CallPlus Limited

Cross-Submission on the Commerce Commission's Draft determinations for UBA and UCLL services

Public Version

20th March 2015

Overview

1. This cross-submission is made by CallPlus, the third largest fixed line carrier and operator of a number of brands in the retail and wholesale market including CallPlus, Flip, Orcon and Slingshot. CallPlus is by far the largest unbundler in New Zealand. We thank you for the opportunity to comment on the Commissions draft determination.

2. CallPlus strongly agrees with the points made in Sparks submission and the conclusions that:

   - *"The draft UCLL price is indefensibly high, not for any New Zealand specific reasons, but because of the Commission decision to include inefficient costs within its models"*
   - *"The Commission can make decisions that operate to increase prices for end-user, but only where they can be shown to demonstrably result in greater long-term net benefits to end-users."*

3. We would also echo Spark's view that we want a healthy Chorus as a key component of New Zealand's infrastructure but as Spark state "*we know that Chorus had sufficient funding, and was able to continue investing at efficient levels, at the IPP prices for UCLL & UBA. It said precisely that in the last UCLL pricing review"*

4. We cannot see how backdating can benefit consumers, and it has a big negative effect on us, reducing our ability to provide effective competitive pressure as the third fixed line provider.

What will be the challenges in 2020?

5. **CallPlus urges the Commission to consider the challenges that the industry will be facing in 2020 and make the correct decisions now to best facilitate s18 and competition and consumers.**

6. Fibre will be rolled out, that is already commercially contracted and the FPP decisions will have no bearing on the rollout of fibre.

7. Fibre take-up will well exceed targets, there is already enough evidence that the take-up of fibre will more than meet expectations. In the current deployment footprint Crown Fibre expects that fibre take-up will be at 30% by the end of 2015 – well ahead of expectations.

8. In fact at a high level the critical challenges facing the industry, and the Commission in particular, in 2020 will not be about fibre, they will be: -

   - Ensuring that there is a vibrant competitive landscape encouraging that consumers get the services at the prices they should.
   - Ensuring that RSP's are investing in bandwidth, caching, multicast capability and other network investments to be able to create compelling high speed services.
   - Ensuring that there is an active wholesale market allowing non-traditional Telco's and smaller niche service providers to innovate and differentiate.

- Ensuring that there is not a duopoly of integrated mobile-fixed players

9. In CallPlus' view the Commissions draft determination does little to support competition and is arguably doing little to address the challenges above – in fact the reverse.

Current draft will adversely impact competition in the fixed retail and wholesale market

10. Competition is founded on copper services currently. Fixed line operators business models are founded on copper access prices.
11. The Commission are determining the key prices that underpin the copper regime – UCLL & UBA.
12. The Commissions have been a leading player in promoting unbundling investment, a cornerstone of the ladder of investment. The competitors to the incumbent have been the biggest unbundlers.
13. The Commissions draft decision to increase UCLL prices by $4.70 (20%) from 1 December hits unbundlers the hardest – particularly Slingshot, Orcon & Flip who have a heavy reliance on unbundled lines to deliver their services.
14. The impact on the ability of the number 3 & 4 largest ISP's (Slingshot & Orcon) to compete should be self-evident.
15. For CallPlus, a mere 6 months from acquiring Orcon (a significant unbundler in its own right), the Commission is proposing to increase its costs by $4.70 (20%). This could not have reasonably been foreseen or expected by CallPlus at the time of the investment and would have impacted the valuation of the business.
16. As we have also submitted if we become uncompetitive then in addition to a $4.70 increase in our copper charge we face a vicious cycle of lower utilisation of our unbundled assets (as a result of being less competitive) driving higher cost per user of the equipment (due to the fixed cost nature of the investment). The higher cost per user impacts our ability to invest in marketing and create compellingly priced services further driving lower utilisation.

Impact on our ability to compete in copper and you impact our ability to compete in fibre

17. There is absolutely no evidence that copper services priced at the IPP level have any detrimental effect on fibre, in fact despite views from some parties that VDSL would be bad for fibre up-take empirical evidence to date is the reverse. Not only is Fibre take-up one of the fastest growing services so too is VDSL.
18. CallPlus has always stated the view that high speed copper and fibre services complement each other and have a symbiotic relationship.
    - They collectively create high speed broadband with sufficient coverage to start the development of the services that will run over fibre

- They collectively provide the scale for RSP's to invest in the infrastructure, caching, backhaul etc. that is critical to providing high speed broadband. It is the copper services that underpin those investments over the next 3-5 years

19. CallPlus despite being the largest unbundler in NZ is also one of the leading fibre providers, for example Orcon is the only one of the larger providers that is currently offering a Gigatown service. Our ability to craft a 'Gigatown product' is wholly dependent on the infrastructure it shares with copper.

Backdating

20. It's hard to see how backdating, in any way, is in line with s18 and promotes competition or benefits end-users. What efficiency is the Commission trying to achieve by transferring money from, end-users and RSPs to Chorus (and Chorus alone, not other LFCs) an upstream wholesale network operator who has already committed contractually to build the fibre network?
21. Retrospectively RSP's are unable to recover any increase. Backdating to 2012 would have a material negative impact on us, and on our ability to provide robust competitive pressure as the third fixed line player. An increase in copper to $28.22 in 2012 could have materially changed our decisions with respect to: -
    - The extent to which we unbundled
    - The extent to which we invested in a new 'on-net' brand – Flip
    - The price we were prepared to pay for Orcon in June 2014
22. Furthermore backdating to December 2014 is wrong. As we said in our February submission, the recent price rises were limited by market conditions, such that, even after those price rises, we face a substantial shortfall. Add to that the significant increases in connection costs and the fact that at the time of signing a customer we have no way to ascertain what that connection cost will be makes recovering these additional charges challenging.
23. **RSP's cannot be expected to adjust their business models to a substantial change in the fundamental underlying copper price in a matter of months, let alone retrospectively.**
24. If Chorus couldn't predict where the Commission would land on pricing, there is no prospect we could do so. Therefore there is no prospect we could provision for the possible backdating range, especially given market pressures and competition faced by RSPs (but not faced upstream by Chorus).
25. We note that Chorus said in its Stock Exchange announcement in December 2012, that the final UCLL and draft UBA IPPs*: "could require Chorus to fundamentally rethink its business model, capital structure and approach to dividends".* They obviously couldn't predict where the Commission would go and provision accordingly, yet they have the key relevant information as it is their network, and they have the scale to analyse in detail. There is no prospect we could predict and make provision for the 20% increase.

26. We struggle to see how this could in any way benefit competition or consumers.

Conclusion

27. This brief submission supplements and supports the detailed cross-submissions on 20 February 2015 by Wigley & Company outlining significant concerns with the process and errors in the modelling to date.

28. This cross submission is short and we recognise are repeating points made in our submission and the past which is a practice we normally try to avoid. However the assessment of the impact on fixed market competition seems to be absent from considerations and submissions are largely silent on the issue. Concerning is that there appears to be little acknowledgement that the third operator in the fixed line retail market is a critical role in the competitive landscape of both the retail and the wholesale markets seems to be largely ignored.