



UNBUNDLED BITSTREAM ACCESS SERVICE PRICE REVIEW- CROSS SUBMISSION

1 MARCH 2013

(There is no confidential version)

	TABLE OF CONTENTS
2	Executive Summary
5	Chorus unable to recover TSLRIC price due to UFB cap?
9	Benchmark all bitstream services not just the lowest service?
10	Account for lower line density?
13	Add three countries to benchmark set?
14	Price point selection
14	Price path to December 2014
14	Adjustment for TDL?
14	WTO GATS, etc
15	Relativity between UBA and Homelines

Executive Summary

Introduction

1 At Page 16 and 17 of its submission, Chorus lists each of the dollar incremental steps by which it submits that the UBA should be \$23.13 instead of the \$8.93. In this submission, we deal with the major dollar components in Chorus's price stack, namely:

- Claimed increase in UBA price by \$2.75 or \$5.26 : Chorus unable to recover TSLRIC price due to competitive cap caused by UFB pricing;
- Claimed increase by \$5.13: Benchmark weighted average of all bitstream services in Denmark and Sweden, not just the lowest speed service;
- Claimed increase by \$3.47 or \$5.55: Account for lower line density in NZ compared with Sweden and Denmark;
- Claimed increase by \$1: Add 3 countries to the benchmark set;
- Claimed increase by 78 cents: increase price to 75th percentile to apply s18.

2 We now summarise each of those claimed price increments, and then summarise other matters. The body of the submission follows the same order.

Chorus unable to recover TSLRIC price due to UFB competitive cap

- 3** Chorus and CEG say the price should be increased as UFB pricing will cap commercially recoverable pricing below the TSLRIC price. They say that an adjustment should be made to the Swedish and Danish benchmarks to accommodate NZ's unique issues.
- 4** This is deeply flawed, including at these three levels:
 - Major factual errors include the apparent assumption that Sweden is different as it has no significant fibre (the CEG approach can only be explained this way). Yet Sweden has among the most developed FTTP networks in the world. Denmark is similar with its extensive FTTP. They already have the very issues that NZ will face. So they appear to have strong similarities on the issue as to which CEG say NZ has unique issues. A second major error is that CEG confuse the life of UBA assets with the life of copper network assets. CEG treat the UBA assets as having a life of 20 years when, for example, the electronics have a life cycle closer to 3 years. In addition to flawed calculation of the price impacts, there is no need to front-end price increases when the UFB pricing will not exert significant downward pressure on pricing for up to 7 years.
 - The methodology is not available: the Commission- correctly - does not adjust benchmarks: the methodology instead is to filter countries down to similar countries. To do otherwise creates unjustified complications for simple benchmarking and it is prone to error (e.g. if there is an adjustment for one variable (here the effect of the UFB competitive cap) there must be adjustments for other variables (e.g. rural NZ paying higher rates even though it is not affected by UFB pricing downward pressure)).
 - Even if the proposed approach was available, the price uplift would not be justified. It is unlikely that there is a better benchmark than Sweden for the very issues that CEG raise, given Sweden's FTTP networks. A close runner up as a benchmark is Denmark, Far from adjusting the Swedish and Danish benchmarks to reflect NZ's "unique" circumstances, Sweden is the best benchmark and Denmark is close behind.
- 5** CEG advance arguments that are controversial, even assuming their facts are correct. Yet they do not outline other options and issues, as experts would be required to do under the Code for Expert Witnesses. There are similar issues with CEG's second report, dealt with below. They and other consultants should be required to elect to be experts (and sign up to the Code) or advocates before

submitting reports. Doing this for the conference (the current practice) is too late. In view of the fundamental issues raised as to the CEG reports, the reports generally (beyond the points we raise) should be discounted.

Benchmark weighted average not just the lowest speed service

- 6** CEG claim that the Commission's choice of just the lowest speed bitstream products in Denmark and Sweden is incorrect: a weighted average of all bitstream products should be used. This is, they say, because BUBA is a full speed product, but those benchmarked bitstream products are not (they increase in price as maximum speed increases).
- 7** CEG are incorrect, including because:
 - As the Commission has observed in its draft UBA decision when dealing with this issue, BUBA in fact is a constrained service on a different dimension as it only has guaranteed throughput of 32kbps;
 - It is clear from the example that CEG relies upon that they have wrongly failed to take into account the Chorus commercial UBA services, offering higher guaranteed throughput at higher price up to 150kbps (and they have not taken into account the commercial VDSL service). Plus they have not taken into account the regulated EUBA services. They treat NZ as having only one UBA service.
- 8** The Commission has correctly used the lowest speed services in Denmark and Sweden.

