

Section 30R Reviews of seven regulated telecommunications services' Standard Terms Determinations Price Lists

**Final decisions
[2017] NZCC 10**

The Commission: Dr Stephen Gale
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Date of determination: 19 May 2017

Confidential material in this report has been removed. Its location in the document is denoted by [].

Purpose of this document

1. This document explains our final decisions in our section 30R reviews on changes to the Schedule 2 Price Lists¹ of the following Standard Terms Determinations (STDs):²
 - 1.1 Chorus' Unbundled Bitstream Access Service (UBA);
 - 1.2 Chorus' Unbundled Copper Local Loop Service (UCLL);
 - 1.3 Chorus' Unbundled Copper Low Frequency Service (UCLF);
 - 1.4 Chorus' Unbundled Bitstream Access Backhaul Service (UBA Backhaul);
 - 1.5 Chorus' Unbundled Copper Local Loop and Unbundled Copper Low Frequency Network Backhaul (Telephone exchange to interconnect point) Service (UCLL and UCLF Backhaul);
 - 1.6 Chorus' Unbundled Copper Local Loop and Unbundled Copper Low Frequency Network Co-Location Service (UCLL and UCLF Co-Location); and
 - 1.7 Chorus' Sub-Loop Unbundled Copper Local Loop Services (SLU).
2. In this document the UBA, UCLL, UCLF, and SLU price lists are collectively called "FPP Price Lists". The price lists for UBA Backhaul, UCLL and UCLF Backhaul, UCLL and UCLF Co-Location, SLU Backhaul and SLU Co-Location are collectively called "non-FPP Price Lists". All of these price lists are collectively referred to as "Price Lists".

Process for these section 30R reviews

3. On 10 April 2017 we published our consultation document detailing our proposed changes to the Price Lists and our proposed changes tracked in MS Word documents.³
4. We gave public notice of the commencement of these Section 30R Reviews of the Schedule 2 Price Lists of each of the STDs in the *Gazette* under section 30R(5)(b) of the Telecommunications Act 2001 on 13 April 2017.
5. We invited interested parties to submit on our proposed changes. Submissions closed on 28 April 2017. We did not invite cross-submissions.
6. We received submissions from Chorus and Spark.

¹ In each standard terms determination, Schedule 2 lists the prices for all of the services that Chorus will make available to Access Seekers under the determination.

² Note in total there are nine Schedule 2 Price Lists, one each for the UBA, UCLL, UCLF, UBA Backhaul, UCLL Backhaul, UCLL Co-Location, and one for each of the three relevant SLU services (SLU, SLU Backhaul and SLU Co-Location).

³ Commerce Commission "Section 30R reviews of seven regulated telecommunications services' Standard Terms Determinations (STDs)' Price Lists" (10 April 2017).

7. Alongside this document we have also published updated versions of the nine Price Lists to give effect to our final decisions. These updated Price Lists are dated 19 May 2017 (Updated Price Lists).

Scope and objectives of these section 30R reviews

8. We limited the scope of these section 30R reviews to just the Schedule 2 Price Lists of the STDs.⁴
9. Our objectives were to:
 - 9.1 ensure the STDs accurately reflect our recent pricing and section 30R reviews, and annual price adjustments;⁵
 - 9.2 improve the consistency and usability of the Price Lists; and
 - 9.3 reduce cost to industry by improving the efficiency of the annual price adjustment process.

Submissions

10. While Spark was supportive of our proposed changes to align the Price Lists and reduce complexity and compliance costs, it suggested that we could go further in simplifying the Price Lists and align the prices for a number of Service Components that are common across the STDs.⁶
11. Following our final UCLL and UBA Final Pricing Principle (FPP) determinations, monthly charges in different STDs have been set using different cost methodologies and input costs. Spark has suggested that the Commission should reconsider these prices to ensure that prices reconcile across regulated services to provide efficient overall prices.⁷
12. Spark commented that because the FPP model was only applied to a subset of related regulated services, there may be work to be done to ensure that the price of a particular regulated service reconciles to – or is aligned with – related regulated services, including backhaul and co-location services. If not, there is potential for inefficient aggregate prices resulting from the sum of the prices for all the associated services, and potential for double cost recovery by Chorus.⁸

⁴ “Notification of Commencement of Section 30R Reviews of the Schedule 2 Price Lists of Standard Terms Determinations of Seven Regulated Telecommunications Services” (13 April 2017) 39 *New Zealand Gazette*. Available at <https://gazette.govt.nz/notice/id/2017-au1806>

⁵ Our consultation was limited to whether our proposed drafting changes to the Price Lists accurately reflected our previous decisions.

