

TELECOMMUNICATIONS USERS ASSOCIATION OF NEW ZEALAND

Cross-Submission to the Commerce Commission on the UBA Price Review

Service Price Review

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TUANZ

The Telecommunications Users Association of New Zealand is a membership-based, not-for-profit organisation that represents business users of telecommunications in New Zealand.

Established in 1986, we work to encourage investment in the New Zealand telecommunications market, better regulation to deliver increased competition and improved access for all New Zealanders.

We thank you for the opportunity to cross-submit on the matter of wholesale pricing for copper services. For the purposes of releasing to the public, none of this submission should be deemed commercial in confidence.

Executive Summary

TUANZ has reviewed the submissions made public by the Commerce Commission and would like to focus predominantly on Chorus's submission.

Most of the submissions, it must be said, in large part support the Commission's work but it is interesting to note those parties that do not, at least in TUANZ's view. Only two submissions appear to challenge the overall direction the Commission has taken – the submission by Chorus and a joint-submission from the three Local Fibre Companies (LFCs). Given these four companies are engaged in building the Ultra Fast Broadband network (UFB) the lines of division are clear – network operators and network retailers.

TUANZ sits in neither camp and is more concerned with the outcome of this determination from a user's perspective. We have read a draft of InternetNZ's cross-submission and broadly support its views – both on the role of the Commission and the need for effective differentiation between government's role as investor and policy maker and the Commission's role as independent regulator. There is no need for us to reiterate InternetNZ's work on s18 or the Commission's ability to deviate from the Act as we see it before us today. Suffice it to say we support those views.

1: Chorus's Submission

Chorus spends large chunks of its submission discussing the role of fibre and its position as majority builder of the UFB. Indeed, Chorus's opening statement discusses the ability of copper pricing in relation to its fibre build programme.

TUANZ would submit that this is irrelevant. The Commission cannot consider fibre pricing, uptake or deployment as part of its determination of copper wholesale pricing any more than it can consider mobile, electricity or the price of coffee at the café nearest to Chorus's head office. The Telecommunications Act is quite clear in Section 18 – the Commission is to:

“promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand”¹

There is no requirement for the Commission to look at either alternative services that currently do exist or those that will be developed over the next seven years.

As we stated in our own submission on this matter, the Commission must pay attention to the government's economic policies (section 19 of the Act) but that does not mean the Commission can bend the rules or ignore them with regard to s18 and its role in promoting competition.

In TUANZ's reading, both Chorus's submission and that of the LFCs centre around the belief that copper UBA wholesale is a direct competitor to fibre services, to be delivered under UFB.

The LFCs go so far as to say:

“It is likely that uptake of fibre will be deterred and investment in fibre will be put at risk, with the result that the investment by LFCs will become a ‘white elephant’”²

TUANZ believes this is erroneous, to put it mildly, and that whether or not fibre and copper services are competitive is a red herring – the Commission is required to look at copper wholesale pricing, with specific reference to a set of benchmarks. It is not required to look at whether copper pricing will have any impact on fibre pricing.

Assuming that the Commission should take into account UBA pricing's impact on fibre pricing, TUANZ submits that, first, UBA wholesale itself is no direct competitor to fibre and, secondly, that copper in general will cease to have any competitive capability in the longer term (post the introduction of full-scale deployment of UFB).

TUANZ believes Chorus is more concerned with its own internal financing arrangements than it is with a competitive telecommunications market and is conflating a successful Chorus with a successful market in general. While that is certainly true to the extent that Chorus is responsible for building 75% of the UFB, it does not follow that a happy and content Chorus will deliver a happy and content (read: competitive for the long-term benefit of end-users) customer.

¹ Telecommunications Act 2001 Section 18 (1)

² <http://www.comcom.govt.nz/assets/Telecommunications/STD---Standard-Term-Determinations/UBA/Enable-WLFC-UFL-submission-on-UBA-draft-determination-1-February-2013.PDF>

The Commission's role in all this is very simple. It cannot, and must not, take into account either Chorus's shareholders' income needs or whether or not Chorus plans to invest its money in an alternate network. Those facts are irrelevant to the question of wholesale UBA pricing.

