



1 July 2016

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TRUSTPOWER CROSS-SUBMISSION: SECTION 30R REVIEW OF THE UBA STANDARD TERMS DETERMINATION

1 Introduction

- 1.1.1 Trustpower Limited (Trustpower) welcomes the opportunity to provide a cross-submission to the Commerce Commission (the Commission) on its *Section 30R review of the UBA Standard Terms Determination* (the review).
- 1.1.2 Our cross-submission follows the workshop organised by the Commission on 15 June 2016. We would like to thank the Commission for organising this workshop. It prompted some interesting discussion, and we found it valuable in informing our cross-submission.
- 1.1.3 We appreciate the amount of work Spark has put in to identifying options for improving the transparency of Chorus' systems. We support all of the suggestions made by Spark, and look forward to improvements in this area as a result of the working party, and possibly this review.

2 Overview of our submission

- 2.1.1 Our submission on this review comprises three main sections.
 - a) The Regulated UBA Service – We explain the changes to the UBA Standard Terms Determination (the UBA STD) that we believe are necessary to ensure the regulated UBA service remains fit for purpose.
 - b) Changes to Clause 10 – New UBA Variants – We explain our view that Clause 10 of the General Terms of the UBA STD should be amended to provide a process for approving, amending, or withdrawing new UBA variants. This would prevent Chorus from unilaterally providing a UBA variant with the effect of replacing or undermining the regulated service.

- c) Transparency – We explain why we support the changes suggested by Spark to improve the transparency of Chorus’ systems, and we explain why we believe that some of these changes should be made as part of this review. This section also details some of the work that the EA has done to improve transparency in the electricity sector, and suggests that the Commission consider establishing a similar repository of information for the telecommunications sector.

3 The Regulated UBA Service

- 3.1.1 In order to ensure that the regulated service remains fit for purpose, we ask the Commission to clarify that the regulated service should evolve over time to meet the needs of end users, and clarify that VDSL forms part of the regulated service. We discuss these below.

3.2 Clarify that the regulated UBA service should evolve over time

- 3.2.1 The main topic of discussion at the workshop was around how the UBA STD should ensure that the regulated UBA service evolves over time. We submitted that the international best practice and good faith requirements already require that the service evolve to meet the needs of end users. We maintain this view.
- 3.2.2 At the workshop, the Commission referenced the original UBA decision (Decision 611) when discussing options for ensuring that the UBA service is fit for purpose. Of note are paragraphs 58-59, and 71 (emphasis added):¹

58. In the draft UBA STD the Commission proposed a single internet-grade FS/FS Basic UBA service, **suitable for general internet use**, with no priority for real-time services, and no upstream or downstream line speed specified (in contrast to the former UBS service description).

59. The Commission was of the view that a single internet-grade FS/FS Basic UBA service would best give effect to s 18, and that continuing to limit the upstream line speed of the Basic UBA service to 128 kbps would be unlikely to **meet the changing needs of residential and SME broadband end-users** where there is increasing use of symmetric web based applications such as social networking websites, video content, and increasing file sizes in general for residential and SME end-users.

71. The Commission understands that **worldwide, there is a trend towards focussing on services for end-users that a broadband connection can support, rather than the specifications of the broadband service itself**. Defining a single Basic UBA service is consistent with this approach, and is relevant to the services that it may support, rather than the line speed of the service.

- 3.2.3 We agree with the Commission that there is value in focusing on the services that the UBA broadband connection can support, rather than setting prescriptive specifications that will not likely be flexible enough to reflect end users changing needs.
- 3.2.4 We believe that the notion that the regulated UBA service should be suitable for general internet use, and able to meet the changing needs of end-users, can be informed by Principle 2 of Clause 5 of Schedule 1 of the Telecommunications Act 2001, which provides that “the service must be supplied to a standard that is consistent with international best practice”. That is, we believe that New Zealand end users should have access to the same services that overseas broadband networks support.

¹ Commerce Commission, “Standard Terms Determination for the designated service Telecom’s unbundled bitstream access – Decision 611”, 12 December 2007, pp 23, 26.

