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Submission on the Treatment of broadcasting services revenue in the Telecommunications Development Levy (TDL) consultation paper published 12 December 2019

Responses to Specific Consultation Questions

Q1-14 – Questions for all stakeholders

Q15-18 – Questions for broadcasting service providers

Q1	Do you agree that telecommunications service does not include content and content aggregation services? Yes.
Q2	Do you agree with the views expressed in Table 5? Not applicable to NZME.
Q3	Should DTT aerials and set-top-boxes be regarded as part of a PTN? Not applicable to NZME.
Q4	Do you agree with the views expressed in Table 6? Not applicable to NZME.
Q5	Do you agree that, where a satellite is transmitting signals to New Zealand, the satellite operator is providing a telecommunications service in New Zealand? Not applicable to NZME.
Q6	Should satellite dishes and decoders be regarded as part of a PTN? Not applicable to NZME.
Q7	Do you agree with the views expressed in Table 7? We agree that content production and media operations are not telecommunications services. We do not agree that compressing and multiplexing in the current analogue AM/FM format are telecommunications services. For AM/FM radio, compression and multiplexing is the generation of a signal for broadcast. This may need to be reviewed if technology should change at a future date (e.g. introduction of DAB into New Zealand). We agree that broadcast towers only may be considered a telecommunications service. We do not agree that spectrum as used by NZME for free-to-air radio broadcasting should be considered a telecommunications service and note that NZME already pays a licence fee to MBIE for the spectrums it uses. We do not agree that the customer should be treated as providing a telecommunications service.
Q8	Do you agree with the views expressed in Table 8? Not applicable to NZME.
Q9	Do you agree with the views expressed in Table 9? We do not see this table as being applicable to NZME. We note that NZME provides VOD content through its various platforms but do not see this as the provision of a telecommunications service.

Q10	<p>Do you agree that broadcasting services means “any goods, services, equipment, and facilities that enable or facilitate broadcasting”?</p> <p>We do not agree with this definition. It is too broad and does not conform with what it commonly understood by the terms broadcasting and broadcasting services.</p> <p>We note that in the context of radio, the terms ‘broadcaster’ or ‘broadcaster service provider’ would be generally understood to mean the creator of content and the aggregator rather than the provider of transmission services.</p> <p>We consider that the framing of the definition ‘broadcasting services’ by reference to the ‘telecommunications services’ definition creates confusion around what is a broadcast service and what constitutes broadcast revenue and believe that this definition should be reviewed.</p>
Q11	<p>Do you agree that anything that enables or facilitates the transmission of advertising programmes is a broadcasting service, and therefore falls within the exclusion in section 85A(1)?</p> <p>We consider that all broadcast revenue including revenue related to advertising should be excluded when determining Liable Person status.</p> <p>If however, it is determined that broadcast revenue does determine Liable Person status then we agree that such services would fall within section 85A(1).</p>
Q12	<p>Do you agree that all revenue received from the transmission of on demand programmes should be treated as non-broadcasting services revenue (ie not be subject to section 85A)?</p> <p>We are unclear as to the exact extent of this question.</p> <p>Do you mean revenue received by the entity that transmits the on—demand programming (i.e. the broadband service provider)?</p>
Q13	<p>Should revenue received from the supply of broadcasting services to free-to-air broadcasters be subject to section 85A(1)(a)?</p> <p>If it is determined that broadcast revenue does determined Liable Person status then we agree such revenue should be subject to section 85A(1)(a).</p>
Q14	<p>Should the Commission set specifications under section 85A(2)? If yes, please give reasons why and explain what the specifications should address.</p> <p>No. We believe that the definition of broadcasting service needs to be reconsidered to ensure clarity on what broadcasting services revenue the TDL applies to.</p>
Q15	<p>Do you expect that your company will meet the revised definition of liable person?</p> <p>Our answer to this question depends on the further definition of broadcasting services as commented on above.</p>
Q16	<p>Do you expect that your company will earn qualified revenue (under the new definition)?</p> <p>Based on the exclusion of all broadcast revenue for 2019/20 TDL, we do not consider that NZME will earn qualified revenue in that period. NZME may do so in future years depending on the further definition of broadcasting services.</p>
Q17	<p>If you are a 2018/19 QLP do you expect that your qualified revenue will change in future TDL disclosures due to the Amendment Act? Not applicable to NZME.</p>
Q18	<p>Are you expecting that a portion of your gross telecommunications revenue will meet the criteria for section 85A(1)(a)?</p> <p>Yes, if it is determined that NZME is a Liable Person, then all of NZME’s revenue from broadcasting services relates to a free-to-air radio service and therefore in our view would meet the criteria for section 85A(1)(a).</p>