This is not, as Chorus would have it, a "policy disconnect" but a vital part of the Commission's role. The Commission does not consider Vodafone's investment in LTE, FX Networks' investment in fibre, Telecom's investment in the Southern Cross Cable network either when considering UBA wholesale pricing, and nor should it consider Chorus's other investments.

2: UBA Wholesale services

Chorus's UBA service is not the only wholesale option open to the company and assuming that all wholesale customers are UBA customers is erroneous. Yet Chorus's public statements regarding a loss of \$180m in revenue should the draft Determination price be finalised assumes just that. TUANZ agrees with the CallPlus/Kordia submission on this point³ – the door is open for Chorus to migrate customers from regulated UBA services to non-regulated VDSL services and as such recover both the "lost" \$180m in revenue but also help "train" customers in preparation for the eventual move to fibre.

Chorus itself has acknowledged that in order to encourage migration from copper to fibre technologies, customers must be educated as to the benefits of fibre. One of those benefits, from a user point of view, is of course the increased speed of the connection, yet one of the primary concerns expressed by industry members to TUANZ is that customers will migrate to the base level fibre plan (30Mbit/s download, 10Mbit/s upload) and stay there. This base level plan has been described by a number of RSPs and others as being a "loss leader" product, designed to encourage migration but which will not provide RSPs with enough margin to be considered profitable.

TUANZ has submitted that VDSL services also fill that gap and that migration to fibre will be encouraged not diminished by enabling customers to have access to faster copper services while they wait for fibre to be deployed.

The UFB rollout is broken into two time periods – the first period sees "priority customers" connected as a priority. Schools, hospitals and business customers are deemed to be the priority and so until 2016, Chorus and the LFCs will focus predominantly on these connections.

After 2016 the bulk of the residential work will begin, which means most residential customers are still many years away from being able to buy a fibre connection even if they wanted to.

Kordia's submission makes it clear that a move to VDSL would, in its view, be a good way to educate customers about the benefits of faster connectivity and TUANZ agrees.

³ <http://www.comcom.govt.nz/assets/Telecommunications/STD---Standard-Term-Determinations/UBA/CallPlus-Kordia-submission-on-UBA-price-review-draft-determination-1-February-2013.PDF> paragraph 17

3: UBA versus UFB

Customer uptake of fibre around the world has been far lower than many would like. Typical uptake rates of 10-20% are not uncommon and that is, in large part, a result of poor communication of the benefits of fibre.

To date there has been little in the way of advertising or educational efforts from the LFCs and Chorus. There has been a lack of drive in this direction from central government and Crown Fibre and the customer awareness has been low, to put it mildly.

The Commerce Commission's own demand side driver study remains the only major piece of work looking at what will attract customers to the fibre network.⁴ Simply put, customers won't buy faster internet but they will buy video on demand (and if in doing so they have to buy a faster internet connection then so be it).

TUANZ would suggest that increased copper speeds would enable customers to find out for themselves what benefits fibre will bestow. An increase in video services (as outlined in the Commission's report) will provide customers with a taste of what they can expect from a fibre deployment but need not wait until fibre is rolled out. VDSL2 is more than capable of delivering the kinds of speeds needed to deploy quality video content while simultaneously providing Chorus with the alternative revenue stream it feels it needs.

Telekom Malaysia (TM) for example, has one of the world's best uptake rates for a fibre to the home rollout, yet roughly 40% of those deployments make use of VDSL. TM has deployed fibre to the basement of many multi-dwelling units and uses VDSL to deliver services from the basement to the apartments, making use of existing infrastructure.⁵

The UFB will start to reach a critical mass of residential premises late in the decade – plenty of time for RSPs to “train up” customers as to the benefits of fibre and for customers to make the decision to switch of their own accord after having a good experience on copper.

Once fibre is available customers who are already using faster copper services will make the leap for one simple reason – quality of service. Copper will be fine if each property has one user with one device, but in a world of multiple users, multiple devices and dozens of non-user devices connecting to the network, copper's abilities will soon be exceeded.

