

Unbundled Bitstream Access (UBA)

Service Price Review

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FINAL VERSION

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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 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 long argued for certainty in regulation; increased investment and lower prices for users of broadband.

TUANZ submitted on the amendments to the Telecommunications Act introduced in 2010, arguing strongly against the so-called “regulatory forbearance period” and in favour of a level playing field for all investors, overseen by the Telecommunications Commissioner and the Commerce Commission.

Comments made by both the Minister of Communications and the Prime Minister would seem to undermine that independence in favour of the company charged with building most of the country’s Ultra Fast Broadband (UFB) network.¹

TUANZ is gravely concerned by the level of political interference in the Commerce Commission process. The Prime Minister won’t rule out changing the law to ensure the draft determination from the Commerce Commission doesn’t become a final ruling² and the Minister of Communications has also voiced her concerns over the draft determination.

The Commission is required to follow the law which clearly states the Commission to set a forward-looking cost-based price for UBA. The industry as a whole has known about this part of the Telecommunications Act, and has discussed it at some length, since it was enacted and it should come as no surprise to either government or industry participants.

TUANZ shares the Commission’s view that benchmarking against such a small group of comparable countries is problematic, but is entirely opposed to the idea that the Commission’s final determination be treated as some kind of recommendation to the government, rather than the legally binding determination that it is.

¹ <http://www.nbr.co.nz/opinion/key-reaffirms-govt-willing-overrule-commerce-commission-chorus-pricing>

² <http://www.stuff.co.nz/business/industries/8026123/Govt-might-overrule-broadband-pricing-advice>

The government is, of course, entitled to introduce a new Telecommunications Bill to parliament and to make changes to the way in which the law works, however under the current law, the Commerce Commission has little choice in the matter but to use a cost-based model as it has in the draft determination.

TUANZ believes that wholesale UBA services will diminish over the next few years being replaced initially by VDSL services and ultimately by fibre – however, it is vital we get the settings right for both retail service providers and network operators, for investors and users of the service.

Submission

The Telecommunications Act

The Telecommunications Act makes it quite clear in section 77 just what is required of the Commerce Commission in this instance.

Review of standard terms determination for unbundled bitstream access service before expiry of 1 year from separation day

- (1) The Commission must make reasonable efforts to do the following before the expiry of 1 year from separation day:
 - (a) review the standard terms determination for Chorus's unbundled bitstream access service under section 30R for the purpose of making any changes that may be necessary in order to implement the initial and final pricing principles applicable after the expiry of 3 years from separation day; and
 - (b) give public notice of the result of the review.
- (2) To avoid doubt, no variation of, addition to, or deletion of terms specified in the standard terms determination as a result of the Commission's review in accordance with subsection (1) may take effect before the expiry of 3 years from separation day.

The Act goes on to explicitly define the methodology which the Commerce Commission must use to reach this determination:

The price for the designated access service entitled Chorus's unbundled copper local loop network, plus benchmarking additional costs incurred in providing the unbundled Bitstream access service against prices in comparable countries that use a forward-looking cost-based pricing method ³

3

http://legislation.govt.nz/act/public/2001/0103/latest/DLM127744.html?search=sw_096be8ed8098619a_%22plus+benchmarking+additional+costs%22_25&p=1&sr=0

Schedule 1 goes on to require the Commission consider its pricing for UCLL (Unbundled Copper Local Loop) service when assessing the price for UBA:

The Commission must consider relativity between this service and Chorus's unbundled copper local loop network service (to the extent that terms and conditions have been determined for that service)⁴

The Commission released its final determination on LLU pricing on 3 December 2012.⁵

So the rules by which the Commission must work are clearly outlined – UBA must be determined on a forward-looking cost-based assessment, and benchmarking with similar regimes around the world must be taken into account. The starting point for pricing must be based on the price already determined for UCLL.

There is no room, in TUANZ's view, for the Commission to deviate from this model. Any changes to this model must be made at a political level rather than by the regulator.

Consequently, TUANZ supports the Commission's approach and its draft determination.

UBA price

TUANZ supports the Commission's conclusions on price, based as they are on both cost-based services and its benchmarking efforts with regard to similar jurisdictions overseas.

Unfortunately, as the Commission has pointed out, with only two countries to compare ourselves against, the result is less than ideal. TUANZ would support the Commission broadening its brief or potentially looking to model costs rather than compare, given the limited nature of the market. That will, however, require a change to the Act itself.