Account for lower line density in NZ compared with Sweden and Denmark

- 9** CEG argue that the line density is lower in NZ compared with Sweden, Denmark and other potential benchmark countries. Therefore the benchmark price from Sweden and Denmark should be reduced by \$3.47 or \$5.55 depending on whether a ratio or an econometric model is used to adjust for this.
- 10** As noted above, the Commission does not adjust benchmarks in this way, having filtered down to similar countries. Plus, if there are adjustments for one factor, then, as noted above, other adjustments must be considered, including adjustments caused by the effects of introducing the initial adjustment. Additionally, this departs from the intended simplicity of benchmarking.
- 11** The CEG report contains fundamental errors. For example, they assume that the line density and related cost drivers as to the copper network are directly explanatory as to the UBA incremental components. Therefore, their approach relies fully on modelling based on copper network proportions in both the NZ and benchmarked

networks (for example, this is the basis of their ratio modelling). Even assuming Chorus are correct in including, with the electronics, co-location, fibre backhaul and OSS/BSS, the copper network line density implications bear little relationship with the UBA incremental components.

- 12** There are multiple factual and methodological errors in the CEG analysis. Additionally the CEG arguments are novel and controversial, and the report does not benefit from a neutral analysis of factors for and against, as would be required of experts that sign the Code applicable to Experts.

Given that the DSLAMs nodes are dominated by urban cabinets (3,600 cabinets versus 600 urban and rural exchanges) there are intuitive indications that the CEG analysis is flawed.

Add countries to the benchmark set

- 13** Chorus want to add Switzerland and Greece even though their cost models have not been done by the regulator. There is no reason to depart from the Commission's long standing practice of not relying upon such models.

Increase price to 75th percentile to apply s18

- 14** This is not available, as we outlined in our first submission (we add also the GATS and other treaty issues noted below).

Other matters

- 15** The price must be set based on the projected price as at December 2014, and not, as is currently modelled, the current price as at December 2012, 2 years ahead of the implementation date. Consistent with bitstream price trends internationally, modelling the price on this basis will produce a lower price.

- 16** We have already submitted that s18 allows little or no price increase, and we will not add to this, save to respond that the Chorus submission in relation to s18 and 19 is not available due to New Zealand's GATS, NZAFTA and APEC obligations.

- 17** There can be no adjustment for the TDL.

- 18** There is double recovery in relation to Homeline and UBA.

- 19** We turn now to our detailed submissions.

Chorus unable to recover TSLRIC price due to UFB competitive cap

20 Chorus – relying on the CEG report, *Effect of fibre on copper bitstream prices* – submit¹ that the UBA price should be increased by \$2.75 (or \$5.26) as:

- UFB will effectively cap copper prices commercially recoverable by Chorus, so Chorus won't be able to recover TSLRIC prices;
- As copper customers migrate to fibre, unit costs for UBA will increase, thereby increasing appropriate TSLRIC pricing but the effective commercial cap on copper prices means that cannot be recovered; and
- The UBA price should be increased by \$2.75 (or \$5.26) to deal with those issues.

21 The difference between the \$2.75 and the \$5.26 is unclear from the Chorus submission:

22 The Chorus summary of the components making up the price stack resulting in \$23.13 includes \$5.26 for this ground, but the underlying evidence in the CEG report supports only \$2.75.

23 The CEG report is deeply flawed, as is Chorus's reliance upon it, at three levels:

- Major factual errors;
- The proposed approach is not available under the IPP;
- Even if it was available, the approach is fatally flawed.

24 We deal with each of the three points in turn.

Major factual errors

25 We touch on only two errors of a number, but the two errors are unmistakably obvious, and fundamental to CEG's argument.

26 CEG say that there need to be adjustments relative to the benchmarks to accommodate New Zealand's particular circumstances.

27 There are two benchmarks used by the Commission: Denmark and Sweden. As is well known, Sweden has among the most developed and ubiquitous fibre networks in the world. CEG should explain why there should be an adjustment, relative to the Swedish benchmark, when Sweden has been facing, for some time, and on a bigger scale, the very issues to which CEG refer.

