

Chair
Cabinet Policy Committee

DIGITAL BROADCASTING REVIEW OF REGULATION: OPTIONS PAPER FOR PUBLIC CONSULTATION

Purpose

1. This paper seeks Cabinet's approval for the release of a research report and an accompanying discussion paper, to provide the basis for consultation with stakeholders on the digital broadcasting review of regulation.

Executive Summary

2. This paper summarises an initial research report, which describes current and emerging broadcasting and telecommunications markets and relevant policy settings in New Zealand. The report also analyses international trends, provides benchmarking for New Zealand in terms of regulatory responses, and highlights a series of issues and challenges for consideration.

3. The broadcasting and telecommunications markets are experiencing significant change, driven by digital technology and related consumer behaviour. Digital technology allows audio-visual content to be delivered through a computer, mobile phone or personal digital assistant as well as a TV set. Consumers can increasingly watch what they want at a time and in a place of their choosing. As a result, there is growing convergence between the broadcasting, telecommunications and internet sectors. Traditional value chains are being disrupted, and new business models are emerging. It is timely to review New Zealand's regulatory regime to ensure it remains appropriate to this converging environment.

4. The research report identifies a number of risks to (and opportunities for) the establishment in New Zealand of a converged market with diverse audio-visual content and multiple providers. The report's findings suggest maintenance of the status quo is unlikely to manage these risks adequately. A draft public discussion paper (attached) seeks comment on the issues identified in the report, and offers a range of regulatory options for consideration. The options are designed to assess stakeholder views on the level and type of change (if any) that might be required, and to enable issues to be prioritised. Subject to Cabinet's agreement it is proposed that the research report and discussion paper be released to inform stakeholder consultation over the period to April 2008.

5. The discussion paper describes three possible approaches to change, marking broad points along the regulatory continuum. These can be summarised as: updating existing arrangements; restructuring the regime; and reforming the regime. Options include change to the regulatory framework, which may be accompanied by

specific measures to deal with risks at the content, distribution and networks parts of the value chain.

Background

6. In May 2006, Cabinet took a number of decisions in support of the launch of free-to-air digital television, and the eventual switch-off of analogue signals (POL Min (06) 8/6, 8/7 and 8/8 refer). In doing so, Cabinet also “directed officials to review regulatory issues relevant to a new digital broadcasting environment, and to report back to Cabinet Policy Committee with recommendations by June 2007” (POL Min (06) 8/8).

7. In making this decision, Cabinet took into account the significant change to broadcasting infrastructure that the launch of and transition to digital television represents. It alters the competitive relationship amongst free-to-air broadcasters, and between pay TV and free-to-air operators. It also facilitates convergence with telecommunications services via the internet.

8. Broadcasting, film, telecommunications and the internet have traditionally operated as distinct sectors and been regulated separately. In the future, however, the main distinction is likely to be between those in the business of content creation or provision (e.g. TVNZ) and those who are aggregating (bundling) content or delivering it to consumers (e.g. Telecom). This has led governments such as those of the UK and Australia to reflect convergence by re-structuring or reforming their regulatory framework.

9. The regulatory review commenced in December 2006, after arrangements for the launch of free-to-air digital television had been finalised. The Ministers of Broadcasting and Communications approved terms of reference for the review in May 2007. A copy of the published terms of reference is attached (Appendix One). In view of the delayed start to the review, the Chair of the Cabinet Policy Committee agreed to extend the final reporting date to 29 February 2008 (POL Memo (07) 13/1).

Context for the Review

10. The audio-visual¹ communications sector world-wide is undergoing a period of change and significant upheaval, driven by a combination of digital technology developments and new patterns of consumer behaviour. New digital technology is facilitating increased convergence between the traditionally separate businesses of broadcasting, telecommunications and the internet. This is because audio-visual content can now be delivered across all of these platforms. Improvements in broadband, together with the availability of such devices as hard-drive video recorders, put consumers increasingly in control of when and how they access, watch, manipulate and create digital audio-visual content. Convergence is also occurring with other forms of multi-media content – as newspapers augment their on-line presence with audio and video clips, for example.

¹ In this paper, references to “audio-visual” encompass both video and audio content. “Broadcasting-like” activities refer to the delivery of traditional broadcast content across a range of digital platforms (on-line, mobile etc)

11. These changes are having an impact on traditional business models for both the broadcasting and telecommunications sectors in New Zealand. They are changing competitive relationships within the market, and have implications for the creation, availability and accessibility of locally produced and public service broadcasting content.