Copper versus fibre

Section 19 (A) of the Telco Act says:

In the exercise of its powers under Schedule 3, the Commission must have regard to any economic policies of the Government that are transmitted, in writing, to the Commission by the Minister.⁶

4

http://legislation.govt.nz/act/public/2001/0103/latest/DLM127744.html?search=sw_096be8ed8098619a_%22to+the+extent+that+terms+and%22_25&p=1&sr=0

⁵ <http://www.comcom.govt.nz/telecommunications-media-releases/detail/2012/commission-announces-small-reduction-in-wholesale-price-for-chorus-local-copper-lines>

6

http://legislation.govt.nz/act/public/2001/0103/latest/DLM125779.html?search=sw_096be8ed8098619a_%22regard+to+any+economic+policies+%22_25&p=1&sr=0

In this instance that must surely mean the Commission must consider the government's Ultra Fast Broadband (UFB) project. Much has been made of the need to migrate customers from the existing copper network over to the fibre-based network once it becomes available.

Chorus is the lead network partner on the UFB project, as well as being the owner of most of the country's copper lines, and so is placed in the interesting situation of having to earn its income predominantly from copper lines at the same time as it rolls out a replacement network.

Clearly this economic tension must lie at the heart of the government's concern over dramatic changes to the price for copper services. Chorus has stated that the Commission's draft determination would, if introduced into practice, lower its revenue by \$160m a year, equal to 40% of its earnings.⁷

TUANZ has to believe that Chorus must have known about the UBA review for as long as TUANZ has known and that any move to a cost-based model would result in the sort of drop in revenue seen here. Chorus investors must have been aware of the potential for this kind of move in a similar time frame.

Similarly, if TUANZ and Chorus both knew such a review was forthcoming, surely investors in other telcos would have known as well, and priced their investments accordingly.

TUANZ is very concerned that political interference at this point in the process will lead to yet more instability in the market as investors see long-signalled intentions cast aside at the last minute. TUANZ would like to see more investment in telecommunications in New Zealand and a robust regulatory regime is critical to that investment. Changing the rules when they become unpalatable simply isn't acceptable.

Additionally, TUANZ does not see the copper network competing with the fibre network beyond the transition period.

Currently speeds over the copper network are constrained by the nature of the technology involved. ADSL (the family of technology deployed on Chorus's network and which UBA uses) is "asymmetrical". That is, the upload speed is only a fraction of the download speed.

While home users generally don't upload that much content, although that is changing rapidly, business users do and require much faster upload speeds than are found on the ADSL services, such as UBA.

The UFB rollout is scheduled to continue for most of this decade and most New Zealand homes won't be able to be connected until 2016 at the earliest. Internationally, uptake rates of no more than 20% are the norm for fibre rollouts of this type and so for the foreseeable future New Zealand's broadband will be delivered predominantly over copper lines.

TUANZ fully expects to see new DSL services rolled out in the months ahead, especially VDSL-based services, which provide a much faster upload and download speed over short-run copper. Chorus's existing "fibre to the node" network means far more New Zealand households are within reach of a

⁷ <http://www.nbr.co.nz/article/chorus-says-annual-earnings-could-fall-160m-if-uba-draft-price-ruling-goes-ahead-bd-133381>

fibre-fed cabinet than ever before and TUANZ is confident New Zealanders will avail themselves of faster speeds when they become available.

Rather than stopping the migration to fibre, TUANZ believes faster copper services will help drive that demand.

Today a home user connected via ADSL will see relatively modest speeds – 12Mbit/s download and 1Mbit/s upload would not be uncommon.

For an individual user that is quite acceptable in today's broadband world, however as we connect more devices to our business and home broadband services, as more of us use broadband more frequently, that level of speed will rapidly become unacceptable. Ironically, connecting schools and businesses to the UFB first will help spur on families and employees who are used to fibre-like speeds at school or work and will want more at home.

In the next three to five years TUANZ expects most of Chorus's income will continue to be received from customers of its copper network, but the vast majority of those won't be UBA customers but rather VDSL customers. This interim migration – from basic broadband to faster speeds – must be considered as well as the migration from copper to fibre. Indeed, TUANZ believes the move to faster DSL services will encourage customers to take up fibre in much greater numbers when it finally does become available.

None of that will eventuate if the price of copper services in New Zealand is kept artificially high in order to satisfy the needs of one company's income stream – even a company as important to the future of telecommunications in New Zealand as Chorus.

Conclusion

The Commission has acted appropriately with its UBA determination process, following the law as it's written.

TUANZ is gravely concerned that political interference in this process will undermine the good work of the regulator and impact on future investment in the telecommunications market.

TUANZ is also concerned that putting the earnings of one company ahead of the reduction in price will see consumers (both business and home users) disadvantaged.

TUANZ does not believe the impact on Chorus's business model will be as severe as indicated in the press, as customers will predominantly move to faster copper speeds and so be migrating away from UBA in the short term. In the longer term they will, of course, be encouraged off copper and on to fibre anyway.

TUANZ thanks the Commission again for allowing us to comment on the draft determination. If the Commission does hold a conference to discuss these matters, TUANZ would like to be involved.