



WISPA New Zealand

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WISPA NZ Submission on Draft Telecommunications Development Levy Allocation Determination for 1st July 2022 to 30 June 2023

Introduction

WISPA NZ welcomes the opportunity to make this submission on the draft telecommunications development levy liability allocation determination for 1 July 2022 to 30 June 2023 (TDL LAD).

WISPA NZ would like to highlight the significant exclusion of LEO satellite providers, in particular Starlink from this determination and the liability that applies to this.

The exclusion of satellite operators from being Liable Persons under the Act, citing Commerce Commission v Kordia, CIV 2020-485-748 [2021] NZHC 2777 at [88]-[108], has been a point of contention.

WISPA NZ respectfully disagrees with this interpretation for the following reasons:

The judgment in Commerce Commission v Kordia pertained to specific and limited circumstances that do not directly relate to satellite telecommunications services, particularly those not in existence during the time of the judgment.

The assumption made by the parties in Commerce Commission v Kordia that outer space was not "in New Zealand" contradicts international legal opinion.

WISPA NZ would argue that the telecommunications service offered by Starlink, is indeed provided "in New Zealand," thus WISPA NZ is proposing that Starlink should be included as a Liable Person in the TDL LAD.

Uplink and Downlink

In [107] of *Commerce Commission v Kordia*, it is noted:

"the satellite operator might own assets in New Zealand that relate to the operation of the satellite (for example the uplink or downlink facilities) or other goods, services, or equipment that support the operation of the satellite. If so, that may mean that the operator is providing its telecommunications services in New Zealand."

Considering Starlink operates six ground stations situated throughout New Zealand, the statement from *Commerce Commission v Kordia* reinforces the assertion that Starlink qualifies as a Liable Person.

Airspace sovereignty

Starlink satellites' orbits routinely traverse vertically above New Zealand. According to the Convention on International Civil Aviation (the Chicago Convention), each state holds complete and exclusive sovereignty over the airspace above its territory.

The question of the vertical limit of this sovereignty remains unresolved. Presently, there are no presumptions about the limitations of sovereignty.

WISPA NZ is of the opinion that whenever a Starlink satellite is positioned vertically above New Zealand, including over its territorial waters, that satellite should be considered "in New Zealand." Consequently, WISPA NZ strongly believes that Starlink should be recognized as a Liable Person under the Act.

Research

WISPA NZ Acknowledges ISPANZ for their research support and sources below:

<https://starlinkinsider.com/starlink-gateway-locations/>

<https://starlink.co.nz/starlink-tracker-nz/>

<https://www.icao.int › ATConf.6.WP.080.1.en.pdf>

Dean N. Reinhardt, *The Vertical Limit of State Sovereignty*, 72 J. AIR L. & COM. 65 (2007)

Security and Defence Quarterly 2018;20(3):42–56

Summary

WISPA NZ strongly recommends that Starlink should be classed as a Liable Person in the TDL LAD based on the reasons presented above.

Further to this, WISPA NZ is of the opinion that in order for a fair, equitable and level playing field to be the cornerstone of the Telecommunications sector in New Zealand, all providers whether terrestrial or space based should be held to the same regulatory requirements when it comes to the TDL LAD.

Nga Mihi



Michael Smith
Chairman - WISPA NZ