28 CEG should also explain why, as they argue, there needs to be a specific NZ adjustment in relation to the Swedish benchmark when they argue that this is necessary to deal with the following problem:²

"...the Danish (and the Swedish model) assumes a constant utilisation over the life of the asset. Moreover, because these models use simple tilted annuity depreciation, they make no adjustment to current prices to reflect future price constraints imposed by competing fibre networks"

¹ Para 108-115 Chorus submission

² Para 79 CEG report

29 The benchmark, Sweden, actually has ubiquitous fibre networks already, and yet – by choosing a constant utilisation over the network as CEG note- Sweden has specifically chosen not to adjust the bitstream price to implement the points argued by CEG.

30 Therefore, CEG also needs to explain this submission they make (when in fact Sweden probably is the best benchmark as to CEG’s argument):³

“...in a policy environment in which there are external forces that will see accelerated migration from copper to fibre, the forward-looking benchmarks used by the Commission may need to be adjusted to reflect the accelerated depreciation. This is precisely the environment in New Zealand.”

31 Chorus should also explain, in light of the above, how it can be said, given Sweden’s close similarity on the point, that:⁴

“Prices in the benchmark jurisdictions were not set with New Zealand’s special circumstances in mind, so the Swedish and Danish cost models do not use the UFB pricing constraint adjustment recommended in CEG’s report. It follows that use of unadjusted European benchmark values will result in a downwards biased UBA price that underestimates the cost of providing the UBA service in New Zealand”

32 Turning to the second major error, CEG confuse the life of the copper network with the life of the UBA assets. UBA assets do not include the copper network as the UBA price is based on the UBA increment above UCLL. A substantial proportion of UBA assets are electronics with a life more in the order of 3 years than 20 years. Yet CEG treat all the UBA assets as having a 20 year life.⁵

33 Additionally, the fact that a substantial proportion of the UBA assets have a life in the order of 3 years indicates that Chorus will readily be able to recover cost over a short period of time: there is no need to adjust price for this.

34 Based on such factual errors, the argument is fatally flawed.

The proposed approach is not available under the IPP

35 The IPP requires benchmarking. The Commission’s approach is that it does not adjust country benchmarks. The filtering of benchmarks to sufficiently comparable countries is the method that is used to get comparability without having to adjust for other factors.

36 A key reason for this approach is that:

- what should be a simpler exercise before FPP, becomes unduly complex (see for example Para 228 of the MTAS STD); and
- as the Commission has noted, adding in one factor (here, the fibre network effect) requires consideration of what other factors should be considered, including as the other effects of that factor. A simple example here is that CEG ignore the impact as to consumers outside the UFB footprint. How is that to be factored into their modelling? There are plenty of other examples.

³ At Para 8 of their report.

⁴ Para 111 Chorus submission

⁵ See Footnote 14 (confirming the same treatment for all UBA assets) and Paras 83 and 91 in CEG’s report.

- 37** Therefore, the Commission follows a model by which similar countries are derived by a filtering process to get what the UCLL price review decision refers to as peer group benchmarking. As to UCLL, there were no countries in the peer group, and so the Commission had to look elsewhere. It considered and rejected raw benchmarking (that is, raw in the sense of removing filters). It elected a combination of econometric and indexed modelling. Notably, this happened as peer group modelling was not available. It is available here. Notably also, the econometric modelling done in the first and second CEG reports is entirely different from the UCLL price review econometric modelling. In particular, the recent econometric modelling moves away from the benchmarking approach to unacceptable areas of detail.
- 38** Ironically, Sweden, with its fibre network, of all countries is probably the best benchmark from the perspective of the argument that CEG makes. (Denmark, with its increasing FTTP, is a close runner up as a benchmark). Yet CEG argues that it is not at all a benchmark for those purposes: to the contrary there needs to be a substantial adjustment, says CEG, due to what it says are differences, when in fact there is probably more in common between NZ and Sweden on this point relative to other countries. That approach is flawed and unsustainable. It also involves elements of double counting, given Sweden and Denmark are already facing these issues.
- 39** In addition to adjusting benchmarks, contrary to long standing Commission practice, CEG moves toward more complex TSLRIC modelling to derive its conclusions. That is well outside what the Commission permits on IPP. Benchmarking should be simpler.

Even if proposed approach was available, approach is fatally flawed.

