

24 May 2013

UBA Price Review Conference – Agenda

Introduction

1. On 3 December 2012 the Commission released its draft determination (draft determination) for the UBA price review.¹ Submissions on the draft determination were received from interested parties on 1 February 2013, and cross-submissions were received on 1 March 2013.²
2. On 6 March 2013 the Commission released a consultation letter seeking parties' views of the implications, for the UBA price review, of the Government's announcement that the statutory review of the policy framework for regulating telecommunications services in New Zealand (Government review) would begin immediately. Submissions on the consultation letter were received on 14 March 2013.³
3. The conference is the next step in the consultation process for preparation for the Commission's final determination on the UBA price review.

Venue and timing

4. The Conference will be held in Wellington at the Wellesley Hotel, on Wednesday 12 and Thursday 13 June 2013 from 9.30am.

The purpose of the Conference

5. The purpose of the conference is to enable the Commission to clarify and test matters that arose during the submissions process.
6. Even so, the Commission has set aside a period of 50 minutes for parties to make opening statements. These opening statements should be no longer than 10 minutes each and should summarise a party's position on the key issues raised, with a focus on those issues to be discussed at the conference; including any change in your views in light of the Government review and the UCLL final pricing principle. The Commission requests that parties advise Commission staff by **5pm on Monday 10 June 2013** if they wish to make an opening statement and provide an electronic copy of the statement and the name and position of the participant doing so.

¹ Commerce Commission, *Draft Determination on the Unbundled Bitstream Access Service Price Review*, 3 December 2012.

² Documents related to the UBA price review are available on the Commission's website at: <http://www.comcom.govt.nz/uba-benchmarking-review/>.

³ Ibid.

7. Parties may not raise new matters. We have read the submissions and cross-submissions. Discussion will be limited to those matters that have been raised in submissions and cross-submissions. However, we expect parties to be familiar with the views expressed in the UCLL re-benchmarking conference, in particular regarding s 18, relativity and price point selection.⁴
8. We will then address the topics as set out below.

Day 1: Wednesday 12 June 2013

- 9.30am – 10.30am **Introduction and opening statements:**
- Chair’s introductory statements (10 minutes)
 - Parties’ opening statements (50 minutes)
- 10.30am – 11.00am **Applying the UBA Initial Pricing Principle**
Forward-looking cost-based prices
- Relevance and comparability of forward-looking FDC models
 - Relevance of TSLRIC models prepared by the incumbent
 - Relevance of actual costs
- 11.00am – 11.20am Morning tea
- 11.20am – 12.00pm Comparable countries
- Determining which countries are comparable to New Zealand
 - Consideration of the appropriate criteria to be applied
 - Line density and trench length
 - Is the benchmark set comparable?
 - Correcting for any alleged differences in comparability
- 12.00pm – 1.00pm Lunch break
- 1.00pm – 2.00pm Comparable countries (continued)
- 1.45pm – 3.15pm Service characteristics
- Consideration of the handover point criterion
 - Selecting the appropriate speed price point
 - Fibre migration
- 3.15 – 3.35pm Afternoon tea
- 3.35 – 4.45pm Enhanced UBA
- Approach to benchmarking EUBA variants

⁴ A copy of the conference transcript is available at <http://www.comcom.govt.nz/re-benchmarking-prices-for-chorus-s-unbundled-copper-local-loop-service/>.

