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14 March 2013

Dear Stephen

Thank you for the opportunity to comment on the implications, on the current UBA price review timetable, of the Government's recent announcement that statutory review of the policy framework for regulating telecommunications services (**Ministerial Review**) was being brought forward with the intention to implement any legislative changes by the end of 2013.

It was always intended that the TSO review would commence in 2013 and the wider Ministerial Review is now being included into this. Chorus is committed to leading the industry transition to fibre and supports a constructive focus on a more coherent policy framework for everyone.

It is open to (and pragmatic for) the Commission to pause the current UBA price review while the Ministerial Review is completed. The Commission and industry resources are not unlimited and costs are real. We are all better focused on the future during 2013, noting the change in environment and that any changed prices would not ultimately apply until the end of 2014 or later. However, we think it would be sensible for the Commission to inform itself of the scope, approach and time frames of the Ministerial Review in making its decision.

Pragmatic decision

The Minister of Communications and Information Technology has also signaled that the approach taken in the UBA draft determination of 3 December 2012 (**UBA Draft Determination**) was not anticipated when the Telecommunications Act was amended in 2011. The Commission's own UBA Draft Determination has signaled difficulties with benchmarking (and the ACCC's draft bitstream prices released this week highlight how vastly out of line the UBA Draft Determination is with our closest neighbour). It would, therefore, seem a pragmatic approach to pause the UBA price review to at least seek clarification of current statutory framework through the Ministerial Review process.

It would be a positive signal to financial markets that vast swings and issues about coherency in the framework are being carefully considered, rather than continuing what is perceived as tension in policy outcomes and framework disconnects. Financial markets seem to have an expectation that the UBA process will be paused.¹ We note that any signal from a parallel Commission process could also be interpreted negatively by ratings agencies, such as Moody's Investors Service and

¹ "We expect the ComCom to delay further consideration of UBA pending greater clarity on the regulatory framework to apply." Deutsche Bank, 8 February 2013. "While the government reviews are ongoing, the UBA price review will most likely be deferred, with the scheduled implementation date pushed back to November 2015." Macquarie, 8 February 2013.

Standard and Poor's, which would create further adverse impact on Chorus. Moody's already placed Chorus' ratings on review for possible downgrade immediately following the Commission's UBA Draft Determination in December. The market reaction to the UCLL draft determination in May 2012 and UBA Draft Determination in December 2012 was also significant, even though the final UCLL price changed and the UBA price was never implemented.

The Commission can pause under the Act

We appreciate the Commission may have questions as to whether it can pause the current process. However, when considering whether the Commission has met its obligation to make "reasonable efforts" in carrying out its statutory task, this needs to be assessed over time and in the context of the wider environment. To read section 77 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 as not permitting the Commission to pause a review process in light of significant circumstances that may affect the outcome would lead to absurd results.

Accordingly, in light of the Government's statements and the Ministerial Review, we consider that it is reasonable for the Commission to pause the UBA price review until the end of 2013. By the end of 2013, either the legislation will have been changed allowing the Commission to extend the pause, or the Commission can restart the UBA price review and determine a cost-based UBA price in time for the 1 December 2014 implementation date. The Commission can take the Ministerial Review, and the proposed legislative change, into account when determining what is meant by "reasonable efforts" under section 77 and determining a reasonable timeframe for completing the UBA price review.

While it is possible that the UBA FPP process may not be completed before 1 December 2014, if the legislation was not amended, it is not unusual for the Commission to have implemented an IPP price while an FPP process is being completed. When assessing what would constitute "reasonable efforts" under the legislation, we believe that this consideration would not outweigh the reasons for pausing the process discussed above.

However, should the Commission decide to continue with the UBA price review, despite the Ministerial Review, we will continue to participate fully in that process. We would request that the Commission take a reasonable approach to timelines in light of what everyone will wish to participate in during this year. This will require further consideration.

Yours faithfully



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