



# Consultation on possible section 30R review of the UBA STD General Terms and Service Description

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## **Contents**

Introduction .....	1
The review should enhance transparency .....	1
The Commission questions .....	2
Attachment: suggested additions to proposed scope .....	5

## Introduction

1. Thank you for the opportunity to comment on whether or not the Commission should conduct a s30R review of the UBA STD General Terms and Service Description now, and if so, the appropriate scope of the review (**consultation paper**).
2. We support the proposed review. The current version of the UBA STD is largely unchanged from its inception in 2007. Since that time, our industry structure has undergone fundamental change. Until 2011 the UBA service was provided by a vertically-integrated provider (Telecom) that was directly exposed to end-user demands and subject to non-discrimination and equivalence obligations, which worked in concert with the STD to regulate both price and non-price performance of the service. Today, the service is provided by a network utility (Chorus) that has no direct relationship with end-users, no UBA equivalence obligations and much-reduced non-discrimination obligations. The result is much weaker regulatory oversight of the UBA service than was perhaps understood at the time of separation.
3. Chorus' 2014 proposal to unilaterally constrain, and withdraw the VDSL variant of, the regulated service highlights the potential gaps in the STD's regulation of non-price UBA terms. If Chorus had proceeded with its proposal, it would have forced RSPs and our customers off the regulated UBA service, and onto a higher-priced, unregulated UBA variant with no discernible change in performance. Chorus and its customers have significantly different views about the merits or otherwise of those proposals, and about the purpose and scope of the UBA service. We remain confident of our interpretation of the UBA STD, but all parties would accept the process has illustrated a lack of clarity in places in the STD.
4. While Chorus has put its proposals on hold, it reserves the right to implement the proposals at short notice and this leaves the industry in an uncertain position. Without presupposing whether, in fact, any changes are required to the STD, this situation absolutely justifies a review of whether changes to the STD are necessary or not.
5. The Commission can provide greater clarity and certainty to the industry, and ensure the UBA service remains 'fit for purpose'. Accordingly, we support the Commission's proposed review and scope, although we recommend that the Commission put equal focus on considering the implications of changes to industry structure since the UBA STD was first drafted.
6. We also recognise that, with the simultaneous conduct of the FPP pricing review of UBA and UCLL, it is important that the assumptions implicit in the modelled service are consistent and not out of step with the non-price terms described in the general terms and service description.

## The review should enhance transparency

7. The proposed review was triggered by Chorus' 2014 Boost proposals which highlighted the differing views over the nature of the regulated service and service improvement and innovation would occur.
8. We consider that the UBA STD requires that the UBA service will at all times remain fit for purpose, meeting the throughput demand of end-users. In that sense it must be somewhat dynamic and will evolve over time to meet end user needs. The Commission notes in the draft FPP price review determination that the UBA Service Description allows for the average throughput to evolve with changing end-user needs and that, consistent with how the UBA service has been historically provided by Telecom and then Chorus, capacity has been increased over time to meet end-users throughput demand. It is also telling that in the FPP the Commission has modelled a bitstream network capable of meeting current and future end-user demand, and that

the UBA service would be dynamic and evolve over time [238-239]. It is important that the non-price terms are amended to remove any ambiguity about this.