⁶ Spark "Review of Standard Terms Determinations Price Lists. Submission | Commerce Commission". (28 April 2017) at [4].

⁷ Spark "Review of Standard Terms Determinations Price Lists. Submission | Commerce Commission". (28 April 2017) at [5].

⁸ Spark "Review of Standard Terms Determinations Price Lists. Submission | Commerce Commission". (28 April 2017) at [13].

13. Chorus submitted that any submissions that go beyond the scope of the current reviews should not be considered by the Commission in this process. In particular, this review should not be used as an opportunity to try to align legitimate price differences across the STDs arising from the different Initial Pricing Principle (IPP) or FPP methodologies upon which they are based.⁹
14. Spark's suggestions to reassess prices go beyond the objectives set for these reviews. These reviews were focused on improving the efficiency of the annual price adjustment process, rather than reviewing or reassessing the prices for Service Components in the Price Lists. We have not reviewed prices as part of this process. Our view is that the types of issues Spark raised are more appropriately considered after the Government's review of the Telecommunications Act is finalised. Once we have more clarity about the regulatory framework as a whole we will assess what, if any, further steps may need to be taken with respect to the Price Lists. We have adopted a similar approach in relation to our study of domestic backhaul services.¹⁰
15. The context and reasoning for our final decisions on changes to the Price Lists follows.

Our final decisions on changes to the Price Lists

16. For ease of reference we have grouped discussion of our final decisions in these section 30R reviews under two headings:
 - 16.1 incorporating recent pricing reviews and section 30R determinations, and annual adjustments; and
 - 16.2 improving the consistency and usability of the Price Lists, and improving the efficiency in annual adjustments.

Incorporating recent pricing reviews and section 30R determinations, and annual adjustments

Relevant context

17. In December 2015 we published our final UCLL and UBA FPP determinations which set prices for Chorus' UCLL, UCLFS, UBA, and SLU services. These prices were the outcome of comprehensive consultation and detailed modelling of the total service long run incremental cost of providing these services, as required in the Telecommunications Act 2001.¹¹
18. In March 2017 we published our final determination on the UBA section 30R review. This determination added a 10GigE handover connection option to the UBA STD

⁹ Chorus "Submission on Section 30R Reviews of Seven regulated telecommunications services' STD Price Lists" (28 April 2017) at [4].

¹⁰ Commerce Commission "Letter to stakeholders – Domestic backhaul services study" (24 February 2017) available at <http://www.comcom.govt.nz/dmsdocument/15247>

¹¹ Commerce Commission "Final pricing review determination for Chorus' unbundled copper local loop service" [2015] NZCC 37 and "Final pricing review determination for Chorus' unbundled bitstream access service" [2015] NZCC 38.

Price List. It also updated the description of the installation of handover connections to include 1GigE and 10GigE options.¹²

19. In December 2016 we approved the annual price change adjustments to charges in the STDs.¹³
20. For the rest of this document we refer to the pricing reviews and section 30R determinations, and annual adjustments listed in paragraphs 17, 18 and 19 as the recent decisions.

Proposed changes and submissions

21. Our consultation document detailed our proposed drafting changes to the Price Lists to incorporate the recent decisions.¹⁴ Our final decisions on these drafting changes are largely as proposed in the consultation document.
22. Spark submitted that for completeness, and to better reflect our final determination on the UBA section 30R review, we should further amend the UBA Price List to reflect the decision to cap the price of multiple 1GigE handover connections at the 10GigE handover connection price at all UBA handover sites.¹⁵
23. Chorus highlighted two minor typographical errors in Prices for Service Components in the UCLL and UCLFS Co-location Price Lists.¹⁶

Final decisions on changes

24. Our final decisions on drafting changes required to incorporate those parts of the recent decisions relevant to the Price Lists are set out in the Updated Price Lists. These include drafting changes to incorporate:

24.1 Decisions made in our UCLL and UBA FPP determinations to:

24.1.1 replace all prices for Service Components in the FPP Price Lists;¹⁷ and

24.1.2 update the Labour Cost Index (used for adjusting prices) in the FPP Price Lists.

¹² Commerce Commission "Section 30R review of Chorus' Unbundled Bitstream Access service" [2017] NZCC 4.

