



Commerce Commission New Zealand
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Our Ref: Nick Miller, Satellite - TDL

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Dear Sir

**Telecommunications Development Levy:
Optus Satellite Pty Limited ABN: 33 091 790 313 (Optus)**

The Commerce Commission published a consultation paper "*Treatment of broadcasting services revenue in the telecommunications development levy (TDL)*" on 12 December 2019 and seeks comments on the proposed changes as there may be additional persons that now meet the definition of liable person.

Background

The TDL was established through the *Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011* and is collected from telecommunications service providers to subsidise telecommunications capabilities in the public interest which are not otherwise expected to be commercially available.

The Commerce Commission has issued a consultation document on *The Telecommunications (New Regulatory Framework) Amendment Act 2018* which may have the effect of making broadcasting services companies subject to the TDL from next year. This resulted in legislative changes to the *Telecommunications Act 2001 (NZ)* ("the Act") by removing the exclusion of "*any conveyance that constitutes broadcasting*" from the definition of telecommunication. All references are to this Act, unless stated otherwise.

Legislation

A person liable to the TDL is defined in section 5:

Liable person means a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person.

Telecommunication is defined in section 5:

the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not

The removal of the broadcasting exclusion increases the scope of telecommunications services and may impact the scope of the TDL as it may include some broadcasting service providers. It also changes the scope of the term public telecommunications network ("PTN")

Telecommunications service is defined in section 5:

any goods, services, equipment, and facilities that enable or facilitate telecommunication

A PTN is defined in section 5 as:

- (a) means a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication:
 - includes
 - (i) a PSTN [public switched telephone network]:
 - (ii) a PDN [public data network]

Submission

We now provide Optus' submission in relation to Consultation questions relevant to its business as a satellite operator.

Optus considers Consultation questions 4,5,10, 15,16 and 18 relevant to its satellite network.

Consultation questions 4 and 5

Consultation question 4 concerns all aspects of satellite broadcasting and Table 6 sets out the potential for parties involved in satellite broadcasting to be liable persons.

Relevant to Optus, Table 6 lists signal broadcasting and gives the example of satellite transponder access as a telecommunications service where it is provided in New Zealand.

Consultation question 5 concerns satellite transponder access and states a satellite operator is providing a telecommunications service in New Zealand where its satellite is transmitting signals to New Zealand.

Satellite transponder access

87. Satellite operators sell access to transponders on their satellites. These transponders are a key component of the satellite broadcasting network. *However, as satellites are located outside of New Zealand there is a question of whether satellite operators provide a telecommunications service in New Zealand.* (emphasis added)

88. Our preliminary view is that, where a satellite is transmitting signals to New Zealand, the satellite operator is providing a telecommunications service in New Zealand and can therefore meet the definition of liable person.

Optus is strongly of the view that its satellite services are not supplied within New Zealand and as a consequence, fall outside the scope of the TDL.

Optus carries on a business as a provider of satellite services and relevantly here, provides satellite transponder access services to business customers, some of which are located within New Zealand. Although Optus owns a ground station, radio frequency and other transmission moveable equipment in New Zealand to support its satellite monitoring, Optus only supplies satellite transponder capacity to New Zealand businesses and does not supply any ground segment components.

Generally, communications relayed by satellite start with a transmitting antenna located at an uplink facility on the ground. An uplink dish is pointed toward the specific satellite and the uplinked signals are transmitted within a specific frequency range to enable them to be received by one of the transponders aboard the satellite tuned to that frequency range. The transponder redirects the signals back to the receiving earth station or downlink. The satellite creates a communication channel between a source transmitter and a receiver located at different terrestrial locations by relaying and amplifying radio telecommunications signals via a transponder located aboard the satellite. Satellite

dishes, which are not owned by Optus, are aimed permanently at the satellite and reception of the signal transmitted by the satellite operates separately and independently of the physical satellite. The satellite does not create the transmission service or transform it in any meaningful way. The service provided by Optus starts and ends at the physical location of the satellite.