9. The General Terms and Service Description should remain aligned with the UBA service principles and FPP, and support forward-looking iterative service enhancements. The original UBA STD relied on retail preferences creating incentives for the access provider to deliver improvements in the regulated wholesale service. The access provider's own retail operations and the requirement for non-discrimination between wholesale and retail services drove service performance, rather than strict technical standards. At the time the UBA STD was drafted, Telecom as the access provider was vertically integrated and its own retail operations and non-discrimination obligations provided clear incentives to maintain and improve the network and UBA service over time. UBA service improvement and innovation, by and large, occurred through this period.
10. Structural separation has meant, however, that the current approach is no longer effective in driving service performance incentives on Chorus. Structural separation has diluted these incentives and, as demonstrated by Chorus' 2014 proposal to unilaterally reduce UBA service performance, the STD terms are increasingly disconnected from the environment we operate in. The consultation paper identifies a number of issues relating to updating the UBA service description, service performance and the process to approve new commercial variants, which we support.
11. However, the structural changes also has implications for Chorus' operation of the network and management of service companies. For example, an access provider faces diminished incentives to manage and invest in the network to maintain and improve service performance when it does not have retail operations. Further, the STD provides that a number of transaction service company charges are simply passed through to RSPs and Chorus has little incentive to efficiently manage service company activity and charges. Further, RSPs have little visibility of the particular connection charge (of three options) applying to a new service instance - limiting RSPs ability to provide upfront connection price certainty to customers.
12. Accordingly, as detailed below, we propose that the Commission expands the scope of its review to consider transparency requirements relating to network investment and performance, and for service company charges passed through to RSPs, i.e. for service company activity related to network faults charged to RSPs and new connection activity.

## The Commission questions

13. The consultation paper poses a number of questions:

***12.1 Do you agree that it would be appropriate for us to conduct the review of the UBA STD now?***

***12.2 If not, would it be appropriate to conduct the review in the future, and if so, when?***

14. Yes, we support the review being conducted now.
15. The Commission should initiate the review as soon as possible, aiming to complete the review prior to its final FPP pricing review determinations. While Chorus has put its proposals on hold until April 2015, it reserves the right to implement the proposals at short notice. Additionally, as it stands, Chorus plans to withdraw VDSL service in UFB areas from June 2015.
16. The Commission's legal advisors have concluded that Chorus proposals would likely be in breach of the STD and Act. Nonetheless, the possibility that Chorus may seek to constrain or withdraw VDSL variants leaves the industry in an uncertain position.

### **12.3 Do you agree with the areas that we might cover in the review?**

17. We agree with the areas that the Commission proposes to cover – the review should consider how the current service description could be improved or clarified, how the international best practice and good faith obligations could be better codified, and an appropriate process for considering new commercial services.
18. On the face of it there are several policy issues underpinning the specific STD review items listed by the Commission:
  - a. How the STD should provide for commercial services?

All submitters on the on the Boost HD and Boost VDSL issues paper supported innovation and the opportunity for Chorus to provide commercial services that are truly differentiated from the regulated services. The STD should provide for innovative commercial services, while ensuring any differentiation is not delivered as a result of degrading the service performance of the regulated UBA variants or through withholding features and service performance that should be part of the regulated service in any case;
  - b. How should the STD deal with different DSL technologies?

The Boost consultation evidenced significant confusion about how the STD should, and does, regulate the provision of VDSL-based variants of the UBA service. The STD should be clarified to make clear whether, and if so how, price or non-price terms for different DSL technologies should differ;
  - c. How should the STD provide for withdrawal of regulated UBA variants?

Chorus proposed last year to unilaterally withdraw a UBA STD variant (the VDSL variant). That it was even able to come up with an interpretation of the STD that could permit such an action is concerning – if access providers were able to unilaterally withdraw regulated services from the market this would undermine the entire regulatory framework. Equally, we do not believe Chorus should be required to maintain every regulated UBA variant ad infinitum. A process by which withdrawal can occur with meaningful consultation is needed.
  - d. How should the STD address the diminished incentives faced by a structurally separated access provider to maintain service performance and invest in up to date technologies?
19. In terms of reviewing the technical characteristics in the UBA STD Service Description, in addition to the specific technical issues raised by Chorus' May 2014 proposal, the review should also consider how the technical characteristics can be clarified or updated to better reflect today's industry structure and end-user and RSPs expectations. For example, in addition to throughput considerations, the Commission should consider updating the UBA service description to:
  - a. Add a 10xGigE handover option that has become a standard bitstream interface used by industry; and
  - b. Provide for reasonable access to network diagnostics and performance reporting tools – this capability now forms part of any operator's standard capability.
20. Further, as part of considering the circumstances network management can be imposed, the review should consider updating network management that applies to the ATM based BUBA service. Chorus applies bandwidth restrictions to the ATM based service with a separate charge for additional bandwidth. At the time the approach was agreed, the ATM platform had limited and

costly to augment capacity, and the industry agreed to bandwidth management as a means of fairly allocating available capacity across ISPs. In other words, the constraint was a sensible network management tool needed because of the limitations inherent in ATM technology.