As Telecom says in its submission – “Changes in the UBA price will not alter the relative capabilities of copper and fibre services. All they will do is alter the pricing relativities between the two”⁶.

⁴ <http://www.comcom.govt.nz/high-speed-broadband-services-demand-side-study/>

⁵ TUANZ visited Malaysia courtesy of Huawei and met with Telekom Malaysia consultant Peter McCaulay. A similar discussion can be found here: <http://www.r2.co.nz/20120802/peter-m.htm> Chorus Connection special 2 August 2012

⁶ <http://www.comcom.govt.nz/assets/Telecommunications/STD---Standard-Term-Determinations/UBA/Telecom-submission-on-UBA-price-review-draft-determination-1-February-2013.PDF> pp2, par 12B.

4: Benchmarking

As the Commission has noted in its draft Determination⁷, it is required to benchmark against similar regulatory regimes from around the world, yet was only able to compare directly with two regimes.

In the past, the Commission would not consider such a benchmark⁸ as being useful⁹ but in this instance it is required by law to benchmark.

TUANZ has no easy answer to this, however both Telecom¹ and Vodafone¹ have suggested alternative approaches and we would support the Commission to follow their advice with regard to broadening out the benchmarking exercise.

In addition, we note Telecom's suggestion that we can "sanity check" the benchmarking exercise against New Zealand's own operators' experiences:

Further, as a final check, if the Commission remains concerned at the reliability of the estimate, actual cost data and cost models that apply to the New Zealand situation are available from operators to enable the Commission to cross check the results from the benchmarking.

There is no reason to doubt that the experience of RSPs who are also rolling out unbundled services could be used as a way of comparing/contrasting international pricing models with our own.

5: Certainty

The industry has been expecting the Commission to move to a cost-based model for quite some time. It was well signalled in 2010, it's been in law since 2011 and indeed, we've been expecting it since before Chorus was formed, following the de-merger with Telecom.

Chorus submits that it seeks only certainty so its investors are not "spooked" by sudden changes in terms of regulatory involvement. It talks of re-aligning the policy framework to "stabilise it" and a search for clarity in terms of policy.

The Act is quite clear and has not changed since before Chorus was incorporated. TUANZ suggests any move to change it now will not add to the level of certainty but rather introduce uncertainty. Given the government's involvement as both investor and policy maker, it is vital that the Commerce Commission be held at arm's length so as to ensure we have independent oversight.

TUANZ is concerned that Chorus is repeating the mistakes of the past that saw Telecom become the dominant force in telecommunications in New Zealand to the detriment of both competitors and users alike. If we are to have one monopoly provider of basic network services, and apparently we

⁷ <http://www.comcom.govt.nz/assets/Telecommunications/STD---Standard-Term-Determinations/UBA/Price-Adjustments/UBA-Price-Review-Draft-Determination-3-December-2012.pdf>

⁸ <http://www.comcom.govt.nz/assets/Telecommunications/STD---Standard-Term-Determinations/UBA/Telecom-submission-on-UBA-price-review-draft-determination-1-February-2013.PDF>

Analysis Mason report

⁹ <http://www.comcom.govt.nz/assets/Telecommunications/STD---Standard-Term-Determinations/UBA/Vodafone-submission-on-UBA-price-review-draft-determination-1-February-2013.PDF>

are able to do that under the terms of the Telco Act, then we simply must be assured of having a Commerce Commission that is able to regulate that monopoly provider.

TUANZ fought against the so-called “regulatory holiday” for that very reason and will continue to oppose any government that lessens or removes the role of the Commerce Commission. We have begun the journey to deliver a competitive retail provider market for the first time in New Zealand telecommunications history and TUANZ doesn’t want to see that thrown away in favour of one company’s return on investment.

6: Conclusion

TUANZ would like to thank the Commission for its work in this particularly difficult period. It is vital the Commission continues to follow the law as it stands today, despite pressure to diver from that task, and TUANZ is keen to make sure the Commission is allowed to do just that.

TUANZ will attend the proposed conference to discuss this further. If you have any questions regarding this submission, please do.

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