

23 November 2021

Sam Norman  
Manager (Acting), Telecommunications  
Commerce Commission | *Te Komihana Tauhokohoko*  
44 The Terrace  
PO Box 2351  
**Wellington 6140**

By email [Sam.Norman@Commission.govt.nz](mailto:Sam.Norman@Commission.govt.nz)

Dear Sam

### Telecommunications Development Levy 2020/21 (TDL) – draft allocation determination

We refer to our past correspondence and to the Commission's draft TDL allocation determination published on 9 November 2021, the link to which was kindly sent to us in the email from Aidan Winder-Speed of your office on that date.

#### Without prejudice submission

While Kordia supports the draft allocation of TDL set out in Table 3 of the draft determination, there are two points we would like to make in relation to the commentary in the draft TDL allocation determination:

- (a) the Commission slightly overstates what the case-stated was about by saying in paragraph 32 that “the issue of the provision of telecommunications services in New Zealand was also the subject of the case stated”. The question in the case stated was only the narrow question of whether the operator of a satellite located outside New Zealand provided a telecommunications service in New Zealand. As a result, paragraph 32 draws slightly more from the case than is justified.
- (b) the Commission statement in paragraph 33 that “The Court noted that, in relation to satellite transmission to New Zealand end-users, the service provided in New Zealand is the service enabled by New Zealand-based uplink and downlink facilities” refers to a section of the Court decision that is only obiter. The Court did not make any declaration on whether the uplink services provided by Kordia and Sky are subject to the levy. In fact, this question was not traversed in the case, despite Kordia seeking to have it added to the case-stated. Kordia submits that the uplink service and the downlink service are not telecommunications services in New Zealand. They are part of a network system. Among other things, it would be incongruous if the key component of that network, the satellite, was outside the scope of the Act, but the transmissions to and from the satellite were deemed to be within the ambit of the Act.

These points are important because, while currently all of Kordia's revenue that is counted as broadcasting revenue under the Commission's reporting templates comes within the FTA exception in section 85A of the Act, that might not always be the case. Kordia considers that it is important that the Commission is therefore clear on the scope of the case-stated and recognizes that there may be further issues that need to be resolved.

As noted in our previous correspondence, there were also other aspects of the Commission's approach outlined in its Supplementary Guidance and its 12 December 2019 Consultation paper on the treatment of broadcasting services revenue under the TDL that Kordia does not agree with (principally related to Direct-To-Home services) that were not subject of the Commission's case stated, but which Kordia raised in submissions to the Commission on the 2019 Consultation paper.

Kordia reserves its position on these issues.

#### OIA

We ask that any request made to the Commission under the Official Information Act 1982 (“OIA”) for this letter, any information in it, or any specified information is transferred to Kordia Group Limited under section 14 of the OIA, on the basis that the request is more closely connected with the functions of Kordia Group



Limited.

We look forward to hearing from you.

Yours faithfully



**Michael Jamieson**

**EGM Legal & Risk**

**CC:** Shaun Rendell, CEO, Kordia Group  
Aidan Winder-Speed, Senior Analyst – Telecommunications, Commerce Commission *Te Komihana*  
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