12. The review is therefore a joint project of the Ministry for Culture and Heritage and the Ministry of Economic Development. It assesses relevant regulatory issues under the broad headings of competition, standards and copyright, and focuses on three main points in the broadcasting value chain: content, distribution and networks. For the purposes of the review, these are defined as follows:

- **‘Content’** means ‘broadcasting-like’, digital audio-visual and audio material capable of being delivered to the user electronically.
- **‘Distribution’** is the process by which content is purchased, aggregated, packaged and released for delivery to the end user.
- **‘Networks’** are the means by which content reaches its audience, including broadcasting transmission networks, wireline and wireless telephony and data networks.

The terms of reference also directed that changes in business models and the value chain be analysed, and that options for consideration should take into account immediate issues, emerging technology and market developments, and possible longer-term changes. In requesting the review of regulation, Cabinet noted that it would not be undertaken with an implied *intention* to make changes, and that some objectives might be achievable through such means as industry self-regulation or co-operation.

13. The review is being undertaken in several phases:

- Preliminary research (Volume One): The Executive Summary of the report *Digital Broadcasting: Review of Regulation* is attached, as Appendix Two. Copies of the full report have been reviewed by the Ministers of Broadcasting and of Communications. Copies of the full report are available on request;
- Discussion paper (Volume Two): A paper, following on from the research report and setting out possible options as a guide for stakeholder consultation, is attached as Appendix Three;
- Stakeholder consultation: Consultation is planned to take place following Cabinet approval for the release of the research report and discussion paper, from January to April 2008;
- Report-back: The Ministers of Broadcasting and Communications are to report on the outcome of consultation, with recommended actions. If any regulatory change is proposed, detailed options will then need to be designed and further public consultation held.

14. There are a number of other work-streams and strategies with relevance to the regulatory review. It is therefore aligned with the Telecommunications Stocktake, Digital Strategy, Digital Content Strategy, the E-Government Strategy and the public broadcasting Programme of Action. Cabinet recently approved the release of a discussion paper on the future of content regulation (standards). The questions addressed in that paper are complementary to those in the attached discussion document, and stakeholder feedback on content regulation will be fed in to this wider regulatory review.

17. The report notes that the risks it identifies are exacerbated by several features of the small and geographically isolated New Zealand market:

- the tendency towards monopolies or duopolies;
- the vulnerability of local content and public service broadcasting as audiences fragment across multiple channels and international content is instantly accessible via the internet; and
- the necessity to be price (and technology) takers.

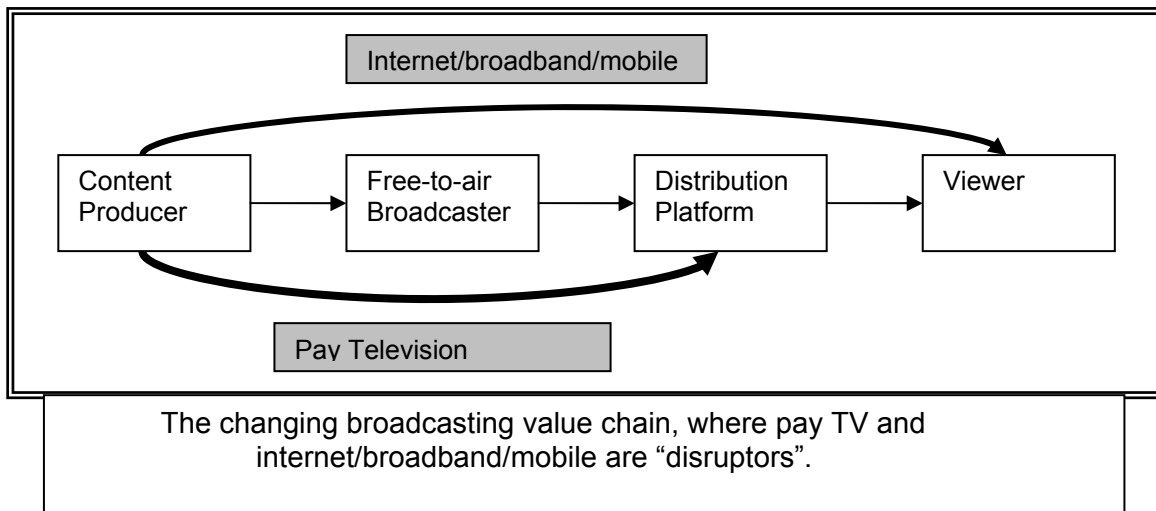
18. The report concludes that international regulatory responses to these changes have varied amongst the markets referenced in the report, but notes some general trends. Most jurisdictions are moving from relatively heavy regulation to a lighter-touch approach, with an emphasis on effective operation of the market and consumer choice. Regulation is now focused on standards issues, the creation and delivery of public service content (especially locally-produced content that the market will not deliver), and ensuring appropriate access to content and to networks.

19. Sometimes the regulatory approach is sector-specific: for example, in the area of standards, free-to-air broadcasting is seen as a “push” technology, but the internet is a “pull” platform, because consumers must actively seek and select content they wish to access. Increasingly, however, governments are adopting a more consistent regulatory approach across telecommunications and broadcasting, irrespective of how audio-visual content is delivered. One result has been the establishment of converged regulatory authorities, such as the Office of Communications (Ofcom) in the UK and the Australian Communications and Media Authority (ACMA) in Australia.

Changes in business models and the broadcasting value chain

20. Technology developments and changes in consumer behaviour are driving the significant changes to broadcasting and telecommunications. These drivers are both, in turn, providing a catalyst for further change. Traditional business models are in flux as new market relationships and new forms of revenue emerge.

21. The competitive environment is volatile: consumers are more in control of when and how they access content; the media market is increasingly global; and new market entrants can go direct to consumers, by-passing sections of the traditional broadcasting value chain. There are critical risks to the creation and distribution of local content as a result of the growth in media choices, and the ready availability of global content. The risk is heightened because of the increased costs to broadcasters of providing their content across multiple delivery platforms (satellite, cable, broadband etc) in order to reach their audiences. Pay television and broadband are therefore “disrupting” the traditional broadcasting value chain. This is illustrated below.



22. The telecommunications industry and internet service providers (ISPs) are diversifying in response to heightened competition in the converging environment. Their challenge is to make sustainable returns from new platforms and services which have uncertain growth patterns. This relies upon the development of attractive consumer propositions, and requires investment in infrastructure and the development of new business models. The differences between traditional and new business models are illustrated in the table below:

Examples of business models in digital media³

| | Advertising | Subscription | PPV | Advertising tool | Transactional revenue share |
|--------------------|---|---|---|---|---|
| Traditional models | <ul style="list-style-type: none"> Inserted in breaks in the content (TV, Radio, Print) Embedded in the content (product placement) | <ul style="list-style-type: none"> Ongoing fixed fee for accessing content (e.g. Pay-TV, magazines) | <ul style="list-style-type: none"> One-off fee to access specific piece of content (Pay-TV, print) | <ul style="list-style-type: none"> Content developed as an advertising window (e.g. free magazines, produced by retailers) | <ul style="list-style-type: none"> N/A |
| New media models | <ul style="list-style-type: none"> Model extended to online and mobile (e.g. banners, links to online shops) | <ul style="list-style-type: none"> Model extended to online and mobile (e.g. subscription to mobile content or to a website) | <ul style="list-style-type: none"> Model extended to mobile and online (e.g. VOD, mobile content) | <ul style="list-style-type: none"> Companies developing non-revenue generating mobile and online portals as means of advertising | <ul style="list-style-type: none"> New digital media used as billing platforms with operators taking revenue share (e.g. mobile content) |

23. These changes have the greatest impact on broadcasting, which faces an explosion in competition. This comes not only from the increased number of broadcast services which are possible in a digital environment, but also from the broadband or wireless platforms that now deliver audio-visual content. In addition, there is competition from the increasing availability of global and user-generated content through the internet. Competitive pressures remain largely amongst the broadcasters (especially between free-to-air and pay TV), but will grow as and when investment is made in improved broadband infrastructure.

Context: Rationale for intervention and policy tools

³ In this table, PPV stands for “pay per view” and VOD stands for “video on demand”.

24. In New Zealand, the legislative and regulatory policies for broadcasting and telecommunications are largely separate (with some overlap in the Radio-communications Act, 1989).

25. Broadly speaking, government intervention in the telecommunications sector has focused on the provision of world-class infrastructure which is affordable and effective, primarily by ensuring effective competition. By contrast, broadcasting policy has largely dealt with content issues⁴ and is motivated by social and cultural objectives, ensuring the delivery of public value. Spectrum allocation is relevant to both broadcasting and telecommunications, and is a policy tool implemented by government to optimise the use of a scarce resource.

26. A number of mechanisms are used to achieve these economic and cultural objectives. They include industry regulation and the threat of regulation, conditions being applied to offers of support from government, maintaining public ownership and the provision of incentives to encourage co-operation within and between relevant industry sectors. If these are applied in combination, within a consistent regulatory and funding environment, the effect should be to facilitate lower compliance and transaction costs and to allow the sector to innovate more quickly.

27. The broad government objectives of economic transformation, national identity, and families – young and old are relevant to the regulatory review. In addition, the specific objectives proposed to guide the identification of options for regulatory change are as follows:

- Ensuring **diverse platforms** (e.g. mobile, broadband, satellite, terrestrial) for the delivery of audio-visual content to New Zealanders;
- Creating **world-class infrastructure** for economic transformation;
- Ensuring the operation of **effective markets** (in respect of competition, investment, the encouragement of innovation and sustainable growth);
- Ensuring **accessibility and affordability** of audio-visual content and services (including the encouragement of interoperability);
- Ensuring the **consistent application of standards** (promotion, protection, public safety, rights) as appropriate to delivery platforms;
- Protecting **property rights**, to ensure the creation of audio-visual content is encouraged, and content is able to be exploited on fair terms;
- Ensuring **personal and national security**, to deal with the rise in “cyber crime” (including through the promotion of media literacy);
- Supporting **diversity of content** (especially higher-cost and special interest programming which the market will not otherwise deliver) to foster and promote expressions of national and cultural identity; and
- Securing **public value** (encompassing cultural, educational, social and democratic value) by delivering benefits to audiences as citizens, and not simply as consumers.

28. A set of principles is also proposed, with which it is intended that any changes to the nature or extent of regulatory intervention should be consistent. These are:

⁴ Exceptions to this include support for the roll-out and maintenance of analogue transmission infrastructure to remote areas, and for digital terrestrial transmission costs through Freeview,

- **Minimum intervention necessary:** regulatory tools chosen should be the least onerous to achieve the desired objective, have reference to relevant international requirements, and ensure an efficient, effective regime;
- **Sustainable and adaptable:** making regulatory choices that will cope with the pace of technological change in a fast-developing market;
- **Open and transparent:** to provide regulatory certainty to market players and consumers;
- **Technology neutral:** to avoid making *de facto* technology choices by the use of regulation or incentives, and to ensure innovation is not discouraged; and
- **Social equity and cultural value:** to deliver benefits to all New Zealanders.

Issues and Options for discussion

29. The research report has identified eight areas where there is resistance to change (“market stickiness”), where technology is disrupting traditional value chains, and where social and cultural objectives are at risk. The threats and issues for discussion include some that are relevant across the board, and others that apply to different points in the value chain. A table summarising these threats is reproduced below:

| Threats to ‘Diversity’ scenario | Threats | Issues for consideration |
|--|---------|---|
| | | Macro issues |
| 1. Lack of clarity and consistency in regulation and policies | 1,2,3,6 | Should NZ consolidate the regulation of content, distribution and networks into a single regulator and / or consolidate the legal basis for media regulation into a single Act (itself consistent with telecoms regulation)? ... Should NZ take specific action to define and treat converging markets both in terms of competition law and other areas of jurisdictional overlap? |
| 2. Lack of competition in relevant markets and diversity in provision (platform, content and services) | 2,4 | Should changes to media ownership (including cross-platform) or foreign investment rules be considered? |
| | 2,3 | Does NZ need to make any policy adjustments to encourage investment and to ensure the digital broadcasting industries are yielding optimal economic return to NZ (e.g. investment in digital content, infrastructure)? |
| 3. Lack of investment and consequent lack of innovation in digital products and services | 8 | How should NZ approach its Media Literacy programme in a digital age? |
| | | Content |
| 4. Lack of local content – in terms of range, quantity and quality | 4 | How should NZ ensure availability of diverse content across all platforms - particularly local content in a variety of genres including drama, documentaries and children’s? |
| | 1,3,6 | Are NZ’s rules on advertising appropriate in digital age? |
| | 3,4 | Should NZ consider changing its public service broadcasting objectives, structure, approach and / or funding (e.g. increased contestability)? |
| | | Distribution |
| 5. Rise of cybercrime | 7,8 | How can the regulator ensure that disadvantaged groups are able to access digital content (e.g. regulation of broadcasters or EPGs to ensure services for the visually impaired, captioned/signed content)? |
| 6. Inadequate protection for minors and other vulnerable groups | 4,7 | Should NZ consider regulating the acquisition and/or sale of content rights (e.g. consider anti-siphoning regime)? |
| 7. Inequality of access to digital services for both rural areas and/or disadvantaged groups | 1,2,4,8 | Is NZ’s Copyright framework understood by consumers? Does it work equally for rights holders who are individuals / small companies as it does for large, national or multi-national companies? |
| | 2,4 | Are the rights to orphan AV works and archives sufficiently accessible? |
| | | Network |
| 8. Significant ‘digital illiteracy’ and consumer confusion | 1,7 | How can NZ ensure the effective use of technical standards to promote fair access and competition? |
| | 2,3 | In light of the digital broadcasting network monopolies and duopolies, what, if any, open access regimes should NZ apply across different digital broadcast networks? |
| | 2,3 | What form should the post-ASO spectrum allocation regime take? |

30. In considering the threats and issues outlined in the report, one option is to retain the status quo. The main advantage of doing so is that New Zealand's traditional light-handed approach to broadcasting and telecommunications regulation has been viewed positively in international markets, a number of which are moving towards less sector-specific regulation, with more reliance on general competition policies and the provision of subsidies to achieve economic and social objectives.

31. In the absence of regulatory change, however, the research report – together with the high-level stakeholder views on market and technology developments that informed it – highlights particular concerns that:

- a. The business case for significant investment in broadband infrastructure is marginal;
- b. The production and dissemination of certain genres of local programmes (especially drama, documentaries and children's programmes) will increasingly be threatened;
- c. The ability to trade in content will be compromised if understandings on the value of intellectual property rights, and appropriate digital rights management tools, are not reached, and if there is limited public understanding of copyright issues;
- d. The availability of certain types of premium content (including sports and other events of national significance) will be restricted if "bundling" and/or long-term exclusive deals crowd less powerful players out of these markets;
- e. The market has been characterised by vertically integrated, dominant players (Telecom and SKY) in each sector; and
- f. The existence of multiple regulatory agencies does not deal effectively with the implications of convergence.

The report implies that if these threats are not addressed, the outcome for consumers is likely to be limited choice and high cost of services.

32. As a second volume to the research report, officials have prepared a discussion paper (Appendix Three). An initial set of questions in the discussion document seeks stakeholder comment on these threats and issues, to confirm whether they have been correctly identified, and on the level of change (if any) that might be required.

33. To guide discussion and to stimulate debate, the discussion paper then summarises the status quo, and identifies three broad approaches representing change at places along the regulatory spectrum. The approaches are identified as:

- Updating existing regulatory arrangements;
- Restructuring the regime in line with market developments; and
- Reforming the regime consistent with economic transformation and national identity goals.

The specific measures identified under each of these three approaches are illustrative of change at each level, and there is no implied intention to favour any particular option. The measures can also be seen as incremental or "building-blocks". For example, decisions based largely around updating existing arrangements or restructuring the regime would not preclude reform at a later point, nor the adoption of a specific regulatory measure in response to a risk prioritised by stakeholders. At the same time, measures may illustrate the range of policy responses (referred to in paragraph 26 above) to a single risk. Industry regulation

may be one option, but the discussion paper also offers alternative measures to influence market behaviour.

34. The three broad approaches can be summarised as follows:

- (a) **Updating existing arrangements.** This approach would seek to ensure existing regulation is consistent and up-to-date across platforms. It could, for example, see an expansion of the Telecommunications Commissioner's role to manage relevant aspects of broadcasting. Content standards regulation could be aligned across relevant bodies (e.g. BSA, Office of Film and Literature Classification, ASA⁵), should that be desirable. Further examples include the extension of funded captioning of programmes for the deaf and hearing-impaired to new platforms, and the development of a post-analogue switch-off spectrum framework.
- (b) **Restructuring the regime in line with market developments.** This approach would see the introduction of a series of measures (additional to those updating existing arrangements), with the aim of restructuring and refreshing the regulatory framework in a manner suited to the converged future. It could, for example, include establishment of a *converged* regulator to administer content standards and to manage a media literacy programme. A converged regulator's role could extend further to a "watchdog" function, monitoring whether public broadcasting objectives are being met. Such an agency might also comment on the state of the broadcasting and wider media environment, and conduct relevant research. Restructuring could also see the introduction of mechanisms to ensure the visibility and diversity of funded local content across traditional and new media. It could review the scope and application of public service broadcasting (e.g. terms for the inclusion of public service content/channels on pay platforms) in a digital age. Further examples include a licensing regime for "orphan works"⁶ and brokered terms of trade (amongst content providers, and with content creators) to encourage fairness and transparency.
- (c) **Reforming the regime through structural change,** consistent with economic transformation and national identity goals. This approach would introduce a series of further measures with the aim of creating optimal conditions for achievement of the "Diversity" scenario. It could, for example, establish a *single* regulator: this would build on the restructured approach in (b) above by taking on aspects of the spectrum management regulatory role (currently with MED), incorporating the expanded Telecommunications Commissioner's role, and supported by a single Act. Reform could see the establishment of a converged funding agency, supporting the production of audio-visual content across platforms. Further reforms could include: measures to guard against the concentration of rights in content of national significance; "must-carry" or "must pay" rules to ensure certain services are carried on pay platforms; regulation to ensure open delivery platforms; and

⁵ Note that preliminary questions about such alignment are included in a discussion paper on the future of content regulation, recently approved by Cabinet (CBC Min (07), and confirmed CAB Min 07 36/3 – these do not directly address the issue of organizational structure, and are intended to be complementary to the issues addressed in the discussion document attached to this paper.

⁶ Orphan works are those in which copyright holders are difficult to identify and/or locate, thus constraining any re-screening opportunities for the programmes.

measures to ensure investment in telecommunications and broadcasting infrastructure, as well as in local content and public service broadcasting. Reform might also result in the introduction of licensing for broadcasters and/or multiplex⁷ operators, to enable the implementation of the new conditions of operation.

35. Discussion of the risks and issues, the need (if any) for regulatory change in terms of these three broad approaches, and the pros and cons of possible actions, form the core of the discussion document, which this paper proposes should be released for stakeholder consultation.

36. Finally, the discussion paper makes it clear that changes to the framework, such as the introduction of a converged regulator, do not imply an increase in the regulatory burden. Nor do they pre-figure any intention to introduce additional regulation targeted specifically at the telecommunications sector given that recent regulatory measures, such as local loop unbundling, are still being implemented.

37. Stakeholders will not be confined to making their responses only to the three packages proposed in the attached discussion paper. The full range of policy options identified in the research report could also be referenced – with respondents able to identify those they wished to have considered either in addition to or instead of the components identified in the three packages.

Risk Analysis

38. There is already considerable market interest in the digital broadcasting review of regulation. Some parties have speculated that regulation comparable to the telecommunications sector may be introduced for broadcasting. Equally, telecommunications companies are likely to be concerned by the impact of any further regulation on their business when they are still in the process of managing the implementation of recent regulatory changes.

39. The options in package C (reform) include some changes which, if applied, could have implications for the treatment of other industry sectors. Any proposal to devolve aspects of competition regulation to a single regulator, for example, would need to be carefully thought through, to ensure that the independence of the Commerce Commission were not compromised, and to ensure clear delineations of responsibility and priority of recourse for applicants/complainants.

40. The production sector and public broadcasters could be concerned about an option to create a converged funding body (one of the illustrative examples included in the “reform” package). When such an option was mooted in 2004 independent producers’ preference was to maintain multiple points of contact to maximise the chances of projects being supported. Public broadcasters emphasised direct funding as more important than allocations via a funding agency, given their accountability to shareholding Ministers, their editorial independence, and their need for a secure allocation of funding to meet their Charter obligations. Māori broadcasters, producers and te reo advocates would want to ensure funding for Māori broadcasting did not become secondary to the mainstream activities of a single funding body. A converged funding body could affect the Crown’s ability to “protect

⁷ A multiplex is a piece of equipment used to transmit a number of channels, where the digital transmission streams of each channel have been mixed together.

and promote the Māori language and culture through broadcasting on the most favourable terms and conditions” (CAB (91) M28/11 refers). Were the option of such a body to be explored further, its role and structure would need to be carefully designed in order to deal appropriately with such issues.

41. Across the Tasman, Australia is making a transition to digital broadcasting, has made changes to its cross-media ownership regulations, is attempting to deal with investment in broadband infrastructure and has recently established a converged regulator (ACMA). Proposals for regulatory change in New Zealand will need to take into account the implications of these parallel developments in Australia, although there is no suggestion that regulation in New Zealand needs to follow an Australian approach.

42. Overall, these potential concerns should be mitigated by the shape and context of the discussion paper, which makes it clear that the options for regulatory change are illustrative, designed to elicit stakeholder views on what broad level of change is judged necessary, and to prioritise the issues policy-makers may need to address. In the spirit of “nothing is either ruled in or ruled out”, the discussion paper therefore references issues where, for example, the range of regulatory options open to New Zealand would need to take World Trade Organisation obligations into account (e.g. local content quotas) or where the views of stakeholders are already known to be divergent (e.g. anti-siphoning regulations).

Conclusion

43. The changes in the broadcasting and telecommunications sectors make this review both necessary and timely. It will be important for interested parties to consider carefully what actions might be required to ensure the continuing creation, provision and accessibility of diverse local content and public service broadcasting across multiple platforms as technologies converge, global content can be sourced directly, and users increasingly create and share their own video content.

Process and Timing

44. It is proposed that the research report (Appendix Two to this paper), and the discussion paper (Appendix Three), be approved by Cabinet for publication as the basis for consultation with stakeholders.

45. The consultation would take place in the period January to April 2008, and be jointly managed by the Ministry for Culture and Heritage and the Ministry of Economic Development. The two volumes would be posted on both Ministries’ websites, and a wide list of stakeholders would be directly contacted to advise them of the consultation process. Meetings with key stakeholders would be held, and a combination of workshops and public meetings would be arranged in main centres. Stakeholders would be invited to make written submissions in response to the discussion paper, a summary of which would be published.

46. Following the period of consultation, and an evaluation of stakeholder submissions, a further report with recommended actions would be prepared. In accordance with the timetable referenced in paragraph 13 above, the Minister of Broadcasting and the Minister of Communications would report back jointly to Cabinet Policy Committee with recommendations by 31 July 2008.

Consultation

47. The following departments have been consulted in the preparation of this paper: the Ministry of Economic Development, Crown Company Monitoring Advisory Unit, the Treasury, Te Puni Kōkiri, Department of Internal Affairs, State Services Commission, Ministry of Foreign Affairs and Trade, Department of Internal Affairs, Ministry of Justice and the National Library of New Zealand. The Department of the Prime Minister and Cabinet has been informed.

Fiscal Implications

48. There are no fiscal implications arising directly from this paper. The regulatory review is a substantial exercise, however, and will need to be conducted effectively and well in order to avoid delays and minimise a period of uncertainty for the affected business sectors. It will therefore need to have sufficient resource dedicated to it to ensure it is given priority. There may be fiscal implications arising from any amendments to the regulatory regime that are proposed in the report-back to Cabinet Policy Committee referred to in paragraph 46 above.

Treaty of Waitangi Implications

49. There may be Treaty of Waitangi implications with respect to the Crown's obligations to protect and promote te reo Māori, depending on any recommendations for regulatory change arising from the review. This will be addressed in later papers.

Human Rights and Legislative Implications

50. There may be legislative implications arising from any subsequent decisions to reform the regulatory regime for broadcasting and telecommunications. This will be addressed in later papers, as appropriate.

Regulatory Impact and Compliance Cost Statement

51. Not required. A full report will be prepared to accompany any proposed regulatory changes to arise from the consultation process proposed in this paper.

Publicity

52. It is recommended that the Minister of Broadcasting and Minister of Communications make a media statement announcing the release of the Digital Broadcasting Review of Regulation report and the accompanying Discussion Paper, and explaining the consultation process.

Recommendations

It is recommended that the Committee:

1. **note** that Cabinet's decisions on digital television taken in May 2006 included a direction to officials to "review regulatory issues relevant to a new digital broadcasting environment, and to report back to Cabinet Policy Committee with recommendations by June 2007" (POL Min (06) 8/8);

2. **note** that terms of reference for the review were approved by the Ministers of Broadcasting and Communications and have been posted on the websites of the Ministry for Culture and Heritage and the Ministry of Economic Development;
3. **note** that a report entitled *Digital Broadcasting: Review of Regulation. The implications for regulatory policy of the convergence between broadcasting, telecommunications and the internet* has been completed in accordance with the published terms of reference;
4. **note** that the report outlines the significant changes that are occurring in broadcasting and related markets internationally, including increasing convergence with other forms of communication, and that in the absence of regulatory change eight significant risks are identified for New Zealand:
 - i. Lack of clarity and consistency in regulation and policies;
 - ii. Lack of competition in relevant markets and of diversity in provision (platform, content and services);
 - iii. Inadequate investment and consequent lack of innovation in digital products and services;
 - iv. Inadequate range, quantity and quality of local content;
 - v. Rise of “cyber-crime”;
 - vi. Inadequate protection of minors and other vulnerable groups;
 - vii. Inequality of access to digital services (e.g. for rural areas); and
 - viii. Significant consumer confusion and lack of digital literacy.
5. **note** that the Ministry for Culture and Heritage will release the *Digital Broadcasting: Review of Regulation* (Volume One) report, the executive summary of which is attached as Appendix Two;
6. **agree** that the risks in recommendation 4 above, and issues for consideration in response, should be the subject of public consultation, to confirm that risks have been correctly identified, to seek feedback on the broad level of regulatory change (if any) that might be required in response, to enable the prioritisation of issues to be addressed, and to provide guidance for the subsequent design of any proposals for regulatory change;
7. **agree** to the public release of the discussion paper (Volume Two) attached to this paper as appendix 3, setting out the risks and three illustrative approaches (updating existing arrangements, restructuring the regime, and reforming the regime) for an amended and updated regulatory framework and regime;
8. **direct** officials from the Ministry for Culture and Heritage and the Ministry of Economic Development to consult widely with interested parties, on the basis of the research report and discussion paper approved for release, and to report back to the Minister of Broadcasting and the Minister of Communications on the outcome of consultation by 31 May 2008;
9. **direct** officials to ensure work on the regulatory review is aligned with related work-streams, policy developments and initiatives, including the

Telecommunications Stock-take, Digital Strategy, Digital Content Strategy, the E-Government Strategy and the public broadcasting Programme of Action;

10. **note** that Cabinet has recently authorised public consultation on the future of content regulation (especially content standards) in a digital age CAB Min 07 36/3 and that where there is relevance to the issues raised in this paper, stakeholder feedback on content regulation will be fed into this wider review, alongside the consultation referred to in recommendation 7 above ;
11. **agree** that the objectives of the regulatory review are to:
 - i. Ensure diverse platforms (e.g. mobile, broadband, satellite, terrestrial) for the delivery of broadcasting and broadcasting-like content;
 - ii. Create world-class infrastructure for economic transformation;
 - iii. Ensure the operation of effective markets (in respect of competition, investment, the encouragement of innovation and sustainable growth);
 - iv. Ensure accessibility and affordability of broadcasting and broadcasting-like content and services (including the encouragement of interoperability);
 - v. Ensure the consistent application of standards (promotion, protection, public safety, rights) as appropriate to delivery platforms;
 - vi. Protect property rights, to encourage the creation of audio-visual content, and ensure content is able to be exploited on fair terms;
 - vii. Ensure personal and national security (including through the promotion of media literacy), to deal with the rise in “cyber crime”;
 - viii. Support diversity of content (especially higher-cost and special interest programming which the market will not otherwise deliver) to foster and promote expressions of national and cultural identity; and
 - ix. Secure public value (encompassing cultural, educational, social and democratic value) by delivering benefits to audiences as citizens, and not simply as consumers.
12. **agree** that the principles to be applied in considering any regulatory changes will be the following:
 - i. Minimum intervention necessary: regulatory tools chosen should be the least onerous to achieve the desired objective, have reference to relevant international requirements, and ensure an efficient, effective regime;
 - ii. Sustainable and adaptable: making regulatory choices that will cope with the pace of technological change in a fast-developing market;
 - iii. Open and transparent: to provide regulatory certainty to market players and consumers;
 - iv. Technology neutral: to avoid making *de facto* technology choices by the use of regulation or incentives, and to ensure innovation is not discouraged; and

- v. Social equity and cultural value: to deliver benefits to all New Zealanders;
- 13. **invite** the Ministers of Broadcasting and Communications to report back to POL with recommendations for a regulatory response to issues raised in the report by 31 July 2008; and
- 14. **authorise** the Minister of Broadcasting and the Minister of Communications to issue a media statement announcing the release of the research report and the accompanying discussion paper.

Hon Trevor Mallard
Minister of Broadcasting

Hon David Cunliffe
Minister of Communications