



Chorus

A Telecom New Zealand Business

Chorus submission on the Commerce Commission's "Guide to Regulatory Decision Making by the Commerce Commission for the Telecommunications Sector"

Introduction

1. Chorus is strongly supportive of the Commission's exercise of articulating guidelines for the industry on how it will approach the exercise of its powers under the Telecommunications Act. We understand that Telecom Group is providing a detailed response to the Commission on the guidelines and we do not intend to address every issue that the proposed guidelines raise.
2. Chorus' direct experience of the Commission's exercise of its powers has been in the Commission's role of developing Standard Terms Determination (**STDs**) and its ongoing administration of the STDs. Chorus is responsible for the implementation of four STDs:
 - a. UCLL STD dated 7 November 2007;
 - b. UCLL Co-location STD dated 7 November 2007;
 - c. UCLL Backhaul STD dated 27 June 2008; and
 - d. Sub-loop Services STD dated 18 June 2009.
3. We approach this topic from a practical angle. How can the Commission best exercise its jurisdiction to develop STDs and then ensure their ongoing workability?
4. First, we wish to remind the Commission of the principles that we submitted should found the Commission's decision-making in the context of the Sub-loop Services STD. Secondly, we wish to comment on the Commission's jurisdiction in the ongoing administration of the STDs.

Principles

5. In the context of the Sub-loop Services STD, Chorus outlined the principles that guided us in working with the Commission and our customers to develop the terms for our sub-loop services¹:
 - a. Retaining investment incentives;
 - b. The best commercial interests of Chorus as required by the Undertakings, and taking a long term view;
 - c. Supporting industry agreements;
 - d. Supporting the realistic needs of our customers; and
 - e. Encouraging consistency with previous Commission decisions.
6. Save for (b), which is particular to Chorus' context under the Telecom Separation Undertakings, these principles are consistent with themes which are developed by the Commission in its Guidelines.
7. For practical and operational issues (as distinguished from price), we think that the Commission should up-weight industry agreement in its decision-making process. As an example, the Space Allocation Rules in the draft Sub-loop Services STD departed significantly from the TCF agreement and were simply not practical. The parties had to invest significant time and effort in consulting on these rules (several rounds of submissions and a workshop with staff). In addition Chorus

¹ Chorus submission dated 20 March 2009, paragraph 2.

undertook two rounds of customer consultation to get information from customers on (a) the type of equipment they were likely to put in the cabinet; and (b) pedestal design. The industry was reasonably well aligned on how the space allocation rules should work. The final rules were substantially similar to those which had already been agreed by the industry in the TCF. We are supportive of the need for a robust consultation process, consistent with the principles of natural justice, but some of the additional consultation could have been avoided had the Commission accorded greater primacy to the agreements reached in the TCF.

8. The consultation process for the Sub-loop Services STD was protracted. This caused practical issues for us, as the 6 month delay in issuing the STD meant an equivalent extension to the project. This had significant financial implications, particularly as the project extended into the 09/10 financial year. We expect that our customers were also impacted by the delay. The length of these consultation processes increases regulatory uncertainty and has real financial implications, so we're keen to see efficient consultation processes where possible. However, we do recognise that there is a balance to be struck here; where issues are genuinely complex, we can see that several rounds of consultation are necessary and help to ensure the right outcome.

Commission's ongoing role with the STDs

9. In addition to its jurisdiction under s30R, which the Commission has identified in table 1, the Commission has jurisdiction under sections 58 and 59 of the Telecommunications Act 2001 (**Act**) to clarify and reconsider determinations. The Commission has also reserved to itself jurisdiction under the STDs to approve price changes and approve changes to the Service Level Terms and Operations Manuals. Chorus wishes to comment on the role of the Commission in the ongoing administration of the STDs.
10. Our key point is that, given the high level of operational detail in the STDs, and the extent to which the Commission has reserved to itself jurisdiction to approve changes, it is incumbent upon the Commission to deal with these issues in a timely fashion. And in exercising this jurisdiction, given the practical nature of the issues that are subject to change requests or clarifications, we think the Commission should give primacy to industry agreement. This is not occurring at present. This presents practical operational difficulties to Chorus.

Reviews

11. Review mechanisms are contained in all the STDs. Examples from the UCLL STD are:

Document	Clause	Description	Frequency
General Terms	10.2	Change mechanism for Operations Manual and Service Level Terms	Initiated by the parties or under the reviews for Operations Manual and Service Level Terms
Operations Manual	1.3.3	Review of Operations Manual	24 months after STD and thereafter every second

			year
Service Level Terms	2.3	Review of SLA	12 months after determination date and thereafter every second year
Price List	3.1.1	Labour cost index (LCIQ) annual price adjustment	Annual
	3.1.2	Change in underlying input costs of field services provided to Chorus (e.g. due to change in field services contract)	As required
	3.1.3	Review of sundry charges which are "price on application" (POA)	Annual

12. Clause 10.14.3 of the UCLL General Terms requires the Commission to advise whether a proposed change is approved or not within 10 Working Days. The TCF has set up a Working Party and in practice the industry consults on any proposed changes. The process is that Chorus then notifies the proposed change to Access Seekers and it is then submitted to the Commission for approval.

13. Chorus submitted changes to the UCLL, UCLL and UCLL Co-location STDs on 12 March 2008. We have not yet had approval from the Commission.

Clarifications, reviews and reconsiderations

14. Inevitably as we implement the STDs, parties find issues that are not covered by the STD, are unclear or ambiguous, or where the situation is simply not catered for. There are two possible mechanisms for amending the STDs in these circumstances, either a clarification under s58 or a review under s30R. In addition, where there has been a material change in circumstances, the Commission can "reconsider" a determination under s59.

