

Briefing Paper

MFR2025-073



Ministry for Regulation
Te Manatū Waeture

To	Hon David Seymour, Minister for Regulation Hon Paul Goldsmith, Minister for Media and Communications		
Title	Draft Terms of Reference for telecommunications sector review	Number	MFR2025-073
Date	7 April 2025	Priority	High
Action Sought	Agree the process for engaging on scope and approach to the review	Due Date	9 April 2025
Contact Person	Peter Clark, Manager, Regulatory Reviews	Phone	S 9(2)(a)
Contact Person	Maria Spencer, Senior Advisor, Reviews and System Capability	Phone	S 9(2)(a)
Attachments	Appendix 1: Draft Terms of Reference for telecommunications sector review Appendix 2: Options for engaging with stakeholders to inform the scope of the review Appendix 3: List of stakeholders for targeted engagement on draft Terms of Reference	Security Level	IN CONFIDENCE
Consultation	MfR undertook targeted pre-engagement with telecommunication providers, the Telecommunication Forum and the Tech Users Association of New Zealand (TUANZ). This engagement informed the Cabinet paper and the draft Terms of Reference. We also consulted with the Ministry of Business, Innovation and Employment and the Commerce Commission on this briefing and the draft Terms of Reference.		

IN CONFIDENCE



Recommended Action

We recommend that you:

	Minister for Regulation	Minister for Media and Communications
a note that Cabinet noted the next regulatory sector review will focus on the telecommunications sector and invited you to present the Terms of Reference (ToR) to Cabinet for approval on 12 May 2025 [CAB-25-MIN-0098 refers];	<i>Noted</i>	<i>Noted</i>
b note that attached to this report at Appendix 1 is a draft ToR for your consideration, developed in consultation with the Ministry of Business, Innovation and Employment and the Commerce Commission;	<i>Noted</i>	<i>Noted</i>
c discuss and agree the draft ToR with a specific focus on agreeing the engagement approach to define the scope of the review and the approach that the Ministry for Regulation (MfR) will use for the review;	<i>Agree / Disagree</i>	<i>Agree / Disagree</i>

Process for engaging with stakeholders to inform the proposed scope of the Review

EITHER

d agree to Option 1 - proceed with targeted engagement on the draft ToR without defining the scope of the review;	<i>Agree / Disagree</i>	<i>Agree / Disagree</i>
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OR

e agree to Option 2a - proceed with targeted engagement on the draft ToR with scope based on MfR's pre-engagement discussions with stakeholders;	<i>Agree / Disagree</i>	<i>Agree / Disagree</i>
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OR

f agree to Option 2b - proceed with targeted engagement on the draft ToR with a proposed limited scope;	<i>Agree / Disagree</i>	<i>Agree / Disagree</i>
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Approach to the review

g agree that the review will look at the regulatory system from the viewpoint of regulated parties, which includes providers of the regulated services, consumers who use those services, and other stakeholders who are impacted by the regulations;	<i>Agree / Disagree</i>	<i>Agree / Disagree</i>
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	<i>Minister for Regulation</i>	<i>Minister for Media and Communications</i>
h agree that MfR undertake targeted engagement with the organisations listed in Appendix 3 once your feedback has been addressed;	<i>Agree / Disagree</i>	<i>Agree / Disagree</i>
i agree that MfR release this briefing after Cabinet has made decisions on the ToR.	<i>Agree / Disagree</i>	<i>Agree / Disagree</i>

Minister for Regulation alone:

j agree to refer this briefing to the Minister for Finance, Minister for Rural Communities and the Parliamentary Under-Secretary to the Minister for Media and Communications for their information.	<i>Agree / Disagree</i>
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S 9(2)(a)

Paul Delahunty

Deputy Chief Executive, Reviews and
System Capability
Ministry for Regulation
Date: 7 April 2025

Hon David Seymour
Minister for Regulation
Date:

Hon Paul Goldsmith
Minister for Media and Communications
Date:



Purpose of Report

1. To provide you with a draft Terms of Reference (**Appendix 1**) for the telecommunications sector review for your consideration and discussion at your Joint Ministers meeting on Wednesday, 9 April 2025.

