



**Cross-Submission to the Commerce
Commission on the 1st UBA Competition
Test Draft Decision**

21 December 2010

Introduction

1. Vector welcomes the opportunity to respond to submissions on the Commerce Commission's (the **Commission**) "Draft Review Decision under section 30R of the Telecommunications Act 2001 (the '**Act**') of Decision 611" (the **Draft Review Decision**).
2. In the following sections we respond to several issues and topics addressed in Vodafone's and Telecom's submissions. However, to again summarise our overarching view:
 - a) It is critical that the Commission makes sound decisions on its UBA competition assessment as the consequences of drawing the wrong conclusions are asymmetric and significant for both consumers and investors; and
 - b) The Commission's final decision will set a framework precedent for how UBA is deregulated in response to upcoming Ultra-Fast Broadband (**UFB**) initiative and Rural Broadband Initiative (**RBI**) fibre deployments. It is therefore important that the Commission accounts for Local Fibre Companies (**LFCs**) and RBI networks in its final review decision.

Product Market

3. The consensus view in submissions was that mobile and wireless is at least a *near* substitute for fixed-line UBA (if not already a *close* substitute) that needs to be closely monitored by the Commission¹.
4. As we previously submitted, Vector would prefer that the relevant market definition be technology neutral, focussing on bandwidth ranges in which consumers make substitution decisions. However, if the Commission does not deem wireless a close substitute for UBA at this time then we support Telecom's request that the Commission establish in its final report the process it will adopt for deciding how and when it would do so. In particular, we note that several RBI bidders are proposing the use of 3G/4G-mobile and wireless access technologies to replace rural copper access services. These investments, which will proceed over the next six years, imply greater fixed-to-mobile substitution in rural areas that the Commission will specifically need to take account of in its final review decision.

¹ Vodafone submission (Page 2) and Telecom submission (paragraph 14)

5. In a similar vein, we also agree with Telecom that the Commission needs to clarify the process by which fibre network coverage will be included in the market analysis going forward² and that a similar approach for cable and fibre networks seems appropriate³.

Non-Discrimination and EOI

6. In light of future uncertainty over Telecom's structural separation and its EOI and non-discrimination obligations, we agree with Vodafone's recommendation that "the Commission consider this uncertainty to ensure that there are adequate protections for access seekers in future competition assessment reviews of the UBA service"⁴. One such protection would be for the Commission to adopt Vector's proposal that unbundled UCLL should only be considered a competitive product where EOI remains⁵ and where there exists effective co-location and backhaul regulation (or at least effective competition for these complementary products).

Competition review process

7. With regards to the review process, Vector is supportive of Telecom's proposal for quarterly data reviews (although six monthly reviews would be more administratively efficient) supplemented by annual policy reviews and ad-hoc reviews as required⁶.
8. We would envisage the data review to be a mechanistic application of the Commission's competition threshold test, while we submit that the annual policy review should investigate the wider competition issues including the supplementary competition tests that Vector proposed in its submission, namely:
 - a) an ex-post assessment of the impact of competition in a particular ESA/cabinet that has been deregulated;
 - b) a supplementary test that questions whether Telecom's national scale affords it significant market power in areas being investigated for deregulation; and

² Telecom submission – paragraph 27

³ *ibid*

⁴ Vodafone submission – page 3

⁵ Vector submission – paragraph 18

⁶ Telecom submission – paragraph 49

- c) an opportunity for investors in competing networks or unbundled services to outline their investment intentions and business cases in confidence to the Commission to supplement the formulation of any ex-ante competition threshold (e.g. the 6,500 lines threshold).
9. Vector also agrees with Telecom that adopting a strict rule that any increase in price of a deregulated UBA service will warrant an ad hoc review is unwarranted. Price increases that reflect increasing service costs are legitimate. More importantly, price is only one aspect of a competitive service offering so should not be assessed in isolation. It is therefore our view that changes in post-deregulation prices should be just one factor that the Commission considers as part of a wider ex-post competition assessment incorporated into annual reviews, as suggested above.
10. Despite this view, the application of ad hoc reviews should not be limited and Key stakeholders should be afforded reasonable rights to request such reviews where there are genuine competition concerns.

Contact details

11. Vector looks forward to working with the Commission as it considers and develops its thinking on this topic. We would be happy to expand on any of the points raised in this cross submission. Please contact Aaron Webb at aaron.webb@vector.co.nz or on 09-978-8288 should you wish to discuss further.