

## REVIEW OF REGULATION FOR DIGITAL BROADCASTING: TERMS OF REFERENCE

### Background

1. In May 2006 Cabinet made a number of decisions to support the launch of and transition to free-to-air digital television (DTV), with the objective of eventually switching off analogue transmission signals.
2. In making these decisions, it was noted that the transition to DTV represents a significant change to broadcasting infrastructure, and that it would alter the competitive relationship amongst free-to-air broadcasters, and between pay and free-to-air operators.
3. It was also noted that the launch of the Freeview DTV platform was a first step, enabling free-to-air broadcasters to participate as multi-channel operators in a multi-platform environment. A significant feature of the emerging media environment is the opportunity for convergence between broadcasting, telecommunications (fixed and mobile) and the internet. In addition, other sectors such as print media are expanding their on-line presence to encompass sound recordings and video clips. One consequence of this appears to be a re-positioning of businesses to focus on either content creation (commissioning, producing and packaging) or content delivery (e.g. as a platform provider), rather than divisions in business structures being made on the basis of the mechanism for the delivery of content.
4. As players in each sector – broadcasters, print media, telecommunications operators – experience a reduction in consumption of their core services with the proliferation of platforms and services, they are seeking to expand and diversify revenue generating activities through the exploitation of audio-visual content. The landscape of business models is becoming more complex and interwoven as a consequence.
5. In many countries around the world, including New Zealand, there have traditionally been separate regulatory policies for broadcasting, film, telecommunications and the internet. This is, however, starting to change, with the development of new legislation and re-structured regulatory bodies, such as

the Office of Communications (Ofcom) in the UK and the Australian Communications and Media Authority (ACMA). Australia has also instigated changes to its cross-media ownership regulations, in part as a response to the blurring of boundaries between the different segments of print, radio and television media.

6. The broadcasting sector has traditionally been shaped by the fact that spectrum was a scarce resource, implying a high cost of entry and leading to market concentration. Digital broadcasting and the emergence of new delivery mechanisms, such as broadband, now mean spectrum scarcity is much less of an issue. While this barrier to entry to the market has been overcome, however, new competitive tools are emerging, and convergence could result in different forms of market concentration through either vertical or horizontal integration and through the mechanisms and devices used to interface with audiences – including the dependence of internet services on telephone line provision in many cases.

7. In light of the changes implied by digital broadcasting, Cabinet authorised a review of the current regulatory settings, using a combination of research and stakeholder consultation. This paper sets out the terms of reference for the review.

### **Overall Approach**

8. The approach to be taken in conducting this review of regulation will be:
- a) Analysis and Research: a summary of the current regulatory settings applicable to the broadcasting, telecommunications and internet spheres, with an identification of relevant issues affecting competition, standards and rights. A brief review of past regulatory approaches. An analysis of key trends and patterns of investment and innovation. International comparisons of regulatory policy frameworks and trends in the light of technology developments in broadcasting and changing consumer behaviour. Prospects and scenarios for broadcasting in a multi-platform, converged future.
  - b) Consultation: Outcome of the research project to provide a starting point for a discussion paper with questions for consideration. Documents to be published and submissions invited. A full opportunity for consultation with key stakeholders representing (for example) broadcaster, telecommunications, production, transmission and consumer interests.
  - c) Report and Recommendations: preparation of a report summarising the results of the consultation process, the findings of independent research, and proposing a recommended approach for government consideration.

## Scope and Purpose of the Review

9. The review will take broadcasting policy as its starting point, and will address issues under the broad headings of competition law, standards and copyright. It will also, however, consider the implications for regulatory policy of the convergence between broadcasting, telecommunications and the internet.

10. There is work underway in several related areas, such as the Telecommunications Stocktake, the Digital Strategy, the Digital Content Strategy and the Public Broadcasting Programme of Action (priorities 5 and 6, for example, address the roles of the BSA and NZ On Air in a digital context). This review of regulation will therefore be coordinated and aligned with these related initiatives.

11. The review will be managed by the Ministry for Culture and Heritage, as the lead department on digital broadcasting matters. It will be undertaken in close coordination with the Ministry of Economic Development, which has responsibility for competition policy, telecommunications, Information Technology policy, standards issues and the Digital Strategy.

