this is likely to be only a handful of sites, and they look to provide 10 GigE handover on all sites generating enough traffic to warrant it. Chorus agreed that transparency of this would be helpful.

Transparency of Chorus' systems

50. Clarification was sought regarding the specific issues with the current UBA STD that could be resolved through increased transparency of Chorus' systems, and parties' views on these changes. Commission staff also asked for parties' views on the ability of a TCF working party to resolve these issues.
51. In general, parties supported the idea of using the TCF to hold discussions around the detailed technical changes required to the general terms and operational manual under clause 9. Spark noted that, from recollection, clause 9 was limited as it could only recommend changes to service level terms and the operations manual, when its' proposals required changes to the general terms and other schedules. Recommendations would be made to the Commission as a result of these discussions.

52. Spark's handout detailed specific technical changes that could be discussed in further detail at the TCF. These included issues surrounding: provisioning events, fault events, diagnostic tools and processes. Spark noted that while some of these issues could be considered through TCF and recommendations put to the Commission, other issues could only be considered by the Commission.
53. Chorus and Vodafone both expressed concern that while the technical aspects should be left to the TCF to discuss, due to the dynamics at play, there may be some aspects of these discussions that may not get traction. Vodafone suggested that the Commission should play a role in providing guidance to parties, for example on the relevance of the FPP, to better facilitate these discussions.
54. Trustpower noted that some of the issues raised by Spark appear to fall outside the ambit of the changes able to be proposed under clause 9, as they require changes to the General Terms, Service Description, or Price List. Accordingly, it requested that the Commission consider whether some of these issues be addressed by the working party before the conclusion of the s 30R review.
55. Commission staff encouraged parties to further comment on their concerns in cross-submissions, clarified that our views will be expressed in the draft determination, and that the main concern for Commission staff is the timeframe for the TCF to provide recommendations.

Clarification of clause 10 of the General Terms

56. Clarification was sought on parties' views on whether there is a need to update clause 10 of the STD to clarify the distinction between the regulated service and commercial variants, and the process for this.
57. Chorus' view was that no change to clause 10 is required, stating that the 'Boost' proposal showed that the purpose of clause 10, to test out a proposal, worked well and that a more complicated process would have taken longer. Chorus indicated that if there is no demand from RSPs for commercial variants, then it is less important to consider updating this clause.
58. Spark commented that the 'Boost' proposal created uncertainty around the regulated service, and identified gaps in the clause 10 process. Clause 10 only requires notification of a commercial variant, and it is not a complete process for testing the variant against the regulated service. Spark's proposed amendments are detailed in its presentation.
59. Spark also commented that the regulated UBA service would likely be the only bitstream service used by RSPs over copper, with the focus shifting to fibre. There is no room or need to develop commercial variants on this service.

60. InternetNZ and Trustpower agreed with Spark that if a 'Boost' type experience is to be avoided in future, it may be necessary to update clause 10.

Section 18 considerations

61. Commission staff noted that Spark had expressed some views on the consideration of section 18 in its presentation handout and asked parties to comment on their views on the consideration of section 18.
62. Spark suggested that the current STD is no longer promoting the efficient operation of the service for end-users. For the market to operate efficiently for consumers, the Commission should provide the right incentives for Chorus to operate and invest in the network.
63. Chorus noted that the FPP process involved a lot of discussion around section 18, and there is little value to be gained in reviving old debates. Chorus agreed with Spark that information is important to facilitate efficient and competitive markets, but suggested that information should be provided in a way which doesn't hinder competitive opportunities for RSPs.