- 40** Starting where we have just left off, the TSLRIC calculations reach new heights in drawing a decidedly long bow. Deriving a purported optimised replacement cost (ORC) by reverse engineering back from the Commission's draft price of \$8.93, and from other factors, is too tenuous. The same concern can be expressed about the other calculations.
- 41** The calculation underpinning the assessment of what the UBA price should be in view of the "competitive cap" (the UFB price/product cap that would commercially restrain UBA prices) relies upon inputs that can't even be guessed at, at this stage (and anyway certainly would require more work than appears in the CEG report). There are multiple moving parts in the mix between copper and fibre price/product combinations, and how that plays out in a few years' time can only be guessed at.
- 42** CEG also ignore the reality that there will be no downward pressure on UBA prices from fibre for several years. (Perhaps that has been overlooked in view of their error on the life cycle of the assets). For those several years, the very data that CEG relies upon shows largely static UBA customer numbers in each year, and contradicts its position.⁶ The drop between now and 2020 is only in the order of 15% of customers (around 1 M customer down to 844K in 2020). That drop of customers would not

⁶ They rely upon Table 5-1 in their report, and they use, as they say at Para 84, straight-line interpolation between dates. That has the number of lines largely static until 2015 declining thereafter at 30K per annum (starting at 1M customers in 2015) until 2020 (ending at 844K)

materially increase unity costs (and in any event, there are forecasts also that indicate the UBA services will increase not decrease over this period).

- 43 Additionally, the major residential roll out of UFB is in the period 3 to 7 years away, so the network will not exert significant competitive pressure for some years.
- 44 Uplifting the price on this basis cannot be justified and certainly not on the inadequate information relied upon by CEG.
- 45 There are also the factual errors, two of which are noted above.

Code of conduct for expert witnesses

- 46 We consider that the CEG report contains major errors of fact and methodology. Additionally, CEG's argument is clearly novel and controversial. The Commission generally asks experts to acknowledge the High Court code of conduct for expert witnesses applies to them at conferences. The issues raised above – and those that we raise as to CEG's other report – indicate that those giving external reports should elect to be experts or advocates, at the time those reports are provided. Getting that confirmation for the conference is not sufficient as such confirmation does not apply retrospectively (and the expert may not appear anyway). The Commission can proceed with reports such as CEG's without the benefit of the consultant explaining – as it would be required to do under the code, the position in a more balanced manner, explaining also the difficulties with the view put forward.
- 47 Advisers such as CEG can elect to be advocates or to be experts. In the latter case, they sign up to the code. In the former, they are treated as advocates with less weight placed on the report.

Reduced weight given to report

- 48 Of importance is that, where a report is demonstrated to be flawed in one area, that reduces the weight to be given by the Commission to the other aspects of the report. We have not fully vetted the CEG modelling but in view of the fundamental concerns noted above, and in relation to CEG's second report, it is submitted that the reports should be fully or largely discounted and not relied upon.

Benchmark all bitstream services, not just the lowest speed service

- 49 Chorus claim that the UBA price should increase by a further \$5.13 because the Commission has used only the lowest speed services in each of Denmark and Sweden, when a weighted average of all the Danish and Swedish services should have been used. Using the latter produces an additional \$5.13, according to CEG.
- 50 CEG's views are incorrect. In particular, CEG have not shown why the Commission has not correctly identified that only the lowest speed services in those two benchmark countries should be used. The Commission correctly states in the draft decision:⁷

⁷ Para 89 draft UBA price review decision

“The price for the Basic UBA service represents the cost of providing the service with a 32kbps minimum throughput which puts it at the low end when compared to other services overseas. The price point for the slowest speed should therefore be selected in the benchmarked countries.”

51 The rest of this submission deals with CEG’s second and longer report, *Wholesale Broadband Cost Drivers*.

52 CEG’s error is apparent from the example it uses at Paras 176-179. The example that CEG uses is:

176. Assume that ‘Country B’ has a network that has exactly the same dimensions and characteristics as Chorus’ in New Zealand. Assume also that each country has 50 UBA subscribers. However, there are different services offered in each location:

- in New Zealand, there is only a basic UBA service; whereas
- in Country B, there is a basic service for \$10/month and an enhanced service for \$20/month [each set at cost].

53 Arising out of this example CEG conclude:

178. If New Zealand uses benchmarking to set the price for its basic UBA service, and selects the price of the basic service observed in Country B (i.e., \$10/month), this risks underestimating the cost of providing the service. Even though New Zealand is only offering a basic service, it will still be incurring some of the common costs that are being allocated to high speed services in Country B. A \$10/month price will prevent those costs from being recovered.

