

12 February 2020

Commerce Commission

44 The Terrace
Wellington, 6140
New Zealand

Attention: Aidan Winder-Speed

By email: aidan.winder-speed@comcom.govt.nz

RE: MediaWorks response to Commerce Commission consultation paper “Treatment of broadcasting services revenue in the Telecommunications Development Levy (TDL)”

The purpose of this document is to respond to the consultation paper regarding Treatment of broadcasting services revenue in the Telecommunications Development Levy (TDL). MediaWorks has addressed the specific questions from the consultation paper below this summary and we also include a table at Appendix A (for ease of reference) which sets out our view as against each portion of the value chain across various technologies.

In summary, our preliminary view is that:

- 1) the purpose of the updates to the legislation and the TDL appears, on the basis of its design and our discussions with the Commerce Commission, to be to capture revenue for telecommunication services related to broadcasting (provided it is not related to free-to-air broadcasting);
- 2) the updates to the legislation and the TDL create confusion regarding the commonly understood concepts of broadcast services and broadcast revenue; which are not the expressed target of the TDL. Broadcast revenue for broadcast services is already captured by the Broadcasting Levy;
- 3) accordingly, we recommend that this confusion be resolved by clarifying what in the value chain related to broadcasting is actually a broadcast and providing a clear definition of broadcast services for the purposes of the TDL. This clarification and amendment would ensure the TDL focus remains upon telecommunications services (including telecommunications services which may be provided within a value chain related to broadcasting);
- 4) we also recommend that revenue which is related to free-to-air broadcast not be included in the calculation to determine whether a liable person meets the threshold

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of a Qualifying Liable Person (QLP) (i.e. at the beginning of the TDL process) in order to ease the administrative burden of the TDL process on parties that are unlikely to have to pay the TDL;

- 5) such an amendment would ensure that free-to-air broadcasters are not inadvertently captured as QLPs and then put through the TDL process for no reason. Clearly, if a free-to-air broadcaster did actually earn over \$10m of telecommunications revenue for telecommunications services by means of a PTN (excluding revenue related to free-to-air broadcasting) then they should be subject to the TDL process to calculate what their qualifying revenue might be; although we note this is unlikely for the free-to-air broadcasters currently operating in the New Zealand market;
- 6) without the amendments we recommend above, the operation of the TDL may have the effect of capturing free-to-air broadcasters in the TDL process and placing an administrative burden on them for no reason (i.e. no levy is likely to be payable by free-to-air broadcasters but revenue related to free-to-air broadcasting is only discounted at the end of the TDL process/calculations); and
- 7) digital on demand content that is made available to the public in New Zealand without charge (e.g. Threenow or Youtube) is effectively the same as free-to-air broadcast content for the purposes of the TDL. Accordingly, we believe that the basis for whether revenue related to digital on demand content is captured for the purpose of the TDL should be whether such content is provided free of charge rather than on the basis of the technology it is being transmitted upon (i.e. any exclusion of revenue related to free-to-air broadcasting from telecommunications revenue should also allow for an exclusion for revenue related to free of charge digital on demand content).

In the event that our suggestions above cannot be taken into account and proposed amendments made to the applicable legislation, regulations and guidance are not possible, then we would like the opportunity to be consulted further on any updates to the TDL and its application in relation to broadcasting. We would be happy to provide further feedback and we reserve the right to amend and update our comments in this document based on the outcomes of this consultation process.

Please do not hesitate to contact us if you require additional information or have any queries.

Yours faithfully,



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Consolidated consultation questions:

1 Do you agree that telecommunications service does not include content and content aggregation services?

We agree that telecommunications service does not include content and content aggregation services.

Furthermore, we believe that compression and aggregation of signals is not a telecommunications service (nor in our case, is it part of a PTN that we operate). Please see Appendix A together with our responses below. Our view is that when we compress and aggregate signals, we are packing our content into the smallest (most economic) form for the service provider (telecommunications provider) to convey the content. E.g. people pack their bags tightly to avoid paying for multiple bags when travelling.

