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Commerce Commission
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WELLINGTON

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UBA Price Calculation: Telecom Request for Clarification

CallPlus & Kordia Group (Kordia) welcome the opportunity to comment on this issue. CallPlus & Kordia are both significant unbundled copper local loop (UCLL) investors in their own right – with only a few exceptions these investments are all in urban areas.

With the introduction of the Amendment Bill & Supplementary Order Paper (SOP) there is the prospect of a substantial change in the regulatory framework applying to various copper services including UBA. This now needs to be factored into the Commissions thinking with respect to the competition test.

In particular the following changes to the Act need to be factored into thinking before a final determination is made:

- UCLL averaging – a central part of the argument that UCLL prices should be moved from de-averaged (in this case Urban & Rural) to averaged is to align UCLL with UBA which is currently averaged. The two are linked with an aim to maintain the relativity between UBA & UCLL.
- The Supplementary Order Paper introduces a ‘transition’ period for 3 years following separation, presumably to create some stability and give the market time to adjust. In the case of UBA there is a 3 year period whereby the retail-minus price is frozen and the Commission is precluded from undertaking reviews, including further competition tests as we understand it.

In the context of the above, the introduction of de-regulated and regulated areas and Telecom’s proposal that non-regulated UBA retail prices are ‘ring fenced’ from the regulated price calculation, creates a situation that appears to contradict the intent of the changes to the Act and may well produce an outcome that is detrimental to the market.

- CallPlus and Kordia’s view is that to create a situation whereby UBA effectively become a de-averaged product (this time by competitive & non-competitive

areas) contradicts the averaging of the UCLL price in the SOP. The reality is that UBA will not be averaged if there are regulated and de-regulated areas.

- To implement the first competition test immediately ahead of a three year period where the retail price model is frozen, and the Commission is unable to make changes, could create a situation where the market is adversely affected and this is 'locked in' for a 3 year period before cost based UBA is introduced.

The timing is all wrong. The implications of the competition test and the clarification are uncertain and could have a detrimental effect on the market. The Commission should not make changes at this stage and should defer the competition test until the 3 year period is completed at which stage a competition test could be applied along with cost-based UBA.

The averaging of UCLL will have a material impact on the build plans of operators. Telecom suggests that the threat of further UCLL entry will constrain their behavior however this threat is questionable given the proposed averaging.

The proposal that UBA is split into de-regulated areas (largely urban) and regulated areas and the proposal that Telecom's retail prices in non-regulated areas are decoupled from the retail minus calculation raises significant concerns for UCLL builders.

Telecom's behavior to date has been to aggressively deter UCLL build and to seek to constrain the success of deployments. The loyalty offer, which breached undertakings, and the current alleged breach of the undertakings with respect to sub-loop extension, are examples of this and a good indication of the likely behavior that we can expect. Add to this mix the uncertainty as a result of the changes to the act and the three year freeze and there is a very real cause for concern.

UCLL builders built based on the relativity between UCLL prices and UBA prices. The introduction of de-regulated & regulated UBA areas will likely significantly change the situation.

Conclusion

CallPlus and Kordia believe that the competition test should be deferred until cost-based UBA is introduced.

CallPlus and Kordia do not support the proposed decoupling of retail prices in de-regulated areas from the regulated, averaged retail minus UBA product.

Should the Commission elect to proceed with the competition test then, given the uncertainty in the copper services regulation, CallPlus and Kordia suggest that the Commission review the basis of the competition test. The mere presence of competitors in exchanges is not, in itself, a good measure of competition. We would propose that in addition to the presence of multiple competitors there should be an actual market share test based on competitor share of the addressable market. A 'trigger point' such as this is in line with regulatory practice overseas. Additionally the Commission may consider it appropriate to apply a 3 year freeze during the transition period in line with the proposed changes to the Act.

For further information please contact:

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