

MED and the Regulation of the ICT Sector

The Ministry of Economic Development ("the Ministry") is responsible for the maintenance of a sound regulatory environment for the information and communications technology (ICT) sector.

Key functions of the Ministry are:

Statutory Functions

The Ministry undertakes the following statutory functions under Vote Communications:

- management of the following legislation:
 - Telecommunications Act 2001 (including associated regulations);
 - Radiocommunications Act 1989 (including associated regulations);
 - Postal Services Act 1998 (including associated regulations);
 - Electronic Transactions Act 2002; and
 - Unsolicited Electronic Messages Act 2007.
- administration of the registration of telecommunications network operators in New Zealand;
- enforcement of the Radiocommunications Act 1989, including licence assignment, compliance, enforcement, and registration responsibilities; and
- administration of information disclosure requirements for New Zealand Post.

Other Areas of Responsibility

The Ministry is also responsible for:

- policy advice on the regulation of the ICT sector, including advice to the Minister of Communications and Information Technology on recommendations of the Telecommunications Commissioner;
- policy advice on the social, cultural, environmental and economic impacts of information and communications technology;
- policy and technical planning advice on the allocation of the radio spectrum resource, including advice on broadcasting spectrum and related commercial broadcasting matters;
- monitoring of the telecommunications functions of the Commerce Commission;
- administration of telecommunications service obligations instruments;
- administration of the Broadband Investment Fund; and
- representation of New Zealand's interests in international ICT fora and trade negotiations.

Other Agencies

The Commerce Commission

The Commerce Commission is an independent regulatory authority responsible for the development, monitoring and enforcement of regulations. It enforces general competition legislation through the Commerce Act 1986, which promotes competition in markets for the long-term benefit of consumers within New Zealand.

The Commission also enforces sector-specific legislation, including the Telecommunications Act 2001, which is designed to promote competition in telecommunications markets for the long-term benefit of end-users.

The Telecommunications Commissioner

The Telecommunications Act 2001 established a Telecommunications Commissioner who is a member of the Commerce Commission and is appointed by the Minister responsible for the Act.

The Commissioner has powers under the Telecommunications Act to perform the functions of the Commission alone in some circumstances, and in conjunction with two other members of the Commission in others.

Under Schedule 3 of the Telecommunications Act, the Commission may, on its own initiative, or if requested to do so by the Minister of Communications and Information Technology, commence an investigation (Schedule 3 investigation) into whether any new telecommunications services should be regulated under the Act, or whether any currently regulated services should be altered. The Telecommunications Commissioner must report to the Minister about every proposed alteration under Schedule 3 to regulated services in the Act, and the report must include the views of two other members of the Commission. The Minister, after receiving a final report from the Commission, may accept, reject, or require the Commission to reconsider its recommendations.

The Commission has an output agreement with the Minister of Communications and Information Technology (as the Purchasing Minister), which enables the Minister to monitor the Commission and hold it to account for the performance of its functions under the Telecommunications Act.

Department of Internal Affairs

The Department of Internal Affairs enforces the Unsolicited Electronic Messages Act 2007 by investigating complaints about spam, acting against 'spammers' who are deliberately flouting the law, undertaking research into technologies used to send spam, advising government and organisations on spam matters, and liaising with relevant overseas bodies to ensure New Zealand complies with international agreements concerning spam.

New Zealand Police

The New Zealand Police investigates and prosecutes people who have committed electronic crime.

Background - Telecommunications Sector

Telecom Corporation of New Zealand Ltd was established as a state-owned enterprise on 1 April 1987 after the break-up of the New Zealand Post Office. Telecom was privatised in 1990. It remains the supplier of the most extensive range of telecommunications services throughout New Zealand.

The telecommunications services market in New Zealand was fully opened to competition on 1 April 1989. For the period between deregulation and 2001, the telecommunications sector was subject to the so-called 'light-handed' regulatory regime. During this time, primary reliance was placed on general competition law to resolve disputes over access to telecommunications facilities.

A number of disputes arose in the telecommunications sector, some of which could not be satisfactorily resolved under the Commerce Act. In particular, telephone network interconnection took over five years for the parties to agree to pricing terms.