2 Do you agree with the views expressed in Table 5?

No, we do not agree with the views expressed in Table 5. Please see Appendix A together with our response below. The only element of Table 5 that we consider to be a telecommunications service by means of a PTN is signal broadcasting.

Compression and multiplexing: MediaWorks operates up to and including the multiplex (MUX)/headend. As per answer 1 above, our view is that Compression and Multiplexing is not a telecommunications service. We compress and multiplex in our facilities; those activities are not telecommunication. Our MUX/headend is also not part of a PTN.

Signal distribution: We contract a dedicated fibre line from Kordia for signal distribution which we do not own or operate. While we agree that signal distribution may be a telecommunications service, we do not consider signal distribution to be part of a PTN as it is not used by the public for telecommunication (it is not accessible).

Signal broadcasting: We contract Kordia for Digital Terrestrial Television (DTT) signal broadcasting (we do not own or operate DTT broadcast towers). We have spectrum licences for our broadcast.

Customer: Our view is that customer aerials and set-top boxes are not part of a PTN; just as a modem (residential gateway) is not considered to be part of a PTN. Aerials or set-top boxes are operated by the public and are typically used to receive one directional broadcasts. Our view is that where aerials or set-top boxes do not have a return path then they should not be considered to be part of a network as they do not permit telecommunication in two directions. We consider that a network must be two-way/bi-directional (and if a network is a PTN then any two-way telecommunication must use the same network/PTN).

3 Should DTT aerials and set-top-boxes be regarded as part of a PTN?

As per answer 2 above, our view is that aerials or set-top boxes should not be regarded as part of a PTN.

4 Do you agree with the views expressed in Table 6?

No, we do not agree with the views expressed in Table 6. Please see Appendix A together with our response below. The only element of Table 6 that we consider to be a telecommunications service by means of a PTN is signal broadcasting.

Compression and multiplexing: MediaWorks operates up to and including the MUX/headend. As per answer 1 above, our view is that Compression and Multiplexing is not a telecommunications service. We compress and multiplex in our facilities; those activities are not telecommunication. Our MUX/headend is also not part of a PTN.

Signal distribution: We contract a dedicated fibre line from Kordia for signal distribution which we do not own or operate. We contract Kordia and Sky for satellite uplink service which we do not own or operate. While we agree that signal distribution may be a telecommunications service, we do not consider signal distribution to be part of a PTN as it is not used by the public for telecommunication (it is not accessible).

Signal broadcasting: We contract Kordia and Sky for signal broadcasting (we do not own or operate satellite transponder access).

Customer: Our view is that customer satellite dishes and decoders are not part of a PTN; just as a modem (residential gateway) is not considered to be part of a PTN. Satellite dishes and decoders are operated by the public and are typically used to receive one directional broadcasts. Our view is that where satellite dishes and decoders do not have a return path then they should not be considered to be part of a network as they do not permit telecommunication in two directions. We consider that a network must be two-way/bi-directional (and if a network is a PTN then any two-way telecommunication must use the same network/PTN).

5 Do you agree that, where a satellite is transmitting signals to New Zealand, the satellite operator is providing a telecommunications service in New Zealand?

We agree that satellite signal broadcast to New Zealand is a telecommunications service. However, we do not agree that signal distribution using satellites is part of a PTN (because it is not accessible by the public). Clearly, not all satellite signals transmitted are part of a PTN/broadcast.

6 Should satellite dishes and decoders be regarded as part of a PTN?

As per answer 5 above, our view is that satellite dishes and decoders should not be regarded as part of a PTN.

7 Do you agree with the views expressed in Table 7?

No, we do not agree with the views expressed in Table 7. Please see Appendix A together with our response below. The only element of Table 7 that we consider to be a telecommunications service by means of a PTN is signal broadcasting. We also believe that Table 7 is missing a signal distribution item which we have addressed below.