12. The review will not be undertaken with any implied intention to make changes to the current settings, and there may well be issues for which industry self-regulation or cooperation will provide the best solution.

13. The review will principally address competition, standards and intellectual property rights issues at the three main stages of the broadcasting value chain: content, distribution and networks.

14. The issues for consideration at these three main stages will fall under the following broad headings:

(a) Content: broadcasting standards (taking into account work already underway in conjunction with the BSA, looking at the future of content regulation); levels and diversity of local content.

(b) Distribution of Content: availability of content across delivery platforms; intellectual property rights in content; acquisition of content; accessibility of public service and publicly funded content; availability of premium content such as broadcast sport events.

(c) Networks: access to spectrum or multiplexers; access to telecommunications networks; terms of access to platforms; technical and equipment standards; local operators (e.g. private transmission sites); transmission networks.

15. The industry sectors involved in digital broadcasting, either as their core business, or through complementary service offerings, are living through a time of significant and rapid change. The review will therefore look at three tiers of issues thereby using multiple frameworks, as indicated in the preceding paragraph:

- Short-term (tier one): those that are relevant to the broadcasting, telecommunications, internet and print media markets that now exist within New Zealand, and can therefore be viewed as priorities for consideration;
- Medium-term (tier two): those that are emerging through developments in these sectors that have occurred in other markets, and that are likely to occur in New Zealand (such as IPTV);
- Longer-term (tier three): those that might arise in the future, but cannot be confidently predicted now. Such issues might imply that the ground should be prepared for a different approach to regulatory issues, seeking consistent policies at key points in the value chain across the wider broadcasting, media and communications market.

## **Market Definitions**

16. As indicated in the background section of this paper, developments in the media and communications sectors are resulting in complex business models and relationships, and increased blurring between what have traditionally been perceived as separate markets. The review will map out the current range of and relationships between delivery platforms and participants in the value chain. This exercise of market definition is likely to provide guidance on the extent to which it might be appropriate to consider a regulatory approach at points on the value chain rather than the more traditional vertical industry perspective. The aim of such an approach would be to ensure New Zealand is well-positioned to manage the longer-term “tier three” issues that may be on the horizon, but whose implications are not yet discernible.

17. The activities at the various points of the value chain are summarised below.

(a) Delivery platforms or media:

- Print;
- Radio;
- Free-to-air television (linear, multi-channel, SD or HDTV) via DTT, DTH or wired network;
- Pay (conditional access) television (linear, multi-channel, SD or HDTV) via DTH, wired networks or DTT;
- Internet (websites, streamed, down-loadable content, gaming, podcasting)
- Telephony (fixed line, mobile);
- Broadband IPTV (VoD).

(b) Value Chain:

*Content creation*

- Content producer/provider (e.g. Independent producer, studio, broadcaster, newspaper), with revenue generation from commissioning fees, investment, royalties, licensing fees);
  - Content aggregator (e.g. broadcaster, aggregated channel such as “Living Channel”);
  - Content packager (e.g. broadcaster, packaged programme);
- Access/Delivery*
- Content distributor (e.g. broadcaster, transmission provider);
  - Platform provider (e.g. SKY, Freeview, Vodafone);
  - Device (TV, radio, PC, mobile phone, PDA);
  - Consumer (note also the growth of user-generated content).

## **Research Project**

18. To support the terms of reference for the review, and to provide a starting point for the planned consultation process, the Ministry for Culture and Heritage and the Ministry of Economic Development have commenced the preliminary research project outlined above. It will take the form of a brief review of past and current regulatory approaches within New Zealand. It will include an analysis of key trends and patterns of investment and innovation, along with international comparisons of regulatory policy frameworks and trends, in the light of technology developments in broadcasting and changing consumer behaviour. Finally, it will consider the prospects and possible scenarios for broadcasting in a multi-platform, converged future.

19. The report will then identify key issues for consideration in New Zealand, against the background of the specific circumstances of this market. It may include possible approaches for consideration by government, and for comment by stakeholders.

## **Timing and Process**

- i. Research project commissioned: April 2007, for delivery by end of June 2007.
- ii. Public Consultation on basis of research and an options paper: September to November 2007.
- iii. Ministers of Broadcasting and Communications report to Cabinet with recommendations: December 2007.