21. The current informal approach constraining the ATM based service is not provided for in the STD, and it's unclear whether the constraint is still necessary or how it relates to the STD terms. A significant number of customers have been migrated to the Ethernet based service (that does not suffer such limitations). Further, where an Ethernet based service is not available, Chorus should be encouraged to upgrade the service. At the moment, the reverse incentive applies: Chorus receives additional revenue by not upgrading infrastructure. It is timely to review whether the restriction is still required and, if it is, ensure the approach is consistent with the general agreed approach.

***12.4 Are there any other areas or matters which we should cover in the review?***

22. As noted above, structural separation have reduced incentives to maintain and invest in service performance. It is likely to be difficult to create incentives on the access provider to invest to maintain service performance or deploy up to date technologies, or to effectively manage service company arrangements where costs are simply passed through to RSPs.
23. Accordingly, we propose that the Commission consider transparency requirements on Chorus relating to:
  - a. The management of the network, for example, information on where the REN is congested, waiters and investment plans;
  - b. Service company service orders and customer information, for example, ensuring pre-qualification returns the status of the line, access to NFF information and visibility of line capacity; and
  - c. Transactional charges relating to no fault found and new connection charges. With the new three tiered connection charges, for example, RSPs have no visibility of the charge that will apply ahead of placing the service order and service company activity that actually occurred.
24. For convenience, recommended additions are marked in the attached scope.

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*END*

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## **Attachment: suggested additions to proposed scope**

14.1 whether or not the clause 10 process for assessing proposed commercial UBA services is workable and appropriate;

14.2 the role of the technical characteristics when assessing whether or not new services are regulated services or commercial services (for example, should a proposed new service be held to fall outside the Schedule 1 description on the basis of particular features – ie, on the basis of the extent to which it exceeds the minimum requirements for those features, or on the basis that the features are not provided for in the Schedule 1 description);

14.3 changes to the technical characteristics in the UBA STD Service Description, [including providing clarity on UBA service performance and to update the service definition for current service functionality](#);

14.4 the role of access principle 2 under clause 5 of Schedule 1 to the Act, as incorporated into the Schedule 1 description by clause 2.3 of the UBA STD, that “the service must be supplied to a standard that is consistent with international best practice”;

14.5 the practical effect of the requirement in the “Guiding Principles” in the UBA General Terms that the parties must “carry out their obligations under the UBA Terms in good faith and in furtherance of those purposes”, for example:<sup>2</sup>

14.5.1 in what circumstances network management can be imposed;

14.5.2 in what circumstances traffic can be prioritised; and

14.5.3 in what circumstances a regulated service can be withdrawn;

[14.5a the appropriateness of network management applied to the current ATM based UBA service](#);

14.6 whether the UBA STD should require the provision of regulated services using any xDSL technology that increases the maximum downstream speed where it is available (for example, that VDSL has to be provided when a DSLAM card is installed in relation to the line);

14.7 the extent to which the UBA STD requires, or should require, the evolution of the regulated service to meet the demands of end-users, which may require investment that will be recognised in the FPP; and

14.8 the extent to which the access provider should take account of the reasonable expectations of access seekers, particularly where they have made investments based on those expectations.

[14.9 transparency requirements relating to:](#)

[14.9.1 management of the network \(for example, information on where the REN is congested, waiters and investment plans\)](#);

[14.9.2 service orders and customer information \(for example, ensuring pre-qualification return the status of the line, access to NFF information and visibility of line capacity\)](#); and

[14.9.3 transaction charges and service company activity forming the basis of charges to RSPs.](#)