Compression and multiplexing: As per answer 1 above, our view is that Compression and Multiplexing is not a telecommunications service. We compress and multiplex in our facilities; those activities are not telecommunication. Our MUX/headend is also not part of a PTN.

Signal distribution (missing from Table 7): While we consider that signal distribution may be a telecommunications service, we do not consider signal distribution to be part of a PTN as it is not used by the public for telecommunication (it is not accessible). We contract a dedicated fibre line from Kordia for some signal distribution which we do not own or operate. In some circumstances, we use microwave to distribute our signal to radio towers. In both cases, such distribution is not accessible by the public.

Signal broadcasting: We contract Kordia and JDA for some signal broadcasting which we do not own or operate. We also broadcast our own signal and have spectrum licences for our broadcast.

Customer: Our view is that radio receivers are not part of a PTN; just as a modem (residential gateway) is not considered to be part of a PTN. Radio receivers are operated by the public and are typically used to receive one directional broadcasts. Our view is that where radio receivers do not have a return path then they should not be considered to be part of a network as they do not permit telecommunication in two directions. We consider that a network must be two-way/bi-directional (and if a network is a PTN then any two-way telecommunication must use the same network/PTN).

8 Do you agree with the views expressed in Table 8?

No, we do not agree with the views expressed in Table 8. Please see Appendix A together with our response below. The only element of Table 8 that we consider to be a telecommunications service by means of a PTN is signal broadcasting. We also believe that Table 8 is missing a signal distribution item which we have addressed below.

It is important to note we do not consider the diagram at Figure 7 to be accurate (and we do not believe that MediaWorks is an Internet Protocol TV (IPTV) operator as set out in the Analysys Mason report).

Compression and multiplexing: As per answer 1 above, our view is that Compression and Multiplexing is not a telecommunications service. We compress and multiplex in our facilities; those activities are not telecommunication. The equivalent of a MUX/headend in this context is the VOD platform and it is also not part of a PTN as it is not used by the public for telecommunication (it is not accessible).

Signal distribution (missing from Table 8): While we consider that signal distribution may be a telecommunications service, we do not consider signal distribution to be part of a PTN as it is not used by the public for telecommunication (it is not accessible). Our position is that signal distribution includes the activities of the Content Distribution Network (CDN). Post a CDN is where we consider the "signal broadcast" to begin if it is broadcast by means of a PTN; although we do not consider that MediaWorks is an IPTV operator. A CDN service should be considered signal distribution prior to signal broadcast and not part of a PTN because the activities and outputs of a CDN are not directly accessible by the public (at least not via normal behaviour).

Signal broadcasting: In the case of IPTV, our position is that broadcast would be by means of a PTN (the public internet or a directly managed equivalent such as HFC). The IPTV equivalent of 'broadcast' is the mechanism of an ISP's broadband service to convey content to

each member of the public. This activity operates as a PTN. We do not consider that MediaWorks is an IPTV operator. We also do not own or operate broadband services which enable public access to the internet.

Customer: Our view is that computers and smart TVs are not part of a PTN; just as a modem (residential gateway) is not considered to be part of a PTN. Computers and smart TVs are operated by the public.

9 Do you agree with the views expressed in Table 9?

No, we do not agree with the views expressed in Table 9. Please see Appendix A together with our response below. The only element of Table 9 that we consider to be a telecommunications service by means of a PTN is signal broadcasting. We also believe that Table 9 is missing a signal distribution item which we have addressed below.

It is important to note we do not consider the diagram at Figure 8 to be accurate. We believe that MediaWorks is an Over-The-Top (OTT) service provider for our Free-to-air On Demand content (contrary to the position set out in the Analysys Mason report).