¹³ Commerce Commission "Approved price adjustments for STDs" (13 December 2016) available at <http://www.comcom.govt.nz/regulated-industries/telecommunications/regulated-services/standard-terms-determinations/unbundled-copper-local-loop-and-unbundled-copper-low-frequency-services/unbundled-copper-local-loop-ucll/>

¹⁴ Commerce Commission "Section 30R reviews of seven regulated telecommunications services' Standard Terms Determinations (STDs)' Price Lists" (10 April 2017) at [9].

¹⁵ Spark "Review of Standard Terms Determinations Price Lists. Submission | Commerce Commission" (28 April 2017) at [9.b].

¹⁶ Chorus "Submission on Section 30R Reviews of Seven regulated telecommunications services' STD Price Lists" (28 April 2017) at page 6.

¹⁷ For example, see Chapter 6 of Commerce Commission "Final pricing review determination for Chorus' unbundled copper local loop service" [2015] NZCC 37 and Chapter 6 of "Final pricing review determination for Chorus' unbundled bitstream access service" [2015] NZCC 38.

24.2 Decisions made in our UBA section 30R review to:

24.2.1 add 10GigE handover connection Service Components and update the description of the handover installation Service Component;¹⁸ and

24.2.2 cap the price of multiple 1GigE handover connections at the 10GigE handover connection price at all UBA handover sites.¹⁹ We have added the following clause to the UBA Price List.

2.13 For Service Components 2.9 – 2.10 (1GigE handover connections), the Price for multiple orders is capped at the relevant Price for a 10GigE capacity handover (Service Component 2.14) at each handover location.

24.3 Our 2016 price adjustments process to update all the Price Lists of the STDs. We have corrected the typographical errors that Chorus identified in its submission.

Improving the consistency and usability of the Price Lists, and improving the efficiency in annual adjustments

Relevant context

25. While updating the prices in the FPP Price Lists to reflect the UCLL and UBA FPP determinations, we identified opportunities to improve the consistency and usability of the Price Lists as a whole.
26. During the 2016 annual price adjustment approval process we identified further areas where efficiency could be improved to reduce industry costs.
27. The non-FPP Price Lists share non-price terms with the FPP Price Lists. However, these non-FPP Price Lists were outside the scope of our UCLL and UBA FPP determinations. Our final decisions will improve the efficiency of the annual price change process by having a consistent price adjustment process across all the Price Lists.

Proposed changes and submissions

28. Our consultation document detailed our proposed changes to the Price Lists to improve their consistency and usability, and improve the efficiency of annual adjustments.²⁰ Our final decisions on these changes are largely as proposed in the consultation document.

¹⁸ Commerce Commission “Section 30R review of Chorus’ Unbundled Bitstream Access service” [2017] NZCC 4 at Attachment 1.

¹⁹ Commerce Commission “Section 30R review of Chorus’ Unbundled Bitstream Access service” [2017] NZCC 4 at [268].

²⁰ Commerce Commission “Section 30R reviews of seven regulated telecommunications services’ Standard Terms Determinations (STDs)’ Price Lists” (10 April 2017) at [11]-[12].

Price Change Mechanism for security-related Charges

29. Chorus highlighted that in promoting consistency between the SLU Co-Location and UCLL and UCLF Co-Location Price Lists we had proposed removing the Price Change Mechanism for three security-related Service Components in the SLU Co-Location Price List.²¹ These security-related services include provision of a security card and a security guard call-out charge.
30. Chorus suggested adding this Price Change Mechanism back into the SLU Co-Location Price List, and also adding the Price Change Mechanism to the UCLL and UCLF Co-Location Price List for consistency in the Service Components across the two STDs. This Price Change Mechanism had not previously been in the UCLL and UCLF Co-Location Price List.
31. Chorus also suggested that the existing Price Change Mechanism (Clause 4.1.2) is specific to changes in contractual obligations by its field service company contractors. Prices for the affected Service Components are derived from Chorus' security-related input costs based on third party charges. These charges are with security contractors and are not contained within field service company contracts. Therefore, this Price Change Mechanism should be separate to allow Chorus to adjust the Price for these Service Components following an increase or decreases in these security-related costs.²²
32. We agree with Chorus that the Price Change Mechanism for these Service Components should be added to both the SLU Co-Location and UCLL and UCLF Co-Location Price Lists for consistency.
33. In our original decision on SLU Co-Location we noted that the UCLL Co-location STD did not include a price change mechanism for these Service Components, and that the issue was not specifically considered when drafting the UCLL Co-Location STD. We also considered there was merit in the argument Telecom (Chorus) put forward for including the mechanism.²³
34. We note that the UCLL and UCLF Co-Location Price List was not updated at the time of the SLU STD decision. Our view is that a price change mechanism for these Service Components is equally appropriate for each of the SLU Co-Location and UCLL and UCLF Co-Location Price Lists and the price change mechanism should be added to the UCLL and UCLF Co-Location Price List. This process provides a good opportunity to add the price change mechanism to the UCLL and UCLF Co-Location Price List. Making this change will promote efficiency of price adjustments and consistency across these Price Lists.