15. The Commission also relies on its power under s30R to conduct regular competition reviews under the UCLL Backhaul STD, which is an important part of the ongoing administration of that STD.

16. As with the change mechanism process, the industry has agreed that issues should first be presented to the TCF Working Party. Appendix One contains a summary of the process that the industry has agreed should be followed. While it is not appropriate for the TCF to discuss price, at a meeting held in March this year the Commerce Commission indicated that the TCF could make submissions on price pitched at a principle level in relation to pricing, not on the price per se. The TCF Working Party is a robust, and reasonably formal, forum for discussing issues. The process agreed still leaves room for parties to object to a change before the Commission, notwithstanding that the majority of the Working Party is in agreement. In these circumstances, we consider it would only be in a very special situation that the Commission should fail to approve a change.

17. There have already been a number of clarifications to the STDs. However, there are a number still in flight. These have been submitted to the Commission, but we do not yet have a decision. Appendix Two contains a summary of the clarifications and reviews since the STDs, including when they were applied for and when granted.
18. In almost all cases, these issues have practical effects for those who administer the STDs at an operational level and Chorus is really keen to get them resolved. We can often agree on operational issues with our customers, meaning that the practical impact of a delay is minimised. However, we think it's important that the STD is a "living document". In particular the Operations Manual and Service Level Terms should accurately reflect operational practice. When there are delays, there can be a gap between what happens in practice and the requirements of the documents. Also, if the Commission does not agree with operational issues that the parties have already agreed upon, then we think it's desirable to have early notice of this.

Price reviews

19. As with clarifications and reviews, we request that the Commission deal with price reviews in a timely fashion. To date we have had no issue with the timeliness of price reviews (indeed, we have to confess that we have not always been timely with submitting the new prices and must bear some responsibility here if there have been delays).
20. There are practical issues with implementing price changes. There is a minimum 15 day lead time for applying a new price. Accordingly, we are grateful when the Commission can work with us to ensure that new prices are able to be applied as quickly as possible following approval.

APPENDIX ONE

Contents of Email dated 28 August 2009, recording agreed process for clarifications agreed at a Working Party Meeting on 28 November 2008

“The Working Party agreed at the meeting held 14 Nov 2008, that the process within the TCF for dealing with clarifications and reviews was as follows:

- The party seeking a clarification will consult with the TCF prior to any formal approach being made to the Commerce Commission.
- Parties can be advised of proposed changes via the TCF dialogue forum, but the detailed discussion must take place at a TCF Working Party meeting and TCF views can only be produced by a TCF Working Party.
- The party seeking a clarification will seek the working parties views on the issue and provide proposed solutions.
- The working party will give a view on whether it is a major or minor change. The TCF will provide a joint letter to the Commerce Commission if it supports the application. If it is straight forward to express alternate views the TCF will do so, otherwise it will highlight the level of agreement or disagreement and not get into detail.
- Parties remain free to give their views to the Commerce Commission directly.
- The initiating party is free to make the application after this whenever they wish to.
- It is up to the Commerce Commission to decide whether it is a review or a clarification, and on how they will run the consultation process.
- As the TCF will have done its “submission work” earlier, during the Commerce Commission consultation process it is likely the working party will just confirm its earlier submission assuming there have been no material changes since they last discussed it.

The same process will apply to reviews.

APPENDIX TWO
Clarifications and reviews

STD	Date	Process	Topic	Status
UCLL and UCLL Co-lo	24 Jan 08	Clarification	"Acting as a bank"; No fault found price list; Service Level Terms; requirement to publish on "Telecom's website"; Interference Management plan	Decision 643 dated 21 May 2008
UCLL	20 Feb 08	Clarification	Number portability	Decision 643 dated 21 May 2008
UCLL Backhaul	11 Sept 08	Clarification	Aggregation; pricing; capital carrying cost formula; soft launch; jitter	Decision 665 dated 5 March 2009
UCLL and UCLL Co-lo	7 Nov 08 ²	Price review	LCIQ and power	21 April 2009
UCLL Backhaul	28 Oct 08	Review (s3OR)	Competition review	Decision 667 dated 30 April 2009
UCLL and UCLL Co-lo	24 Feb 09	Clarification	Transfer costs	Still with the Commission
UCLL; UCLL Co-lo; UCLL Backhaul	12 Mar 09	Change mechanism	Service level terms and ops manuals	Still with the Commission
UCLL and UCLL Co-lo	12 May 2009	Clarification	Waiver process for cabinetisation notice	Still with the Commission
UCLL Backhaul	12 May 2009 ³	Clarification	Service Description	Decision 681 dated 9 Sept 09

² Revised information was sent to the Commission on 30 January 2009, so the delay was not as long as it first appears

UCLL Backhaul	19 August 2009	Review (s30R)	Competition review	Still with the Commission
Sub-loop Services STD	26 Aug 2009	Clarification	Notification of Distribution Cabinet information; backhaul charging methodology; market share assessment; timing of first assessment date; service level terms notifications	Still with the Commission
All	14 Sept 09	Price review	Price changes triggered by service company contract renegotiations	Still with the Commission
UCLL and UCLL Co-lo	Information yet to be submitted	Price review	LCIQ and power; POA	We will be asking the Commission to approve the changes as soon as possible so that we can apply as close to the 7 Nov 09 date as possible.

³ We acknowledge that there was some confusion with this clarification; Chorus sought to withdraw the clarification application when we discovered there was an error with it, the TCF Working Party agreed, but the Commission helpfully went ahead with the clarification, ensuring that the error was fixed.