Background

2. On 31 March 2025, Cabinet noted that the Ministry for Regulation (MfR), in consultation with the Ministry of Business, Innovation and Employment (MBIE), will undertake a regulatory review of the telecommunications regulatory system (Review). Cabinet also noted that Terms of Reference (ToR) for the Review will be developed in consultation with the sector. [CAB-25-MIN-0098 refers].
3. Cabinet further noted that you, as Joint Ministers, will present the ToR to Cabinet for approval on 12 May 2025.
4. In making their decision, Cabinet considered that:
 - there is already considerable work underway in this sector;
 - the Review will not revisit Cabinet decisions on the Telecommunications Development Levy (TDL); and
 - the scope of the Review will complement existing work programmes and avoid duplication.

Draft terms of reference

5. Attached at **Appendix 1** is a draft ToR for the Review, which was developed in consultation with MBIE and with the Commerce Commission. Following your feedback, MfR will proceed with targeted engagement on the draft and will provide further advice on the proposed ToR, prior to you seeking Cabinet's approval on 12 May 2025.
6. There are two outstanding issues we recommend you consider:
 - the process for engaging with stakeholders to inform the scope of the Review; and
 - the approach to be taken by MfR in undertaking the Review.

Process for engaging with stakeholders to inform the scope of the Review

7. There are two approaches that can be used to engage with stakeholders to define the proposed scope of the Review.
 - **Option 1** is to seek views from stakeholders on issues to include in the proposed scope without defining the scope in the draft ToR.
 - **Option 2** is to define the proposed scope in the draft ToR and seek stakeholder feedback on that proposal. This could have a broad proposed scope that reflects the issues raised during MfR's previous targeted engagement (**Option 2a**), or a narrower proposed scope (**Option 2b**).



8. **Appendix 2** sets out these options along with the advantages and disadvantages of each. At a high-level, these options have different considerations for:
 - the ability to understand the breadth of regulated parties' issues;
 - setting expectations for change; and
 - introducing short-term uncertainty until the ToR is agreed by Cabinet.
9. MfR's preference is Option 2a, whereas MBIE and the Commerce Commission support Option 2b.
10. MfR supports Option 2a because we have already undertaken engagement, albeit targeted, to understand industry concerns. Option 1 may be seen to repeat this process. Option 2a provides an opportunity to receive more detailed feedback on areas that were raised during MfR's initial targeted engagement. In contrast, Option 2b will only address some of matters already raised to MfR.
11. We understand that MBIE and the Commerce Commission are concerned that Options 1 and 2a may result in revisiting Cabinet decisions and may duplicate work that is already underway. The Commerce Commission's preference would be to defer the Review until their current work programme is completed. If a Review is to be undertaken now, their preference would be for a narrower focus as described in Option 2b. They consider that a wider focus would be inconsistent with Cabinet's decision. They noted the Minister for Regulation advised Cabinet that, "the scope of the Review will complement existing work programmes and avoid duplication" given the "already considerable work underway in the sector".
12. In undertaking sector reviews, MfR seeks to work collaboratively to ensure that the Review complements and leverages off existing work.

Approach to be taken by MfR in undertaking the Review

13. The Review provides an opportunity to hear from regulated parties and others to identify how existing regulation could or should be improved and to undertake an independent review of existing regulatory systems and evaluate their impact on a sector.
14. MfR has significant expertise in regulatory frameworks and systems, including regulatory economics, allowing us to see the bigger picture, and consider where broader regulatory issues may lie beyond those where agencies' focus typically lies.
15. The Review would have scope to consider the telecommunications market structure more broadly, other potential market failures that are not addressed by the current regulatory regime, the interaction of the different parts of the regulatory framework analysed as a whole, the roles/responsibilities of the regulator, and strength of the regulatory oversight mechanisms
16. The draft ToR proposes that the Review will focus on issues raised by regulated parties within the telecommunications sector and will look at the regulatory system from the viewpoint of regulated parties, which includes providers of the regulated services, consumers who use those services, and other stakeholders who are impacted by the regulations.



Agency Feedback

17. MBIE and the Commerce Commission were consulted on this briefing and the draft Terms of Reference, and their feedback has been considered. MBIE's and the Commerce Commission's verbatim feedback is provided below.

MBIE full comment is:

“Broad approach to review undermines existing pro-competition regulatory settings

The proposal to consider the vertical integration of Chorus (and other local fibre companies) would undermine competition if changes are made. This approach is inconsistent with the Government's work to increase competition across the economy, for example in energy and grocery markets.