²¹ Chorus "Submission on Section 30R Reviews of Seven regulated telecommunications services' STD Price Lists" (28 April 2017) at pages 6-7.

²² Chorus "Submission on Section 30R Reviews of Seven regulated telecommunications services' STD Price Lists" (28 April 2017) at pages 6-7.

²³ Commerce Commission "Standard Terms Determination for the designated services of Telecom's unbundled copper local loop network service (Sub-loop UCLL), Telecom's unbundled copper local loop network colocation service (Sub-loop Co-location) and Telecom's unbundled copper local loop network backhaul service (Sub-loop Backhaul)" Decision 672 (18 June 2009) at [564] and [565].

35. We have added the following Price Change Mechanism to the SLU Co-Location and UCLL and UCLF Co-Location Price Lists:

4.1.3 Where:

- 4.1.3.1 the cost of providing one of the Service Components (where the prescribed Price Change Mechanism is "clause 4.1.3") increases or decreases; and
- 4.1.3.2 that increase or decrease is due to changes in security-related input costs charged to Chorus pursuant to contractual obligations by its security contractors,

Chorus must immediately calculate an adjustment to Price relating to that Service Component to reflect the increase or decrease in costs.

Alignment of indices

36. In its submission Chorus supported our proposed change to align the labour cost index used to adjust prices in the FPP and non-FPP STDs to the same index. However, it suggested that the labour cost index should be changed from the all industries all sectors index (series reference: SG51Z9) to the all industries private sector index (series reference: SG41Z9).²⁴
37. Chorus suggested that the private sector only labour cost index better reflects the changes in labour costs faced by Chorus as it only contracts with private sector service companies. It also highlighted the fact that a private sector labour cost index was used when setting the IPP determinations (series reference: SE49J9).²⁵
38. We note that the private sector LCI that was used when setting the original IPP determinations was a communications industry specific index. As noted in our UCLL FPP determination, we accepted NZIER's advice that the best series to use for understanding long term trends in labour costs for Chorus is the LCI for All Salary and Wage Rates for all industries.²⁶ NZIER reasoned that Chorus' labour costs extend well beyond field technicians and include customer services, finance, human resources, and property management personnel and related labour costs.²⁷
39. Although Chorus only contracts with private sector service companies, Chorus is likely to compete with the public sector (as well as others within the private sector) for much of its labour force. We have no reason to believe Chorus' skill set requirements are any better reflected in the private sector index compared to the all sectors index. Accordingly, we consider that the all sector LCI best reflects changes in the labour market Chorus is operating in. Our final decision is to continue using the higher level general labour market indicator.

²⁴ Chorus "Submission on Section 30R Reviews of Seven regulated telecommunications services' STD Price Lists" (28 April 2017) at [5].

²⁵ Chorus "Submission on Section 30R Reviews of Seven regulated telecommunications services' STD Price Lists" (28 April 2017) at [8].

40. We note that there is not a significant difference between the two index series and that the weighting of the private sector index within the all sector index is about 75 percent. Our view remains that the all sectors index is the best series to use, and is also consistent with the 2016 annual adjustments.