- 3.2.5 While we believe that an overly prescriptive specification may not be flexible enough to reflect end users changing needs, it is important to Trustpower that there is a well understood standard that retail service provider (RSPs), consumers, and the Commission can hold Chorus accountable to. We believe that the working party may be able to develop an appropriate requirement.
- 3.2.6 Chorus noted at the workshop that “the STD should reflect what is currently happening – the maintenance of a congestion-free network”, and that it would be “happy to increase transparency where possible to improve clarity around congestion and capacity of network links and plans to upgrade the ATM network”.²
- 3.2.7 Further, Spark proposed that the Service Description “set a Service Objective that UBA is an uncongested service that supports the maximum service speed of the line”, and outlined possible requirements for BUBA and EUBA.³ We would support these additions to the Service Description. We believe that these requirements would cater to changes in end user demand. However, we also believe that there could be benefits in discussing the proposed congestion requirements in the working party to ensure that they would be both effective and achievable. However, if the Commission considers that it is able to determine such a measure on its own, we would encourage it to do so.

3.3 Clarify that VDSL forms part of the regulated service

- 3.3.1 At the workshop, Chorus stated that it considers VDSL forms part of the regulated UBA service. However, there has not been a definitive statement by the Commission to this effect. We ask that the Commission make it clear in the UBA STD that VDSL forms part of the regulated service.

4 Changes to Clause 10 – New UBA Variants

- 4.1.1 As explained at the workshop, we believe that Clause 10 of the General Terms of the UBA STD should be amended to provide a process for approving, amending, or withdrawing new UBA variants. We agree with Spark that this could be based on the change mechanism process in Clause 9 of the General Terms of the UBA STD. We believe that any process added to Clause 10 would not need to be onerous on Chorus, but would act to prevent Chorus from unilaterally providing a new UBA variant with the effect of replacing or undermining the regulated service.
- 4.1.2 This approval process would also relate to the FPP price. We believe that if a new UBA variant is introduced that shares costs with the regulated UBA service, then the FPP price may need to be updated to ensure that there is no double cost recovery.⁴ Accordingly, we believe that the option (under Clause 10.3) to commence a section 30R review of the UBA STD should remain, and that Chorus be required to provide information on any cost sharing between a proposed new UBA variant and the regulated UBA service as part of the approval process.

² Commerce Commission, “Section 30R review of the UBA standard terms determination – Industry workshop on process and issues paper – Summary of views expressed”, 27 June 2016, p 10.

³ Spark, “UBA s30r workshop paper”, June 2016, pg 4.

⁴ As required by Clause 4B of Schedule 1 of the Telecommunications Act.

5 Transparency

- 5.1.1 Spark presented comprehensive slides at the workshop, outlining some of changes to the UBA STD that would facilitate greater transparency of Chorus' systems. The Commission noted that these issues could be addressed by a working party, and that suggested changes to the Operations Manual and Service Level Terms should be made to the Commission via the Clause 9 process, separate to this review.
- 5.1.2 We believe that some of the issues raised by Spark may best be addressed during this review as they concern proposed changes to the General Terms, Service Description, and the Price List, rather than matters that can be addressed via a Clause 9 process.
- 5.1.3 We discuss the key issues raised by Spark below. These are issues experienced by all RSPs, and are adversely affecting the experience of our customers. We then explain our experience in the electricity sector, and suggest that the Commission consider establishing a similar repository of information for the telecommunications sector.

5.2 Efficient network management and investment

- 5.2.1 Spark noted that there is a disconnect between the service performance and the FPP decisions. We believe that there is a disconnect between the service performance and what the UBA STD requires (reflected in the FPP decisions). Chorus should be held accountable where it is not providing the service to the required standard, or should be required to provide a timeline for improvements to those parts of its network. Those parts of the network where there is no other contestable service, such as Fibre or Fixed Wireless, should be prioritised to ensure that end users in these areas are not left behind.
- 5.2.2 Related to this, Spark also noted that there is no performance improvement model for Chorus in place. We agree with Spark that there should be. This may require changes to the Service Description and General Terms. Accordingly, we believe this should be considered before the conclusion of the s30R review of the UBA STD, otherwise a subsequent review may be required.

5.3 Provisioning events

- 5.3.1 Spark noted the high number of failed connections on the Chorus network. It recommended changes to the Operations Manual to address this. We support those changes, and consider that they can be addressed in the working party, with suggested changes made to the Commission via a subsequent Clause 9 process.