179. In precisely the same way, if the Commission selects the prices for the slowest services as its benchmarks, then Chorus would not be able to recover all of the common costs that it incurs providing the regulated service in New Zealand. Clearly, that would be inappropriate.

54 The fundamental error by CEG in this example is that there is not just one UBA service in New Zealand: there are multiple services. CEG in the example, and in its approach, overlook the regulated EUBA services which contribute to revenues for Chorus (each with higher price points). Contrary to the example, there is more than one UBA service and there are different price points for those services.

55 CEG also fail to deal with the fact that there are commercial UBA services on top of regulated services, all of which contribute to the Chorus revenues, again each with higher price points.

56 All UBA services have, in theory, uncapped maximum speeds. But that is not the only dimension upon which QoS for UBA services are differentiated. The minimum throughput of the regulated service is another dimension of QoS. That is a particularly poor feature of the regulated UBA service. That was confirmed by the Commission in its draft report when it was noted that regulated UBA (BUBA) as “a 32kbps minimum throughput which puts it at the low end when compared to other services overseas”

57 Chorus sells commercial services with higher minimum throughput than 32kbps for higher prices (although commercially it is said that 32kbps is dimensioned at a minimum of 45kbps). Those services include commercial variants at higher prices at 75kbps, 100kbps, 124kbps and 150kbps. Plus there is the commercial variant of VDSL-based UBA.

58 It is therefore appropriate to use, as the Commission has done, the lowest-end service in Denmark and Sweden as the benchmark; it would be incorrect to use the

other pricing. The lowest Danish and Swedish QoS product is the benchmark for BUBA (even though the dimension for it being the lowest is different). However, having noted that, they are in fact the same dimension: the committed speed of BUBA in fact is 32kbps and not several Mb/s.

59 In any event there appears to be a problem with the dataset used by CEG at its Table 6-1. The speeds clearly include fibre (FTTP) and/or VDSL as speeds are well beyond ADSL2+. In any event, the Swedish speeds appear to be beyond VDSL (maximum speeds of 52 Mb/s) implying that fibre may be in the dataset, further compromising the relevance of the approach. Also, even inclusion of VDSL speeds for this non-VDSL BUBA service is incorrect.

Account for lower line density in NZ compared with Sweden and Denmark

60 CEG argue that the line density is lower in NZ compared with Sweden, Denmark and other potential benchmark countries. Therefore the benchmark price from Sweden and Denmark should be reduced by \$3.47 or \$5.55 depending on whether a ratio or an econometric model is used to adjust for this.

61 As noted above, the Commission does not adjust benchmarks in this way, having filtered down to similar countries. Plus, if there are adjustments for one factor, then, as noted above, other adjustments must be considered, including adjustments caused by the effects of introducing the initial adjustment. Additionally, this departs from the intended simplicity of benchmarking.

62 The CEG report contains fundamental errors. For example, they assume that the line density and related cost drivers as to the copper network are directly explanatory as to the UBA incremental components. Even assuming Chorus are correct in including, with the electronics, the co-location, fibre backhaul and OSS/BSS, the copper network line density implications bear little relationship with the UBA line density implications.

63 However, there are multiple factual and methodological errors in the CEG analysis. Additionally the CEG arguments are novel and controversial, and the report does not benefit from a neutral analysis of factors for and against, as would be required of experts that sign the Code applicable to Experts. Here we just give examples. In many parts the CEG report is impenetrably hard to follow, often due to the large number of steps and decidedly tenuous assumptions made. (That also raises the reality that this analysis is well beyond the relatively simple task of benchmarking).

64 UBA does not have line density implications that mirror copper network line density concerns

65 There is an overriding factual error affecting the whole analysis. CEG assumes that it can model UBA line density implications on the line density implications for the copper network. They use data on the copper network elements (or include the copper network elements) from the Danish and Swedish cost models to deduce the position as to bitstream. For example, CEG say:⁸

“We have focused our analysis of the effect of spatial density factors on the core network module of the cost models, which represents the bulk of the bitstream incremental costs. The core network cost models contain the ‘active network infrastructure’ that the Commission believes will not be substantially affected by spatial density factors. We believe that it is reasonable to assume that the access network part of the bitstream cost increment will be at least as sensitive to spatial density factors as the core network part”

66 So CEG use data dominated by the copper network to deduce UBA line density implications. In doing so, they also rely on the Commission’s approach of determining the SLU price as a proportion of the UCLL price.