Telecommunications Regulation

Telecommunications Act 2001

In 2000, a Ministerial Inquiry into Telecommunications recommended changes to the New Zealand telecommunications regulatory regime to promote competition in relevant services markets and deliver benefits to end-users. Subsequently, the regulatory regime was reformed with the passage of the Telecommunications Act 2001.

New Zealand's telecommunications regulatory regime is embodied in the Telecommunications Act. The purpose of the Act is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand. It achieves this by regulating the supply of certain telecommunications services by service providers.

Telecommunications Service Obligations

The Telecommunications Act 2001 includes the establishment of a regulatory framework for Telecommunications Service Obligations (TSO) to ensure that certain telecommunications services are made available at affordable prices for particular user groups. The TSO superseded the Kiwi Share Obligation, which had been established at the time of the sale of Telecom New Zealand in September 1990.

Telecommunications Service Obligations require the supply of telecommunications services to meet public interest objectives and are equivalent to universal service obligations prevalent in some other countries. TSO requirements are contained in agreements ("TSO instruments") between the New Zealand government and companies appointed as TSO Providers for certain services.

There are currently two TSO instruments:

- the Local Residential Telephone Service TSO (known as the "Local Service" or "Kiwi Share" obligation); and
- the Telecommunications Relay Service TSO (known as the "Deaf Relay" obligation).

The Local Service TSO requires Telecom New Zealand (as a TSO Provider) to make available unmetered ("toll free") local calling as a service option. The Ministry is currently reviewing this service to ensure that TSO requirements continue to efficiently meet the needs of telecommunications users.

The purpose of the Telecommunications Relay Service, launched in November 2004, is to meet the telephone communications needs of the Deaf, hearing impaired and speech impaired. The relay service is available free of charge on a nationwide basis and is supplied by Sprint New Zealand.

The cost of the provision of TSO services is borne by the telecommunications industry. The cost is calculated by the Commerce Commission and allocated across liable parties in the industry according to share of revenue.

Telecommunications Amendment Act (2006)

In 2006, the government introduced the Telecommunications Amendment Act (No 2) to amend aspects of the Telecommunications Act, following its stocktake of the telecommunications sector. The amended Act aligns New Zealand's regulatory regime more closely with international best practice. It provides for a broader set of regulatory tools and greater scope for the Commission to be proactive in order to achieve the statutory purposes of the Act.

The 2006 Telecommunications Amendment Act includes provisions for:

- a requirement for the responsible Minister to settle a robust operational separation plan with Telecom that requires the business operation to be separated to support transparency, non-discrimination, and equivalence of supply of particular services; and

- a range of supporting measures to enhance the effectiveness of the Act, such as information disclosure through accounting separation, enforcement provisions, market monitoring and information dissemination.

The Act extended the Commissioner's powers and functions to initiate regulated services determinations, monitor and provide public information on telecommunications service market performance such as pricing relative to other OECD countries, enforce Telecom's Separation Undertakings, set up an accounting disclosure regime; and also strengthened the enforcement provisions.

To ensure that access terms and conditions are set in a timely and effective manner, the amended Act introduced a standard terms determination (STD) process. This enables the Commission to make a determination on how a designated (price and non-price regulated) or specified (non-price only regulated) service must be supplied with reference to all access seekers and providers of the service.

The Act also provides for a formal undertakings process that allows the Commission to accept and enforce voluntary supply commitments from access providers in lieu of regulation.

Under the Act, the Commission must have regard to economic policies of the government that are transmitted in writing to the Commission by the Minister.

Broadband Investment Fund

The passage of the Telecommunications Amendment Act (No 2) in 2006 paved the way for the implementation of pro-competitive regulatory reforms in the telecommunications sector. New Zealand now has an unbundled local loop, unbundled bitstream, naked DSL, number portability and, most notably, an operationally separated incumbent provider. The regulations put in place ensure that markets continue to encourage competition, infrastructure investment, innovation, and a broad range of consumer choice.

To further encourage infrastructure investment, the government announced, as part of Budget 2008, the Broadband Investment Fund (BIF) - a contestable fund aimed at facilitating high speed broadband connections to businesses in urban centres and key users in the health and education sectors. The BIF also aims to extend the reach of broadband into underserved regions, and to improve the resilience of New Zealand's international connections.