The split between wholesale fibre providers and retailers is fundamental to competition. The Crown's investment into the UFB initiative sought this outcome. Companies were only eligible for UFB funding if they were restricted to the wholesale market, forcing the structural separation of Telecom into Chorus and Spark.

Cabinet has also recently taken decisions on whether fibre providers should be able to move beyond wholesale, in its consideration of changes to the constitutions of local fibre companies. Cabinet has confirmed that fibre providers should remain wholesale telecommunications companies [CBC-24-MIN-0124 refers]. These decisions cannot be implemented if the review is considering the vertical integration of fibre providers.

Broad approach will mean investment uncertainty until the review has been concluded

A broad review will introduce extreme uncertainty in the telecommunications sector (particularly around vertical integration of Chorus) that will hinder current investment plans e.g. fewer mobile towers being constructed and investment in upgrading existing towers to 5G.”

Commerce Commission full comment is:

“Foundation of the review

Any review should be grounded in the purpose of the Act which is to promote competition for the long-term benefit of end users. It should not be centred on the views of regulated parties alone.

Scope of the review

Any review should focus on industry issues that haven't been looked at for some time – such as the TSO, KSO and TCF¹. It should avoid cutting across or duplicating work that is already underway or only recently completed.

The full-scale review recommended by MfR would cut across the Commission's existing extensive deregulatory work programme. This spans copper services in rural areas, remaining legacy multi-operator services, certain fibre services, and comprehensive

¹ Telecommunications service obligations (TSO), Kiwi Share obligations (KSO), New Zealand Telecommunications Forum (TCF)



review of key fibre settings. This work is being undertaken pursuant to various review mechanisms built into the existing regime.

Cutting across this work would disrupt the stability, certainty and predictability the regime is intended to provide for industry, investors and consumers. A full-scale review should not take place until after the deregulatory work contemplated by the existing settings has been completed.

We therefore support the targeted review set out in option 2b and endorse the comments made by MBIE in support of this pathway.”

Engagement with other Ministers

18. It is recommended that the Minister for Regulation refer this briefing for the following Ministers' information:
- Minister for Finance as it is proposed that the Review examine the historical 'Kiwi Share'² protections in the Chorus Constitution, which are within the Hon Willis' portfolio responsibilities
 - Minister for Rural Communities as the review of the Telecommunications Service Obligations is likely to be of great interest to rural communities
 - Parliamentary Under-Secretary to the Minister for Media and Communications as Hon Marcroft is assisting the Minister for Media and Communications in respect of telecommunications services, including rural connectivity initiatives.

Next Steps

19. Following your discussion, MfR will work with MBIE and the Commerce Commission to reflect any changes you would like to make to the ToR. We will work with your offices to support any announcements of the Review topic.
20. Following announcements, we plan to start targeted engagement. The list of stakeholders we propose to engage with is provided in **Appendix 3**.
21. Following stakeholder engagement on the draft ToR, we will provide you with further advice, including on possible priorities for the Review and an updated ToR that can be considered at Cabinet on 12 May 2025.

² The Kiwi Share is a contractual agreement between the Crown and Telecom that enables the Government to meet its social objectives in telecommunications. It was established when Telecom was privatised in 1990 and requires Telecom to maintain some practices of the former state entity.



Appendix 1: Draft Terms of Reference for the telecommunications regulatory review

Proactive release note:

Appendix 1 is available on the Ministry for Regulation website: <https://www.regulation.govt.nz/assets/Publication-Documents/Terms-of-Reference-for-the-regulatory-review-of-the-telecommunications-sector.pdf>

Appendix 2: Options for engaging with stakeholders on the draft ToR to inform the scope of the Review