4.45 – 5.30pm Connection and transfer charges
▪ Approach to benchmarking core charges

5.30pm – 5.45pm **Summary of day one from the chair**

Day 2: Thursday 13 June 2013

9.30am – 9.45am **Review of day one and any outstanding issues**

9.45am – 11.00am **Section 18**
▪ Promotion of competition for the long-term benefit of end-users, s 18(1)
▪ Consideration of efficiencies, s 18(2)
▪ Consideration of the incentives to innovate, and risks faced, by investors in new telecommunications services, s 18(2A)

11.00am – 11.20am Morning tea

11.20am – 12.40pm **Section 18 (continued)**

12.40 – 1.30pm Lunch

1.30pm – 2.15pm **Relativity**
▪ Ladder of investment and unbundling

2.15pm – 3.00pm **Price point selection**
▪ Selecting a price point

3.00pm – 4.00pm **Closing remarks including comments from the Chair**

Approach to questions from the Commission

9. Each issue will be introduced by the Commission. Members of the Commission will question the parties.
10. The Commission may choose to initially direct some questions to experts, where those questions relate to topics that the Commission is seeking the expert's professional opinion on. These questions will be clearly signalled as being for expert opinion and all experts will be asked to comment sequentially on those questions, without reference to the parties. Parties will then be provided an opportunity to comment on the experts' opinions, once all experts have commented.
11. The parties may only ask questions of the Commission for the purpose of clarifying a question. No party will have the right to cross-examine the Commission or any other party during the proceedings.

Role of expert witnesses

12. The Commission expects that experts attending the conference appear as experts in their fields rather than as an advocate for any particular party. The Commission expects experts to follow the guidance provided in the Code of Conduct for expert witnesses contained in the High Court Rules. A copy of the Code of Conduct is attached (Attachment A). Experts are requested to complete and sign the attached certification that they are appearing as experts and agree to follow the guidance in the Code.
13. Please provide the details of experts that will be attending, their curriculum vitae and their signed certification that they are appearing as experts and agree to follow the guidance in the Code to Commission staff by **5pm on Monday 10 June 2013**.

Copies of any document produced must be provided

14. All parties are required to provide 20 public copies for attendees of **any** document produced during the Conference which clarifies their position on matters raised in their submissions and cross-submissions. For the avoidance of doubt these documents are not submissions. Following the Conference, an electronic version of these documents must also be produced (PDF format preferred) for publishing on the Commission's website.

Confidential information

15. The Commission's expectation is that no confidential material will be presented during the conference. Nonetheless, should parties wish to present confidential information at the conference, please inform Commission staff of your intention by **5pm Monday 10 June 2013**. The Commission will then decide on whether it is necessary to host a closed session or remain in an open forum but on the condition that parties take all necessary steps to protect the material.

Other administrative matters

16. A computer and data projector will be available for use by parties making statements. As is normal procedure, the conference will be recorded. A stenographer will also provide a transcript of the conference.
17. Copies of the transcript will be made available on the Commission's website.
18. Tea and coffee will be available for all participants. Lunch will not be provided.
19. Please provide the names and position of those people who will attend the conference on behalf of your organization.
20. Should you have any queries, please contact Matthew Clark on (04) 924 3742 or by email at Matthew.Clark@comcom.govt.nz.
21. The Commission looks forward to a productive set of conversations.

Attachment A: Code of Conduct for expert witnesses

High Court Rules

Schedule 4

Code of conduct for expert witnesses

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Duty to the court

- 1 An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.
- 2 An expert witness is not an advocate for the party who engages the witness.

Evidence of expert witness

- 3 In any evidence given by an expert witness, the expert witness must—
 - (a) acknowledge that the expert witness has read this code of conduct and agrees to comply with it:
 - (b) state the expert witness' qualifications as an expert:
 - (c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise:
 - (d) state the facts and assumptions on which the opinions of the expert witness are based:
 - (e) state the reasons for the opinions given by the expert witness:
 - (f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness:
 - (g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.
- 4 If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.
- 5 If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

Duty to confer

- 6 An expert witness must comply with any direction of the court to—
 - (a) confer with another expert witness:
 - (b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses:
 - (c) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.
- 7 In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.

Certification for Expert Witness

I, _____ of _____ have read the Code of Conduct for Expert Witnesses as contained in Schedule 4 of the High Court Rules, and agree to abide by that Code when providing opinion, advice or comment at the Commerce Commission's UBA price review conference.

Signed:

Date: