

## Digital Broadcasting: Review of Regulation

### QUESTION RESPONSE FORM

This form relates to the questions asked in the Discussion Paper. You may wish to use this form to respond to the questions.

Please return to the Ministry for Culture and Heritage by **Friday 4 April 2008**, either by email to **broadcastingregulation@mch.govt.nz** or by post to: Review of Regulation Paper, Broadcasting Unit, Ministry for Culture and Heritage, PO Box 5364, WELLINGTON.

Please see page 50 of the Discussion Paper for further information about submissions.

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## QUESTION RESPONSE FORM: Digital Broadcasting: Review of Regulation

| <i>Discussion Paper page reference</i> | <i>Question from Discussion Paper</i>  | <i>Submitter's response (please enter)</i>  |
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| Page 5                                 | <b>Q1.1</b> Do you agree with the objectives and principles set out for the review? Please give reasons for any proposed additions or amendments to the principles and objectives. | In general agree, however issues of accuracy and balance need greater emphasis to ensure that undue and inequitable influences are not exerted on the NZ public.<br>It also needs as a principle, that the policy recognises the unique place of Māori as guaranteed by the Treaty of Waitangi and the role it should play in policy development.   |
| Page 7                                 | <b>Q2.1</b> Do you agree that the diversity scenario summarised above is a desirable state for New Zealand to work towards achieving?  | Not entirely. While this appears the best of the four scenarios, the concept of "competing on quality and diversity of interest" does not necessarily mean that the best interests of NZ are looked after as a whole. Competition is often not a level playing field and Maori often start the game playing from behind their own goal line.  |
| Page 7                                 | <b>Q2.2</b> Do you agree with the threats and issues identified in the above table? Please identify any threats or issues with which you do not agree, and provide reasons.        | 1. Lack of Clarity .. also extends to all of the other government, both central and local body regulations that act as barriers, particularly in developing new infrastructure. Resource Consent issues are an example of considerable barriers which stifle competition.<br><br>3. Lack of innovation is not only a result of lack of investment capital, but also training and oppportunities for individuals and organisations to participate. Large organisations routinely use their competitive powers to stifle competition. |
| Page 8                                 | <b>Q2.3</b> Are there any further threats and issues for consideration that you believe have not been identified?  | There are clearly more threats to this scenario than identified including<br>1. Other regulations forming barriers to entry   |

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|         |   | <ul style="list-style-type: none"> <li>2. Abuse of market power and anti-competitive practices.</li> <li>3. Inefficient use of capital investment duplicating infrastructure already implemented.</li> <li>4. Lack of engagement with the treaty partner in developing long term policies for the well-being of all New Zealanders.</li> </ul> |
| Page 8  | <b>Q2.4</b> Which of the threats and issues (identified in the table or in your response to Q2.3) do you consider to be the top three priorities for action?  | <ul style="list-style-type: none"> <li>1. Abuse of market power and anti-competitive practices</li> <li>2. Digital divide issues</li> <li>3. Engagement with the Treaty Partner particularly on National Identity Goals</li> </ul>   |
| Page 12 | <b>Q3.1</b> Should New Zealand maintain the <i>status quo</i> in all respects? If so, why? If not, what are the priority areas for change?  | No, clearly this has limitations leading to inequitable access, inconsistent standards and anti-competitive behaviour.   |
| Page 12 | <b>Q3.2</b> If some change is necessary, should this generally be at the level of (a) updating existing arrangements, (b) restructuring the regime in line with market developments, or (c) reforming the regime? Please give reasons for your views. | (b) would be fine if we just want to deal with today's issues, (c) would be the more strategic option to lay a foundation for the future.  |
| Page 15 | <b>Q4.1</b> Should New Zealand consider one of the three options for revised institutional arrangements (reflecting different levels of change along the regulatory spectrum)? If so, which one, and why?   | <p>Approach B, create a converged regulator because</p> <ul style="list-style-type: none"> <li>1. It is likely to be implemented sooner to deal with issues that need to be dealt with now</li> <li>2. Is likely to be more cost effective</li> <li>3. Is likely to be clearer as to their responsibilities</li> </ul>                         |
| Page 16 | <b>Q4.2</b> Which of the above roles would fit appropriately within the responsibilities of <i>converged</i> regulators? Of a <i>single</i> regulator?  |  |

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| Page 16 | <b>Q4.3</b> Would it be appropriate for a <i>single</i> regulator to have both economic (e.g. competition) and cultural (e.g. standards) responsibilities?   | No, there is a risk of lack of clarity and priority. In addition the skill sets required for these two roles are quite different.  |
| Page 16 | <b>Q4.4</b> If Approach A were adopted in preference to a converged or single regulator, should an extended Broadcasting Standards Authority and Telecommunications Commissioner have any additional roles and responsibilities? Should the Commissioner, for example, include regular market reviews as input to competition determinations made by the Commerce Commission?                | Yes, someone should take a look at the whole sector from a strategic perspective.<br>Key roles that are missing should be identified and prioritised.  |
| Page 17 | <b>Q4.5</b> How could the relationship between a single regulator and the Commerce Commission best be defined and managed? For example, should the regulator have primacy and then 'refer' issues to the Commerce Commission? Would the two be required to work together on all competition matters? Or, would they each be free to investigate potential issues / breaches as they saw fit? | It is unlikely that two organisations with overlapping responsibilities are likely to serve the public nor the industry well. One needs to be the primacy, however some further level of "appeal" needs to be built in to protect the interests of the public as a whole and the Treaty Partner. |
| Page 17 | <b>Q4.6</b> Some overlap of responsibilities does exist in other countries, such as the US and the UK. Should such overlap be contemplated if a single   | No answer at present.  |

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|         | regulator were established? If so, how might it be made workable?   |  |
| Page 19 | <b>Q4.7</b> Which of the options for dealing with market definitions should be considered in New Zealand? Please give reasons for your views.   | It is possible that elements of all of these options are desirable, due to the timing of implementation. Approach A could be implemented immediately, moving to approach C over time.  |
| Page 19 | <b>Q4.8</b> Should changes to media ownership (including cross-platform or foreign investment) rules be considered to ensure plurality of news/key genre provision?   | Absolutely. A small example was the purchase of the Dominion newspaper by the Evening Post. We lost a daily newspaper and the resulting one was worse than either of the two preceding it. Did it serve the NZ public .. No .. did it make much more money, undoubtedly.<br>Foreign investment (like Robert Kiyosaki's good debt, bad debt) can be good and bad. Where it is used to invest in infrastructure, for example, it can be useful, investment and control of our media is less likely to be beneficial to the long term good of New Zealanders. |
| Page 21 | <b>Q4.9</b> Should New Zealand establish a national, coordinated media literacy programme? If so, what form should it take, and who should be responsible for its implementation?   | Quite possibly, however this needs much more thought.  |
| Page 21 | <b>Q4.10</b> To what extent would it be appropriate for a media literacy programme to address issues of internet safety?  | It needs to address a wide variety of aspects, not just safety, but a critical and reasoning approach to information presented.  |
| Page 22 | <b>Q5.1</b> To what extent would it be appropriate for administration of the separate content standards functions of the Broadcasting Standards Authority, the Advertising Standards Authority, the Office of Film and Literature | It is likely that this would result in a more consistent approach, however there is a risk of "regulation overload" on industry participants.  |

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|         | Classification and the Press Council, as they relate to broadcasting-like content, to be amalgamated within a single body?  |   |
| Page 25 | <b>Q5.2</b> Which of the above options for change do you consider would best ensure diversity and visibility of local content in a digital age? Please give reasons for your views.   | I don't think that this question can be answered because we need to decide firstly what sort of environment we want, then we can decide how best to implement. This requires some strategic thought (naturally in conjunction with the Treaty Partner)  |
| Page 25 | <b>Q5.3</b> Do funding bodies require any mechanisms (e.g. incentive-based or obligation-based) not currently available to them to promote diversity, maximum visibility and accessibility of funded programmes?  | I don't think that this question can be answered because we need to decide firstly what sort of environment we want, then we can decide how best to implement. This requires some strategic thought (naturally in conjunction with the Treaty Partner)  |
| Page 25 | <b>Q5.4</b> To what extent would the blurring of boundaries between different segments of the audio-visual sector justify changes to the current structure of funding bodies (e.g. to avoid the risk of gaps or duplication)? If a converged funding body were established, what might its role be? | It is too early for Te Huarahi Tika Trust to comment on this, the implications for content on its own platforms are yet to be assessed.   |
| Page 25 | <b>Q5.5</b> What would be the implications of the changes you support for the amount of funding required? How could a significant commitment to private investment in local and other content of public value also be encouraged?   | As Te Huarahi Tika Trust has found, building national infrastructure is considerably more expensive that it ought to be. This wastes investment funds and deprives areas such as content development funds which it could be used to develop applications and content of public value.<br>The issue remains, DESPITE considerable private investment, the public is yet to see any benefit due to regulatory barriers and anti-competitive behaviour. |

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| Page 28 | <b>Q5.6</b> Which of the options for supporting and promoting public service broadcasting in a digital age do you support, and why?   | Approach B and C, strengthening the Public Broadcaster with additional responsibilities of fairness and balance (in particular for TVNZ) should produce a better quality product.. But this should not be at the expense of new entrants particularly in new content delivery channels, indeed, public broadcasters should be encouraged (mandated?) to assist new entrants to deliver through other digital delivery channels. |
| Page 28 | <b>Q5.7</b> Would a greater focus on the role of public broadcasters be a more effective means of ensuring the continued accessibility of public service content than spreading resources and content across numerous providers? If so, how might this be achieved? | Not necessarily, it is unlikely they could cover all delivery methods and are likely to stifle innovation.  |
| Page 29 | <b>Q5.8</b> If an independent body were commissioned, what mechanisms might be needed to measure and monitor the quality and diversity of public service broadcasting in the digital age?   | Clearly engagement with the Treaty Partner would be a prerequisite.   |
| Page 29 | <b>Q5.9</b> As viewing patterns change with the proliferation of platforms, and access is often conditional (pay per view or subscription), what expectations should there be for the delivery of publicly-funded content through pay platforms?                    | Barriers should not exist for all New Zealanders to access publicly funded content through the delivery channel of their choice.  |
| Page 30 | <b>Q5.10</b> Which of the above options for dealing with advertising issues in a digital age do you support? Please   | Approach B and C. A balanced approach to such issues as what to eat, violence tobacco etc need to be regulated as clearly the competitive market does not encourage the long term well-   |

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|         | give reasons for your views.  | being of our children.,  |
| Page 33 | <b>Q6.1</b> Which of the above options for ensuring the accessibility of content for disadvantaged audiences do you support? Please give reasons for your views.  | No response at this stage.   |
| Page 33 | <b>Q6.2</b> If funded captioning of programmes was extended, should this cover all delivery platforms, or are some considered priorities?   | No response at this stage.   |
| Page 33 | <b>Q6.3</b> Should the option of introducing requirements on broadcasters and platform operators to provide some captioning be considered as an alternative, or in addition, to funding?                    | No response at this stage.   |
| Page 33 | <b>Q6.4</b> Should funding and/or requirements be introduced to provide audio-described programmes for the blind or sight-impaired? If so, what would be the implications, in terms of technology and cost? | No response at this stage.   |
| Page 36 | <b>Q6.5</b> Which of the options for ensuring the availability of certain types of content and services across platforms do you support? Please give reasons for your views.                                | We support fair and unfettered rights for all New Zealanders to access content of national and cultural significance through a delivery channel of their choice. |
| Page 36 | <b>Q6.6</b> If brokered terms of trade were developed, what should be their scope? What criteria might be relevant?   | No response at this stage.   |

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| Page 36 | <b>Q6.7</b> If broadcasters or platform providers were required to carry a minimum percentage/amount of certain service types or genres, what services or genres should be prioritised? How would such a requirement be workable in a multi-channel environment?             | No response at this stage.  |
| Page 36 | <b>Q6.8</b> If some form of anti-siphoning were introduced, how might this be limited in the New Zealand environment? How might the effect on sports bodies be mitigated?  | No response at this stage.  |
| Page 38 | <b>Q6.9</b> Which of the options for dealing with consumer understanding of the copyright framework do you support? Please give reasons for your views.  | No response at this stage.  |
| Page 38 | <b>Q6.10</b> In addition to criminal penalties, do you favour a stronger role for the state in promoting media literacy as a means of promoting internet safety? What other interventions would be practical, given the overseas origin of much of the material in question? | No response at this stage.  |
| Page 40 | <b>Q6.11</b> Which of the options for dealing with “orphan works” do you support? Please give reasons for your views.  | The works of Māori need to be considered, these do not appear to fall within the definition provided for "orphan works" in that Māori are generally "reasonably found". |
| Page 40 | <b>Q6.12</b> Would the establishment of a  | No response at this stage.  |

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|         | collection agency as an aspect of the regime be workable in New Zealand?   |   |
| Page 43 | <b>Q7.1</b> Which of the options for ensuring fair access for service providers to digital platforms do you support? Please give reasons for your views.   | Approach C. Clearly reform is required as our experience amply demonstrates that facilitated or code of practice have not sufficient effect to limit the effects of the anti-competotove behaviour. Co-location of mobile transmitters is a clear case study. |
| Page 43 | <b>Q7.2</b> If an open access regime was introduced to ensure fair access for service providers to digital platforms, what would be its scope? What sort of criteria should apply?   | A set of principles need to be developed to be applied across all delivery channels. This ensures consistency and certainty for new entrants.   |
| Page 43 | <b>Q7.3</b> If “must-carry” provisions were introduced, to which platforms would the obligations to carry services apply (e.g. all pay, cable, satellite, IPTV)? What services should qualify for must-carry status (e.g. public service broadcasters, regional channels)? | No response at this stage.  |
| Page 43 | <b>Q7.4</b> Should “must pay” obligations be introduced, either in addition to, or instead of, “must-carry”? If so, how might this work? Which services would it apply to? Would the Canadian version of “must pay” be appropriate to New Zealand?                         | No response at this stage.  |
| Page 43 | <b>Q7.5</b> If a “must list” requirement for electronic programme guides were introduced, should this be in addition to or as an alternative to “must-carry”?  | No response at this stage.  |

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|         | How would such a requirement work in a multi-platform and multi-channel environment?  |   |
| Page 44 | <b>Q7.6</b> Which of the options for ensuring minimum agreed technical standards do you support? Please give reasons for your views.                            | Approach A, however, where it is clearly demonstrated that this does not work in the best interests of all New Zealanders Approach C may be more appropriate. However the danger in this approach is keeping up with the increasing variety of standards and making sure that the wrong choice is not made. Difficulties will occur when a body has made a wrong choice and the natural tendency is defend that choice rather than quickly move to recover.<br>The key areas to concentrate on may be the interfaces between competing infrastructures. This requires significantly more thought. |
| Page 45 | <b>Q7.7</b> Would the interests of audiences and industry be best served by industry-wide adoption of agreed technical standards?                               | In general one would agree that standardised technical services enabling interoperability best serves audiences and can reduce the cost of deployment.  |
| Page 45 | <b>Q7.8</b> Is government encouragement sufficient to ensure industry-wide agreement is reached in New Zealand? If not, what other measures might be warranted? | To date "encouragement" has not been sufficient enough for new entrants in the telecommunications sector. Existing powers may already be sufficient, the resolve to use them to combat anti-competitive behaviour to the detriment of all New Zealanders may be lacking.  |
| Page 47 | <b>Q7.9</b> What principles and priorities do you consider should guide the development of a post-analogue switch-off spectrum allocation framework?            | In deciding the route to take, a much more strategic view of our resource allocation should be undertaken and this should be in conjunction with Maori.<br>Once that has been determined, the implementation of any legislation/allocation policies can then be determined. These questions are premature.  |
| Page 47 | <b>Q7.10</b> If any new regulatory measures (such as an open access regime) were  | as per Q7.9   |

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|         | introduced, would the option of licensing broadcasters, multiplex and/or other platform operators be an appropriate means of monitoring compliance?  |   |
| Page 49 | <b>Q7.11</b> Which of the options to encourage investment in digital content and infrastructure, and to ensure the digital broadcasting industries are yielding an optimal economic return to New Zealand, do you support? Please give reasons for your views. | Our experience is that much can be done now to ensure economic investment in infrastructure which supports long term strategic objectives for NZ. This does not preclude either Approaches B or C. Certainly we should not encourage investment in the sector which is purely for competitive reasons, e.g. locking out competitors from certain spectrum rights while not providing the equivalent service to our users as a competitor would.<br>The concept of bidding for spectrum rights encourages such anti-competitive behaviour, which ultimately is paid for by the consumer. It also acts as a deterrent to new entrants and to new innovative services. |
| Page 49 | <b>Q7.12</b> If government intervenes to encourage investment in infrastructure, how can it ensure that it does not make <i>de facto</i> technology choices that preclude innovation in other areas?   | Government could intervene in terms of firstly setting a strategic direction for NZ in its use of allocation which would take into account cost-effective technologies but in particular the end use of such technologies. We need to be looking at investment in terms of what is good for consumers primarily.  |
| Page 49 | <b>Q7.13</b> If a “build” obligation were placed on media platforms to ensure a minimum roll-out, how could such a requirement best be designed (e.g. the provision of incentives to encourage cooperation)? To which networks should it apply?                | No response at this stage.  |
| Page 49 | <b>Q7.14</b> If a media-funded pool were   | No response at this stage.  |

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|         | established to ensure broad geographic service availability of networks, who should be levied, and how should such a fund be administered?   |  |
| Page 49 | <b>Q8.1</b> Are there any alternatives, beyond the illustrative measures identified in this discussion paper, that you would recommend policy-makers consider as mechanisms to deal with issues across the value chain, or under the headings of “content”, “distribution” and “networks”? | One ought to consider how much our existing legislative and regulatory infrastructure acts as a barrier or fails to act as a facilitator on behalf of all New Zealanders.<br>One possible future scenario is that legislation and regulatory bodies will be overhauled, but will still have a lack of willingness to act. All of the right moves may have been made, but doesn't result in successful outcomes for consumers.  |
| Page 49 | <b>Q8.2</b> Are there any other general comments you would like to make about the digital broadcasting review of regulation?   | While the objectives of creating a consistent, fair and comprehensive regulatory environment to facilitate future outcomes for all New Zealanders is laudable, it fails to consider the overall strategic direction nor considers mistakes that may have been made in the past (or are still making) that may have an influence on the outcome of this review.<br>An of course, in considering the strategic direction from a governance perspective, needs to include Māori as the Treaty Partner in helping set that vision. |