67 Even assuming that the UBA incremental components go beyond the electronics, as Chorus submit, that is wrong. The copper network components are entirely different from the UBA components, that is, as CEG appear to overlook, the incremental UBA components beyond copper. The copper network issues bear little relationship with the UBA incremental components (said by Chorus to include co-location in cabinets fibre backhaul from the cabinets and the exchanges to the first data switch point, and OSS/BSS). In this submission when we refer to the UBA components we are, as the Commission must do, excluding the copper components (UCLL).

68 The copper components on which CEG rely to draw conclusions as to the UBA components involve entirely different cost drivers, especially trenching, the price of copper, labour etc. That has nothing to do with electronics, fibre backhaul, co-location or OSS/BSS. The line density issues as to copper have no explanatory power as to the UBA components. True it is that line density in, say, rural areas, is a cost driver, as is the higher cost (servicing electronics, longer backhaul) in rural areas. But there is little overlap between the copper and UBA cost drivers.

69 Therefore the approach is not correct.

70 There is further concern as to the detail around this. For example, given the limited information from Sweden and Denmark, CEG has had to make multiple questionable assumptions. For example, as to Denmark, CEG ignore the reality that Denmark has extensive cabinetisation: their report refers to nodes in the early hundreds of customers and the multiple thousands of customers to, without more, draw

⁸ Para 85 CEG second longer report

conclusions as to line densities, when the nodes are not broken down into exchanges and cabinets. Additionally, it cannot be assumed that cabinetisation follows the same footprint as in NZ. This is guesswork.

71 The modelling used as to New Zealand is also unclear. For example, have only lines that are DSL-capable been used, especially in rural areas where many lines are not DSL capable? Or have all lines (DSL-capable or not) been used?

72 Intuitively (followed CEG's own approach), the analysis appears to be incorrect:

- There are around 3,600 cabinets in NZ and around 600 exchanges. Cabinet nodes overwhelmingly dominate;
- Contrary to CEG's report, there are few if any cabinets in rural footprints;
- By definition, the cabinets serve urban lines. Apart from issues around urban population density (e.g. Auckland CBD and its apartments as against the most common NZ suburban layout (large city and small town)), it is difficult to see why line density (and also customer take up) differs materially between large and small towns in the cabinetised footprint. Yet the CEG report implies that this is so);
- Rural exchanges will typically be based in locations surrounded by multiple potential points that can use DSL services (i.e. they are typically in areas of population concentration). It is accepted that the cost drivers will be higher in those rural exchanges but nothing like on the scale implied by CEG;
- The nodes where DSLAMs are located are overwhelmingly in cabinets and they are all located in urban areas with a predominantly homogenous suburban footprint. 3,600 nodes as against the rural proportion of the 600 exchanges indicate that the rural exchanges do not exert material net upward pressure on cost.

73 Those intuitions are contrary to the arguments by CEG. Notably too, the geographically dispersed Swedish population produces an uplift, on CEG's modelling, of only 14% (an immaterial variation in the context of benchmarking and in fact pointing to an error in the CEG approach given the geographic overlaps between NZ and Sweden).

Increase the benchmark set by adding three countries

74 This item in Chorus's submission would increase the price by \$1.

75 Chorus want to add Greece and Switzerland despite the fact they do not comply with the Commission's long standing approach of excluding cost models that have not been prepared by the regulator (see e.g. Para 268 of the MTAS STD).⁹ Chorus says that:

- Greece should be added as the regulator was involved in "checking" the model; and
- Switzerland should be used as industry participants haven't sought review of the price "indicating the price is fair".¹⁰

76 As to Greece there is no information as to the level of "checking" and detailed review of the model, and the extent of changes to the model in the light of that, etc; that is not enough to depart from the established and correct practice of relying only on regulator's modelling.

77 As to Switzerland, there are many reasons why parties do not seek review of pricing based on modelling other than by the regulator. Therefore it is unsafe to rely on such a benchmark. A New Zealand example is the terms applicable to PSTN interconnection. These arise from commercial resolution of multiple disputes between Telecom and TelstraClear. Due to commercial trade-offs between the parties, it does not follow that any particular agreed term reflects the underlying regulatory position (e.g. bill and keep for Intra-LICA calls was in the draft determination but its commercial agreement does not confirm the regulatory position). The same can apply to seemingly more linear situations such as the review of a single price point: behind the scenes, there can be many reasons for a decision not to seek review including internal issues within a stakeholder, and issues and agreements between the stakeholders, possibly including agreements on lateral issues. The ability to review does not mean the price is necessarily "fair".