Optus' satellites are outside New Zealand, in a geostationary orbit 37,000 km above the earth's equator and located over Papua New Guinea. Importantly, the transponder services are provided above the earth's equator, outside New Zealand and have no physical nexus with New Zealand

We consider Optus is not providing telecommunications services in New Zealand on the basis that the satellites are neither in nor over New Zealand, the satellite transponder services are provided above the earth's equator in space and because Optus does not own or operate uplink or downlink facilities in New Zealand or have any staff or offices in New Zealand. Our view is supported by the New Zealand goods and services tax ("GST") legislation which does not seek to bring these satellite transponder services within the scope of the legislation.

To facilitate communication between widely separated geographical points, international organisations regulate frequency ranges ("bands") to minimise the risk of signal interference on satellites as they relay their signal around the curve of the Earth. Relevantly here, Australian Communications and Media Authority ("ACMA") regulates satellite space licences, including Optus' licences under Australian radio communications law. By contrast, Radio Spectrum Management ("RSM"), license the operation of satellite earth stations in the mobile or fixed satellite bands in New Zealand, i.e. the uplink normally applying to 'end to end' and the downlink if the receiving earth station is located in New Zealand. Importantly, New Zealand does not license satellites in these circumstances. It would be incongruous to apply the TDL to a satellite operator providing transponder services 37,000 km above the Earth's equator, where there is no physical connection with New Zealand, the services are provided outside New Zealand in space and the satellite operator does not have any staff or offices in New Zealand.

Consultation question 10

Consultation question 10 refers to the definition of broadcasting services. In particular, the removal of the broadcasting exclusion from the definition of telecommunications increases the scope of the term telecommunications service to include broadcasting services and changes the scope of PTN.

The consultation paper seeks to take an expansive definition of broadcasting services for the purposes of the TDL. However, it is important to ensure that the objectives of the TDL as demonstrated by the allowable uses funded by the TDL, are relevant to any definition of broadcasting services. Section 7 sets out the following prescribed purposes for which the TDL funds may be used:

- to pay Telecommunications Service Obligations (TSO) charges;
- to pay for non-urban telecommunications infrastructure development;
- to pay for upgrades to the emergency service calling system;
- ... facilitate the supply of certain telecommunications services to groups of end-users within New Zealand to whom those telecommunications may not otherwise be supplied

Importantly, these prescribed purposes relate to funding critical telecommunications infrastructure to enable services such as telephone, mobile telecommunications and data transmission rather than broadcasting. Satellite broadcasting services are made available to all New Zealanders and the necessary infrastructure has been and continues to be fully funded by broadcasters without government assistance. As broadcasters fully fund infrastructure development for satellite communications services to provide broadcasting services to all New Zealanders, it would be inequitable for broadcasters to both fund their own infrastructure development and pay the TDL. In addition, broadcasters would incur a double burden by indirectly paying increased costs passed-on by telecommunications providers who seek to recover their own TDL imposts and again directly to Commerce Commission New Zealand as (new) TDL payers. To remedy this, the definition of broadcasting services should minimise the impost on broadcasters who fund their own infrastructure and should not include relevant broadcasting services. Finally, Optus expects any TDL indirectly

borne and or directly paid by broadcasters would end-up funding critical telecommunications infrastructure outlined in section 7 rather than broadcasting infrastructure, particularly for satellite services. As a consequence there is no direct benefit to broadcast customers arising from the imposition and payment of the TDL on broadcasting services.

Consultation questions 15, 16 and 18

Consultation questions 15, 16 and 18 refer to the impact on broadcasting service providers and whether Optus will meet the revised definition of liable person, earn qualified revenue under the new definition and whether a portion of gross telecommunications revenue will meet the criteria for s85A(1)(a) due to the removal of the broadcasting exclusion from the definition of telecommunication services.

The answers to these Consultation questions depends largely upon decisions made by the Commerce Commission to our submissions to Consultation questions 4, 5 and 10. In particular Table 6 sets out the potential for parties involved in satellite broadcasting to be liable persons. This needs to be determined before Optus can properly respond to Questions 15, 16 and 18.

If you have any questions or require further information in respect of this submission, please contact me at nick.miller@optus.com.au

Yours faithfully,



(Nick Miller)
Director Satellite Sales, Wholesale & Satellite