5.4 Fault events

- 5.4.1 Spark noted that the current fault process leaves consumers confused and frustrated, imposes costs on both RSPs and consumers, and that Chorus currently faces limited incentives to improve their fault management processes. Spark has recommended changes to the Operations Manual, as well as the General Terms, including treating any degradation of the service performance as an unplanned outage, and treating failing to meet the required service level as a fault event. Accordingly, we believe this should be considered before the conclusion of the s30R review of the UBA STD, otherwise a subsequent review may be required.

5.5 Diagnostic tools and processes

- 5.5.1 Spark has identified a number of areas where Chorus' diagnostic tools and processes could be improved, including the need for better diagnostic information so that RSPs can more efficiently identify where a fault lies. We support Sparks suggested changes, and consider that they can be addressed in the working party, with suggested changes made to the Commission via a subsequent Clause 9 process.

5.6 Real-time Network Utilisation and Congestion Alerts

- 5.6.1 As noted in section 3 above, Chorus stated at the workshop that it was happy to increase transparency around congestion and the capacity of network links. Chorus also "detailed a monthly report that can be made available to detail utilisation of links, within specific bands, to improve transparency around levels of congestion and capacity growth in the network."⁵ We believe that this information should be made available real-time to RSPs using best practice monitoring technology to enable RSPs to better support their customers during fault identification and diagnosis. RSPs would be better able to proactively communicate faults to customers when network congestion occurs.
- 5.6.2 We believe that this should be addressed at the same time as Spark's proposed congestion requirements, which involve changes to the Service Description. Accordingly, we believe this should be considered before the conclusion of the s30R review of the UBA STD, otherwise a subsequent review may be required.

5.7 Experience from the electricity sector

- 5.7.1 The Electricity Authority has facilitated greater transparency in the electricity sector, and has brought significant benefits to consumers through increasing retail competition and efficient operation of the industry. It has also enabled more competition via new entrants, and improved the customer switching process.
- 5.7.2 One of the most useful features of the electricity market is the registry of network connections (the Registry). Since its introduction, the Registry has had a significant impact on competition by providing standardised processes for switching customers between retailers. The Registry provides extensive, publicly-available data that is useful for monitoring the level and development of competition in the electricity retail market.
- 5.7.3 The Registry holds information on every installation connection point (ICP) in New Zealand and supports hundreds of thousands of consumers switching every year through automated processes. It facilitates the exchange of information between retailers, metering equipment providers and distributors to manage reconciliation, invoicing and switching processes.
- 5.7.4 The Electricity Authority has established an Electricity Market Information (EMI) website, on the basis that a fundamental requirement of competitive and efficient electricity markets is access to reliable data and performance metrics. The EMI website is the Electricity Authority's avenue for publishing data, market performance metrics, and analytical tools to facilitate effective decision-making within the New Zealand electricity industry.

⁵ Commerce Commission, "Section 30R review of the UBA standard terms determination – Industry workshop on process and issues paper – Summary of views expressed", 27 June 2016, p 7.

5.7.5 The EMI website contains:

- a) Dashboards: “Dashboards are collections of reports providing a quick overview of related information in a single view”;
- b) Reports: “Reports present information graphically or in tables while allowing users to interact with and interrogate the data by changing parameters. Users are also able to download images and the data in the report”;
- c) Datasets: “Datasets are collections of files that often contain large volumes of data and are available for immediate download”; and
- d) Tools: The EMI website maintains “a suite of modelling tools that are used on a regular basis to undertake many of our industry and market monitoring activities”.

5.7.6 The Commission could look to establish a similar registry and repository of information, working closely with Chorus and RSPs (although we note that some processes may be best left to Chorus to manage and maintain). These could seek to improve the transparency of both Chorus’ systems, as well as reporting on the state of the telecommunications market. We note that this would be a large exercise to undertake, and would take a period of time to establish. We believe that the Commission and Chorus could start small by working together to develop a small repository of information as a result of improvements suggested by the working party. This could then be added to incrementally over time.

5.7.7 For any questions relating to the material in this submission, please contact me on 07 572 9888.

Regards,



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