Compression and multiplexing: As per answer 1 above, our view is that Compression and Multiplexing is not a telecommunications service. We compress and multiplex in our facilities; those activities are not telecommunication. The equivalent of a MUX/headend in this context is the VOD platform and it is also not part of a PTN as it is not used by the public for telecommunication (it is not accessible).

Signal distribution (missing from Table 9): While we consider that signal distribution may be a telecommunications service, we do not consider signal distribution to be part of a PTN as it is not used by the public for telecommunication (it is not accessible). Our position is that signal distribution includes the activities of the CDN. Post a CDN is where we consider the "signal broadcast" to begin if it is broadcast by means of a PTN. A CDN service should be considered signal distribution prior to signal broadcast and not part of a PTN because the activities and outputs of a CDN are not directly accessible by the public (at least not via normal behaviour).

Signal broadcasting: In the case of OTT, our position is that broadcast would be by means of a PTN (the public internet or a directly managed equivalent such as hybrid fibre-coaxial (HFC)). The OTT equivalent of 'broadcast' is the mechanism of an ISP's broadband service to convey content to each member of the public. This activity operates as a PTN. We do not own or operate broadband services which enable access to the internet.

Customer: Our view is that computers and smart TVs are not part of a PTN; just as a modem (residential gateway) is not considered to be part of a PTN. Computers and smart TVs are operated by the public.

10 Do you agree that broadcasting services means "any goods, services, equipment, and facilities that enable or facilitate broadcasting"?

Our view is that broadcasting (and related broadcast services) must be defined from the point a signal is transmitted to the public (i.e. it is accessible to the public). Accordingly, our position is that any goods, services, equipment and facilities that enable or facilitate signal distribution are not broadcasting services (although signal distribution may be a telecommunications service).

We agree that goods, services, equipment and facilities that enable or facilitate broadcasting may be broadcasting services at the point a broadcast is transmitted to the public. We note that such goods, services equipment and facilities are typically a subset of telecommunications services and, in our view, the definition of broadcasting services for the purpose of the TDL should focus on those telecommunications services which are related to broadcasting. To take a wider interpretation would be contrary to the common use of the terms broadcaster, broadcasting service (being a broadcast of content for the public, rather than a commonly understood telecommunication service) and broadcast revenue. We note that Ofcom describes the common understanding of broadcast as a 'one to many' medium.

As per our summary response above, we believe that the updates to the legislation and the TDL create confusion regarding the commonly understood concepts of broadcast services and broadcast revenue; which are not the expressed target of the TDL. Broadcast revenue for broadcast services is already captured by the Broadcasting Levy. We recommend that this confusion be resolved by clarifying what in the value chain related to broadcasting is actually a broadcast and providing a clear definition of broadcast services for the purposes of the TDL. This clarification and amendment would ensure the TDL focus remains upon telecommunications services (including telecommunications services which may be provided within a value chain related to broadcasting).

11 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)?

As per our summary response and answer 10 above, we believe that 'broadcasting service' requires further definition for the purposes of the TDL (both generally and in relation to section 85A).

Our view is that goods, services, equipment and facilities that enable or facilitate the transmission of advertising programmes, which are subject to the TDL, should be telecommunications services in relation to a broadcasting service. Using sections 85A(1)(a) and (b) as an example, a possible solution to clarifying 'broadcasting services' for the purpose of the TDL could be to include wording such as that underlined below:

“(a) any amount of revenue that is received by a liable person for a telecommunications service in relation to a broadcasting service that is supplied to end-users free of charge (for example, revenue derived from a free-to-air radio or television service;

(b) any amount of revenue that is received before 1 July 2020 by a liable person for a telecommunications service in relation to any other broadcasting service.”

As per our summary response and answer 10 above, we do not agree anything which enables or facilitates the transmission of advertising programmes is a broadcasting service for the purpose of the TDL. Any interpretation of the exclusion in section 85A(1) needs to also consider whether it is in relation to a free of charge broadcast.