Claimed increase: 78 cents: increase price to 75th percentile to apply s18.

78 Chorus claims the price should increase by 78cents via a 75th percentile uplift.

79 As submitted in our first submission, an uplift outside cost-driven factors is not permissible. Section 18 cannot apply to allow this. See also our submission on GATS below.

Other matters:

Cost and price path as at December 2014

80 Nowhere is it mentioned that the benchmarking is to achieve a price in December 2014 (or November 2015 if the date changes). With generally declining price paths internationally for bitstream, the analysis needs to be done to estimate the price point at the later date, and not a contemporaneous date.

⁹ Para 42-47 Chorus submission

¹⁰ Para 45.1 Chorus submission

Adjustment for TDL

81 Consistently with the practice of the Commission to not adjust benchmarks – for the reasons noted above, the price should not be adjusted on this ground. If that gives unsatisfactory outcomes, Chorus can apply for FPP.

Commission to apply GATS, APEC and AANZFTA in interpreting Sections 18 and 19

82 Chorus submit that s 18 and 19 should be interpreted so as to allow departure from cost-based pricing. A standard principle of statutory interpretation is that statutes are to be interpreted where possible to give effect to international treaty obligations.

83 We submit, supplementing our earlier submissions on interpretation of s 18 and 19, that s 18 and 19 must be interpreted so that the UBA price cannot be adjusted away from cost, based on implementation of GATS, APEC and AANZFTA treaties.

84 For example, New Zealand, under the WTO General Agreement on Trade in Services (GATS), has made commitments to the GATS Annex on Telecommunications and the GATS Reference Paper. (AANZFTA also closely follows and in some cases builds upon the principles in the Reference Paper).

85 Para 2.2 of the Reference Paper¹¹ requires access to supply bitstream at rates based solely on cost). Therefore, s18 and 19 should be interpreted consistently with that treaty requirement.

86 Para 1 requires specific safeguards against anti-competitive practices. These obligations extend beyond domestic anti-trust legislation.¹² They include, for example, “engaging in anti-competitive cross-subsidisation”.

87 By enabling monopoly rents (the inevitable outcome of pricing UBA above cost), there would be anti-competitive cross-subsidisation (the more so as Chorus has UFB as another product in the market). Sections 18 and 19 should be interpreted to avoid that outcome.

88 Para 5 of the Annex on Telecommunications requires access providers to provide access on reasonable and non-discriminatory terms. Sections 18 and 19 should be interpreted according to this obligation too.

Relativity is between 'UBA AND Homelines' with a risk of double recovery

89 Chorus raise an issue (page 64) with respect to the “with POTS” and “without POTS” distinction disappearing. CallPlus & Kordia would like to make two points with respect to this: -

- This reinforces the inextricable link between Voice services and broadband services. When considering the relativity between UFB & UBA one has to factor in voice services as they are bundled in the majority of cases. UFB is a service that

¹¹ See the TelMex-USA Panel decision

¹² As the TelMex decision confirms.

provides both voice and broadband capability, therefore when considering the price relativity to UFB one has to consider the price relative to what RSP's pay for a 'homeline plus UBA' (the dominant underlying wholesale service used by RSP's to deliver the bundle). The cost is in between \$57 to \$63 depending on region, considerably higher than UFB at \$37.50.

- It is unclear what happens to the price of Homelines when UBA moves to cost based pricing and includes the cost of copper. The current Homeline pricing at \$41 clearly includes the cost of copper however this is not a regulated service and it is not provided by Chorus but by Telecom. It is unclear to CallPlus & Kordia if Telecom is required to reduce the cost of the Homeline and Business Line services when cost based UBA takes effect. If Telecom does not reduce their price by the full copper cost there will effectively be a double recovery of the copper price – however it will not be a double recovery by Chorus as they only provide the UBA component.

If you have any questions on this submission please direct to:

Graham Walmsley

General Manager - Wholesale & Regulatory

CallPlus

Graham.Walmsley@callplus.co.nz

Susie Stone

Chief Product officer

Kordia New Zealand

Susie.stone@kordia.co.nz

ENDS