Radiocommunications Regulation

Radiocommunications Act 1989

Until 1989, administrative radio licensing was the sole means for managing access to the spectrum resource. The Radiocommunications Act 1989 introduced a new framework for managing radio spectrum in New Zealand. It allows privately-held, tradable, long-term rights to spectrum (either nation-wide management rights or geographically-specific spectrum licences) to be created, while also continuing the system of administrative licensing that existed before 1989. It also set up procedures for dealing with interference and managing disputes between spectrum users. New Zealand became one of the first countries to implement spectrum trading.

The government's current practice is to allocate management rights, and spectrum licences granted under a Crown-retained management right, by way of public spectrum auctions or tenders, except for frequencies reserved to meet specific public policy objectives.

The Ministry provides advice on the development of legislative and policy frameworks to support the optimal allocation and management of the radio spectrum resource, maximising the value of this scarce resource to New Zealand. This includes policy advice on:

- spectrum allocation for broadband wireless access;
- spectrum allocation for new radio spectrum technologies;
- arrangements for the renewal of spectrum rights to facilitate investment in infrastructure;
- radio spectrum competition issues; and
- broadcasting spectrum and related convergence issues. The Ministry for Culture and Heritage (MCH) is the lead agency providing advice to the government on broadcasting issues, including the use of non-commercial broadcasting spectrum. The Ministry and MCH are currently conducting a Regulatory Review of Digital Broadcasting to assess the implications of the convergence of telecommunications, broadcasting and the internet for regulatory policy.

The Ministry also manages and enforces the Radiocommunications Act, which include the planning of technical frameworks to facilitate the implementation of spectrum policy decisions, and the delivery of licensing, compliance, management, registration, and spectrum sales services.

Postal Regulation

The Postal Services Act 1987 provided New Zealand Post with the statutory monopoly on the commercial delivery of letters that had previously been the preserve of the Post Office.

Postal Services Act 1998

The Postal Services Act 1998 repealed the Postal Services Act 1987. It completely removed New Zealand Post Limited's statutory monopoly on the carriage of letters. Any company or individual is now legally able to carry out a business delivering letters within the requirements of the Postal Services Act. All persons carrying out business as a postal operator must apply to the Chief Executive of the Ministry to be registered, except where a person is acting as an employee or agent of a postal operator.

In 1989, New Zealand Post Limited concluded a Deed of Understanding ("Deed") with the Crown, which sets out certain social, price and service undertakings to be met by the company in New Zealand's competitive postal

environment. The Deed expired in September 1992, but with the agreement of New Zealand Post and the government, it was rolled over and amended a number of times.

In February 1998, a new Deed was signed, with terms that reflected the new competitive environment for postal services. Compliance with the Deed is monitored by means of information disclosure regulations passed pursuant to the Postal Services Act.

The Ministry monitors New Zealand Post's compliance with the Deed and the Postal Services Act. It monitors compliance by New Zealand Post and other postal operators with regulatory requirements, as well as the framework for the resolution of access disputes between New Zealand Post and other operators.

The Postal Operators Forum was established to facilitate discussion of and agreed approaches to postal industry issues. The Ministry provides secretariat services and support for the Postal Operators Forum.

New Zealand is a member of the Universal Postal Union, which sets out the internationally agreed rules for the exchange of international mail.

Other Legislation

Electronic Transactions Act 2002

The purpose of the Electronic Transactions Act 2002 is to facilitate the use of electronic technology by reducing uncertainty regarding the legal effect of information in electronic form or communicated by electronic means; and providing that certain paper-based legal requirements may be met by using electronic technology that is functionally equivalent to those legal requirements.

Unsolicited Electronic Messages Act 2007

The Unsolicited Electronic Messages Act 2007 (Spam legislation) prohibits unsolicited commercial electronic messages with a New Zealand link from being sent, in order to promote good e-marketing practice and prevent New Zealand from becoming a spam haven.

The Spam legislation establishes a civil penalty regime for non-compliance and is enforced by the Department of Internal Affairs.

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