Timeline for annual adjustment process

41. Chorus submitted three changes to the annual adjustment process to promote certainty and simplification of the process. The suggestions were to:
- 41.1 allow flexibility in the adjustment calculation date,
 - 41.2 allow a process for Chorus to propose an implementation date, and
 - 41.3 require the Commission to approve (or decline) an adjustment and proposed implementation date 20 working days before the proposed implementation date.²⁸
42. We proposed standardising the process across the Price Lists to require Chorus to calculate all price adjustments on 1 November each year. We agree that allowing Chorus flexibility to calculate the adjustments on or before 1 November each year will promote certainty. It will also allow more flexibility for Chorus to calculate and the Commission to approve adjusted prices in advance of them becoming applicable.
43. Chorus has suggested there be a process to propose a date to activate the relevant charges (the Implementation Date) for the Commission's approval. Chorus also indicated that 16 December is likely to be the most efficient implementation date each year. It suggested that the Commission should retain discretion to consider whether RSPs have sufficient notice of changes in any particular year, or any other factors which may make an alternative date more appropriate in a particular year.²⁹
44. Our proposed drafting in the Price Lists was that Chorus should allow 30 working days from approval prior to activating the adjusted Charges in its system. However, Chorus has noted that depending on the date of approval this may not necessarily line up with the proposed implementation date and may create uncertainty around communicating pricing changes to RSPs.
45. We agree with Chorus that a specific implementation date will promote certainty for Chorus and RSPs. We agree with Chorus that 16 December is likely to be the most efficient date, and that in any particular year there may be other factors to be considered. We also agree that we should retain discretion to consider a more appropriate date in any particular year. Our view is that Chorus should be required to provide reasons for proposing an implementation date that is different from the previous year.

²⁸ Chorus "Submission on Section 30R Reviews of Seven regulated telecommunications services' STD Price Lists" (28 April 2017) at [13].

²⁹ Chorus "Submission on Section 30R Reviews of Seven regulated telecommunications services' STD Price Lists" (28 April 2017) at [13].

46. Chorus has further suggested that the Commission be required to approve or decline the adjustments and proposed implementation date at least 20 working days before the proposed implementation date. Chorus has indicated that this is to give sufficient time between approval of the adjusted prices and the Charges being able to be activated in its systems.
47. We agree with Chorus that a requirement on the Commission's timeline for approving or declining adjustments is desirable to promote certainty and consistency. However, our concern is that the time the Commission will have to approve the adjustments and proposed implementation date will depend on how long before the proposed implementation date Chorus gives the Commission notice. Ordinarily (notice on 1 November and an implementation date of 16 December) this would give the Commission just over two weeks, which may not be sufficient time.
48. Time pressures could be heightened further if Chorus was to propose an implementation date before 16 December. It may lead to the most efficient implementation date being declined because the Commission has insufficient time to consider the adjustments.
49. Instead, the Commission considers it would be simpler if it were required to approve or decline the proposed implementation date and adjustments within 20 working days of receiving notification from Chorus.
50. This requirement is the same as the requirement Crown Fibre Holdings (CFH) has for responding to Chorus in approving or rejecting adjustment to prices under the Chorus UFB Services Agreement Price List.³⁰

Final decisions on changes

51. The Updated Price Lists give effect to our final decisions on improving the consistency and usability of the Price Lists, and improving the efficiency of annual adjustments.
52. Our final decisions are to improve the consistency and usability of the Price Lists by:
 - 52.1 removing references to terms and mechanisms that are no longer applicable. These include transitional provisions and mechanisms that have been replaced by clarifications and determinations since the STDs were first written;
 - 52.2 amending/adding a Price Change Mechanism to the SLU Co-Location and UCLL and UCLF Co-Location Price Lists to allow Chorus to adjust specific Service Components for changes in security-related costs as per paragraph 35;
 - 52.3 changing the applicable price indices where Statistics New Zealand has replaced or discontinued an index;

³⁰ Chorus "Chorus UFB Services Agreement Price List" (23 August 2011) at [3.4]. Available at: <https://www.crownfibre.govt.nz/crown-partners/retail-service-providers/>

- 52.4 standardising the terminology used across the Price Lists; and
 - 52.5 making formatting changes to improve the readability of the Price Lists.
53. Our final decisions are to improve the efficiency of the annual adjustment process by:
- 53.1 standardising the Labour Cost Index used for updating prices in all the Price Lists to be the same as that in the FPP Price Lists;
 - 53.2 standardising the process across the Price Lists to include:
 - 53.2.1 requiring Chorus to calculate all price adjustments on or before 1 November each year;
 - 53.2.2 requiring Chorus to give notice to the Commission of the calculations. This would include Chorus providing the Commission with details of the calculations and figures used and reasons for any changes;
 - 53.2.3 requiring Chorus to propose a date on which the new Charges arising from the adjustment are to be implemented, and provide reasoning if this date is different from the previous year;
 - 53.2.4 clarifying the annual index percentage change to be used when adjusting prices under each relevant index;
 - 53.2.5 requiring Chorus to activate changes in its billing system on the Implementation Date; and
 - 53.2.6 requiring the Commission to approve or decline an adjustment and Implementation Date notified by Chorus within 20 working days of receiving the notification.