Specifically in relation to free-to-air advertising revenue, advertisements are part of the content which we aggregate and then broadcast to our audience (it may be argued that we sell space in our content to advertisers). As a broadcaster, we are charged a Broadcasting Levy on advertising revenue. In the event that our advertising revenue was held to be a broadcasting service (and also held to be a telecommunications service for which we were a liable person under the TDL) then we could be charged two levies for the same activity. We do not think

this is the intent (nor should it be the outcome) of the recent changes to the TDL, regardless of whether our revenue is in relation to free-to-air broadcasting.

Accordingly, we believe questions 10 and 11 require further detailed consultation and consideration.

12 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)?

As per answers 10 and 11 above, our position is that the new definition of telecommunication and related legislation definitions are ambiguous. Therefore we believe this area requires further consultation and clarification for the purposes of the TDL; which will need to consider existing broadcasting legislation and regulation related to on demand programmes.

As per our summary response, our view is that the test for whether digital on demand revenue is captured for the purposes of the TDL should be whether such content is provided free of charge rather than on the basis of the technology it is being transmitted upon (i.e. any exclusion of revenue related to free-to-air broadcasting from telecommunications revenue should also allow for an exclusion for free of charge digital on demand content).

13 Should revenue received from the supply of broadcasting services to free-to-air broadcasters be subject to section 85A(1)(a)?

As per answers 10 and 11 above, we believe that 'broadcasting service' requires further definition for the purposes of the TDL (both generally and in relation to section 85A).

Our position is that revenue received by providers of telecommunication services in relation to free-to-air broadcasts should fall within section 85A(1)(a).

14 Should the Commission set specifications under section 85A(2)? If yes, please give reasons why and explain what the specifications should address.

Yes. As currently drafted, the definitions are ambiguous and could create confusion and overlap between the Broadcasting Levy and the TDL. We have addressed possible specifications/updates in our responses and would be happy to engage in more detailed consultation on the points we have raised.

15 Do you expect that your company will meet the revised definition of liable person?

Yes, we expect MediaWorks will be a liable person under the updated definition (which now is likely to capture broadcasters; whether they are free-to-air or not). However, we do not think that MediaWorks should be a QLP as it does not earn over \$10m a year in telecommunications services by means of a PTN that we operate. MediaWorks does not charge for its broadcasting; therefore we believe that the areas where MediaWorks might charge for a telecommunications service are extremely limited.

16 Do you expect that your company will earn qualified revenue (under the new definition)?

Given we consider that MediaWorks should not be a QLP, the calculation of qualified revenue should not be relevant to MediaWorks. In the event that MediaWorks was held to be a QLP, then we expect any qualified revenue would be minimal (given the deductions applicable to the calculation of any qualifying revenue and the fact that we are a free-to-air broadcaster).

17 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 MediaWorks.

18 Are you expecting that a portion of your gross telecommunications revenue will meet the criteria for section 85A(1)(a)?

See answer 16 above.

Table for MediaWorks response (Appendix A):

This table sets out MediaWorks' position regarding whether each portion of the value chain across the stated technologies is a telecommunications service and/or a Public Telecommunications Network (PTN).

| | DTT | | Satellite TV (DTH) | | Radio | | IPTV | | OTT | |
|-------------------------------------|---------------|-----|--------------------|-----|---------------|-----|---------------|-----|---------------|-----|
| | Telco service | PTN | Telco service | PTN | Telco service | PTN | Telco service | PTN | Telco service | PTN |
| Content production | No | No | No | No | No | No | No | No | No | No |
| Media operators | No | No | No | No | No | No | No | No | No | No |
| Compression and multiplexing | No | No | No | No | No | No | No | No | No | No |
| Signal distribution | Yes | No | Yes | No | Yes | No | Yes | No | Yes | No |
| Signal broadcasting | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Customer | Yes | No | Yes | No | Yes | No | Yes | No | Yes | No |

