

29 June 2022

Tēnā koutou

Broadcasting Transmission Study

1. We have today published a report on broadcasting transmission in New Zealand. This report builds on our previous work following recent legislative change and provides a substantial look into this part of the market.
2. In addition to publishing the report, we also set out our intentions for further work in relation to broadcasting transmission.

Broadcasting transmission in the Telecommunications Act 2001 (Act)

3. An important aspect of our regulatory role is monitoring competition in telecommunications markets and the performance and development of telecommunications markets.¹ We can do this through conducting inquiries, reviews and studies into any matter relating to the telecommunications industry or the long-term benefit of end-users of telecommunications services within New Zealand.²
4. In 2018, the scope of our role was amended to include broadcasting transmission by way of the Telecommunications (New Regulatory Framework) Amendment Act 2018.³ The Minister of Broadcasting, Communications and Digital Media noted that this change would enable the Commission “to monitor or investigate the commercial conditions for digital terrestrial transmission through its existing Telecommunications Act processes, if this is needed”.⁴

Changes to treatment of broadcasting transmission

5. To support our understanding of these legislative changes, we commissioned a report by Analysys Mason in 2018 that provided an overview of the main broadcasting methods in New Zealand.⁵

¹ Telecommunications Act 2001, section 9A(1)(a).

² Above, section 9A(1)(b).

³ This change came about as the Telecommunications (New Regulatory Framework) Amendment Act 2018 removed the exclusion of broadcasting transmission from the definition of “telecommunication” under s 5 of the Telecommunications Act 2001.

⁴ Hon Kris Faafoi (Minister of Broadcasting, Communications and Digital Media) “Telecommunications (New Regulatory Framework) Amendment Bill – Second Reading” (18 September 2018).

⁵ Analysys Mason “Introduction to Broadcasting Technologies” (9 December 2019).

6. On 12 December 2019, we released a consultation paper on the impact of amendments made to the Act on the Telecommunications Development Levy (TDL) regime, including the treatment of broadcasting services revenue.⁶ The consultation highlighted some significant differences of interpretation between stakeholders. We considered that the best way to resolve these issues was to state a case for the High Court under section 100A of the Commerce Act 1986.
7. The case stated proceeding was heard by the High Court in April 2021, and judgment was released in October 2021. The case clarified the liability of broadcasting transmission service providers under the TDL regime.⁷

Broadcasting transmission study

8. Subsequently, in February 2022, we commissioned an external report by Network Strategies (**Network Strategies Report**) on broadcasting transmission services in New Zealand.
9. At our direction, the Network Strategies Report provides an overview of the key market players, services, and infrastructure, and sets out how the broadcasting transmission sector may develop in New Zealand, including:
 - 9.1 exploring emerging technologies.
 - 9.2 convergence and potential for disruption (including from over-the-top (OTT) providers); and
 - 9.3 changing trends in traffic and consumer preferences.
10. The Network Strategies Report provides us with valuable information and insights into the broadcasting transmission sector in New Zealand.
11. A key feature of the television broadcasting transmission market is disruption from alternative technology platforms, which suggests that traditional digital terrestrial transmission (DTT) may be entering a sunset phase.
12. Additionally, the spectrum management rights for AM and FM radio transmission are due to expire in 2031. Radio New Zealand is in the process of shutting down its AM service, with full closure of the AM network planned for 2031. There is currently no high-value alternative for the use of the AM spectrum band.

⁶ Commerce Commission “Treatment of broadcasting services revenue in the Telecommunications Development Levy: Consultation paper” 12 December 2019. At https://comcom.govt.nz/_data/assets/pdf_file/0028/195445/Treatment-of-broadcasting-services-revenue-in-the-TDL-12-December-2019.pdf.

⁷ *Commerce Commission v Kordia Group Ltd and others* [2021] NZHC 2777. At https://comcom.govt.nz/_data/assets/pdf_file/0028/268453/Commerce-Commission-v-Kordia-Group-Ltd-and-others-15-October-2021.pdf.

Further work in broadcasting transmission

13. We propose to build on the Network Strategies Report by incorporating broadcasting transmission into our regular, routine monitoring function.
14. We intend to do this by tracking the substitutability between different transmission technologies, as well as the changing patterns in consumer demand. We will also track transmission services revenues, costs, and investment.
15. This will give us the information we need to perform our monitoring role in relation to broadcasting transmission and identify any issues that may require further investigation.
16. We will define the proposed tracking metrics as part of our wider review of market monitoring, scheduled for later this year, and there will be an opportunity to provide feedback on this.
17. Please contact market.regulation@comcom.govt.nz if you have any questions in relation to this letter.

Ngā mihi nui,

A handwritten signature in black ink, appearing to read 'Tristan Gilbertson', followed by a period.

Tristan Gilbertson
Telecommunications Commissioner