Options	Process for determining scope	Out of scope	Advantages	Disadvantages
1	Stakeholders are consulted on the draft ToR without any defined scope, noting items out of scope.	- the Telecommunications Development Levy (TDL) - the Radiocommunications Act 1989 - the Telecommunications (Interception Capability and Security) Act 2013.	Would maximise the opportunity to hear from regulated parties and others to identify how existing regulation is justified or is being sufficiently addressed by existing work. Allows stakeholders to identify issues so that the review can examine: - the regulatory framework as a whole - other potential market failures not addressed by the current regulatory regime - the roles/responsibilities of the regulator and strength of the regulatory oversight mechanisms.	May raise industry expectations regarding the scope of the review. Alternatively, the scope may end up too broad to complete in the allocated timeframe. May initially create some industry uncertainty as to scope before it is formally defined. There will be some duplication, as some stakeholders have already been consulted in targeted industry engagement.
2a [bold items reflect the scope of Option 2b]	Stakeholders are consulted on the draft ToR with draft scope based on issues identified through MfR's prior targeted engagement: - Layering of regulation and need for first principles review Telecommunications Service Obligations, particularly the Telecommunications Service Obligations Deed for TSO Network Service (Chorus), and the Telecommunications Service Obligations Deed for Local Residential Telephone Service (Spark) The efficiency and effectiveness of Part 7 of the Telecommunications Act 2001 that focuses on consumer matters, including Retail service quality regulation (RSQ) Historical 'Kiwishare' protections in the Chorus Constitution - Information requests to businesses being excessive resulting in high administrative and transaction costs which are being passed on to consumers	- the Telecommunications Development Levy (TDL) [although this issue was raised through the targeted engagement process] - the Radiocommunications Act 1989 - the Telecommunications (Interception Capability and Security) Act 2013	Stakeholders who were part of the previous targeted engagement will feel that they were heard. Allows stakeholders to identify issues so that the Review can examine: - the regulatory framework as a whole - other potential market failures not addressed by the current regulatory regime - the roles/responsibilities of the regulator and strength of the regulatory oversight mechanisms.	There will be some missed opportunities to hear from regulated parties and others not consulted in prior targeted engagement. There will need to be a focus on the most important issues. Limits the ability to examine the regulatory framework as a whole. Consideration of the vertical integration of Chorus may create uncertainty in the market. The Review will need to ensure to communicate that no decisions have been pre-determined and the focus of the Review is only to examine the issue.

Options	Process for determining scope	Out of scope	Advantages	Disadvantages
	- Concerns regarding the Commerce Commission's work programme and funding - Vertical integration allowing Chorus to enter the retail market			
2b	Stakeholders are consulted on the draft ToR with the scope explicitly limited to: - Telecommunications Service Obligations, particularly the Telecommunications Service Obligations Deed for TSO Network Service (Chorus), and the Telecommunications Service Obligations Deed for Local Residential Telephone Service (Spark) - The efficiency and effectiveness of Part 7 of the Telecommunications Act 2001 that focuses on consumer matters, including Retail service quality regulation (RSQ) - Historical 'Kiwishare' protections in the Chorus Constitution.	Anything outside the scope defined in the first column, including: - decisions taken by Cabinet in December 2024 [CBC-24-MIN-0124 refers] - services regulated under Parts 2 and 6 of the Telecommunications Act 2001 - the Telecommunications Development Levy (TDL) - the Radiocommunications Act 1989 - the Telecommunications (Interception Capability and Security) Act 2013.	Provides certainty to industry by making it clear that the regulatory settings will continue to support competition between wholesale providers and retail providers. Stakeholders have already had the opportunity to comment on the work that is underway, and Cabinet has taken decisions on removing risk of duplication. Gives the opportunity for industry to have some of its key concerns addressed with the existing regulatory framework and is manageable in the timeframe identified for the Review.	Industry's concerns outside of the issues noted as in scope will not be identified or addressed. Opportunity will be lost to: - hear from regulated parties and others to identify how existing regulation is justified or is sufficiently addressed by existing work; - examine the broader regulatory system and consider where regulatory issues may lie beyond where the focus of agencies typically lies. No ability to examine the regulatory framework as a whole.

Appendix 3: Proposed stakeholder list for engagement on draft Terms of Reference

Group	Members
NZ Telecommunications Forum Inc	New Zealand telecommunications carriers and service providers
Chorus NZ	TSO provider
Spark NZ	TSO provider
One NZ	Provider
2degrees/Vocus	Provider
Technology Users Association of New Zealand (TUANZ)	Consumer organisation
Federated Farmers	Rural businesses
Rural Women New Zealand	Rural customers
Deaf Aotearoa	Deaf customers
Consumer NZ	Consumers, generally