

**SUBMISSION TO
THE COMMERCE COMMISSION
ON THE TREATMENT OF BROADCASTING
SERVICES REVENUE IN THE
TELECOMMUNICATIONS DEVELOPMENT LEVY
(TDL)**

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tvnz

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INTRODUCTION

1. Television New Zealand Limited (**TVNZ**) is the country's leading free to air broadcaster. It reaches approximately 2.2 million New Zealanders every day, predominantly through its three broadcast channels (TVNZ 1, TVNZ 2 and DUKE) as well as its TVNZ OnDemand, 1NEWS, Re: and HEIHEI online services. It operates 24 hours a day and produces, commissions and acquires thousands of hours of content per year. TVNZ is owned by the Crown and operates as a self funded, commercial entity by virtue of the Television New Zealand Act 2003¹.
2. While TVNZ is not a liable person under the TDL regime (we do not operate any component of a PTN) we are happy to share with the Commerce Commission our views (where appropriate) on the Commission's consultation paper on the treatment of broadcasting services revenue in the telecommunications development levy.
3. TVNZ welcomes the further opportunity to discuss this submission in more detail should the Commerce Commission find that helpful.

SUBMISSION

4. TVNZ agrees that telecommunications services do not include content and content aggregation services. A telecommunications service, is, by definition, a service which conveys or transmits images. Content does not enable or facilitate the conveyance, and accordingly content and content aggregation are not telecommunication services. We have assumed from the context of the consultation paper, that the Commission used the term "content aggregation" to describe the process of creating programme content, as distinct from compression and multiplexing. **(Q 1)**
5. In terms of Tables 5, 6 and 9 of the Commission's consultation paper, while we agree that compression and multiplexing may be telecommunications services, it does not follow that they can only be undertaken on a PTN. It is not the nature of the services that determines whether a network is a PTN, but solely whether the network is used, or intended to be used, in whole or in part, by the public. **(Q 2, 6 and 9)**
6. We agree that anything that enables or facilitates the transmission of advertising programmes is a broadcasting service, and therefore falls within the exclusion of section 85A(1) provided that the broadcasting service is supplied to end-users free of charge. **(Q 11)**
7. We agree that on-demand services are not broadcasting services as defined in the Broadcasting Act, and accordingly do not fall within the section 85A exclusion. We note however that the Commission has consistently taken the view that video on demand content services are not telecommunications services. (See footnote 12 on page 17 of the Commission's consultation paper that states that the "Commission considers that music on-demand and video on-demand content revenue is not captured as a telecommunications

¹ See s12 Television New Zealand Act 2003

service as it can be distinguished from the conveyance revenue which is the intended focus of the definition of telecommunications services.”) We agree with this analysis. The relevant definition of telecommunications service in this context is “the conveyance by electronic means from one device to another of any encrypted or non-encryptedimage.” Furthermore, qualified revenue for the purposes of the TDL is revenue the person receives “for supplying” the conveyance service, not revenue from the content itself **(Q 12)**

8. We agree that revenue received from the supply of broadcasting services is subject to section 85A(1)(a). For example, the fee that TVNZ pays Kordia to transmit its free-to-air service is revenue received by Kordia “*in relation to a broadcasting service that is supplied to end-users free of charge*” and therefore falls within the section 85A exclusion. **(Q 13)**
9. TVNZ does not meet the revised definition of liable person as we do not operate any component of a PTN. As a consequence, TVNZ does not earn qualified revenue. **(Q 15 and 16)**