



Terms of Reference for the regulatory review of the telecommunications sector

Purpose

1. The regulatory review of the telecommunications sector (Review) is to **ensure that the current regulation remains fit for purpose in light of technology and market changes**, noting the extensive work currently underway in this sector.

Background

2. The telecommunications sector includes operators of telecommunication services. The New Zealand industry is characterised by several companies who operate their own telecommunications networks and many other operators providing services over those networks. There are more than 90 companies selling retail broadband services, including new offshore providers offering broadband from satellite systems to expand broadband access and increase consumer choice. However, the sector remains highly concentrated, with the top three providers holding 98% of the mobile market and 74% of the broadband market, and four fibre networks operating at the wholesale level in separate geographic areas.
3. The telecommunications sector is subject to a range of sector-specific regulation, reflecting aspects such as the structural separation of Telecom and the approach to managing risks to competition given many existing network connectivity technologies, such as the fixed line fibre network, have inherent natural monopoly characteristics.
4. Legislation regulating telecommunications includes:
 - Telecommunications Act 2001
 - Telecommunications Service Obligations Deed for TSO Network Service (Chorus)
 - Telecommunications Service Obligations Deed for Local Residential Telephone Service (Spark).

Work currently underway

5. In December 2024, Cabinet took decisions on a targeted review of telecommunications regulation led by the Minister for Media and Communications. The Commerce Commission also has an extensive deregulatory work programme covering telecommunications services that are regulated under Parts 2 and 6 of the Telecommunications Act 2001. This work is detailed in **Appendix A**.

In Scope

6. The Review will examine some of the regulatory regime governing the telecommunications sector and make recommendations for changes to legislative and operational settings.
7. **In scope** of the Review is the Telecommunications Act 2001 (the Act), and its subordinate regulatory instruments.
8. The Review will focus on examining whether the current regulation remains fit for purpose in light of technology and market changes, primarily:
 - Shareholder cap and constitutional restrictions
 - Consideration of telecommunications service obligations (TSO)
 - The methodology for allocating the Telecommunications Development Levy (TDL) across telecommunications service providers and consumers
 - Retail Service Quality (RSQ) regulation (Part 7 of the Act)
 - Fibre Fixed Line Access (FFLA) services regulation (Part 6 of the Act)
 - Fibre service regulations (Part 4AA of the Act), noting that the vertical separation of wholesale and retail fibre services is out of scope.
9. The Review will examine:
 - **regulatory design, stewardship and practice**, including how the regulatory system is designed and implemented consistent with good regulatory practice, regulatory efficiency, proportional compliance burden, and good practice for setting and administering fees and levies for cost recovery; and
 - whether the current regulatory system remains **fit for purpose** including examining the purpose of the Telecommunications Act 2001 and the current regime's ability to keep pace with market and technological developments, with a view to achieving regulation that supports competition and innovation, including new technologies.

Out of scope

10. The matters that are specifically **out of scope** of the Review are:
 - the existence of the TDL and the amount of the TDL
 - the Radiocommunications Act 1989
 - the Telecommunications (Interception Capability and Security) Act 2013
 - the Resource Management Act 1991
 - the vertical separation of wholesale and retail fibre services that applies to Chorus and the other local fibre companies.
 - the Commerce Commission's ongoing Copper Services Investigation

Roles

Cabinet

11. Cabinet will approve the terms of reference for the Review and will be the forum for agreeing the Government response to the recommendations from the Review.

Ministers

12. The Minister for Regulation and the Minister for Media and Communications (collectively, the Joint Ministers) will together have oversight and decision-making for the recommendations of the Review. This Review does not affect the portfolio responsibilities or decision-making of the Minister for Media and Communications, and policy decisions on any regulatory changes remain with Cabinet.
13. Other relevant ministers will be informed and engaged as necessary. They may include the Minister of Finance, Minister for Disability Issues, Minister for Commerce and Consumer Affairs, Minister for Rural Communities, and the Parliamentary Under-Secretary to the Minister for Media and Communications. Portfolio ministers will be responsible for implementing recommendations from the Review.

Agencies

14. The Review will be led by the Ministry for Regulation within its central agency mandate to strengthen the regulatory management system and improve regulatory quality. While the Review will be undertaken with cross-agency and stakeholder input, the Ministry for Regulation retains its independence and the ability to make comments and recommendations that may not be fully supported by other agencies or stakeholders. In saying this, the Ministry for Regulation recognises that change is more likely to succeed and be enduring where there is consensus between Ministers and between agencies.
15. The Ministry of Business, Innovation and Employment (MBIE) and the Commerce Commission will work closely with the Ministry for Regulation and provide information and advice on the regulatory system they play a role in and are responsible for.
16. Other agencies will be engaged with where appropriate.

Review procedure

Approach

17. The Review will focus on issues raised by regulated parties within the telecommunications sector. The Review will look at the regulatory system from the viewpoint of the regulated parties, including the providers of the regulated services, individuals or groups who use those services, and other stakeholders who are impacted by the regulations.
18. For all proposed reviews, the approach is to identify:
 - regulations that are justified;
 - regulations that are not justified but are being addressed by other government workstreams; and
 - regulations that are not justified nor being addressed.

19. To address whether regulations are justified or not, a first principles framework is used. The main components of this framework include consideration of the following questions:
- What is the rationale for government intervention (i.e., what is the market failure)?
 - If there is a market failure, what is the proportionate response, including if it needs to come from government (e.g., co-regulation)?
 - What are the costs and benefits of regulation and the distribution of those across different parties?
 - How are the regulations working, including compared to equivalent regimes in other countries?

Reporting and oversight

20. The Review team will report to the Joint Ministers. Additional oversight will be provided by a group of senior leaders from the Ministry for Regulation, MBIE and the Commerce Commission. The Review will provide progress reporting and a final report to the Joint Ministers, which will include the Review's findings and recommendations.

Engagement

21. The Review will seek to hear from a variety of different voices including the regulated parties in the telecommunications sector, providers of the regulated services, consumers who use those services including rural communities and disabled communities and other stakeholders who are impacted by the regulations.
22. The Review will use a variety of engagement methods including in-person and online meetings and inviting written feedback. Consideration will be given as to how we ensure that we consider as wide a range of views as possible.
23. Public consultation will also be undertaken before recommendations are made to Cabinet, although the exact form of this consultation will be tailored to meet the Review's timing and milestones.

Connections

With existing activities

24. The Review will complement and supplement existing work underway and seek to avoid duplication through communication and collaboration with MBIE and the Commerce Commission.

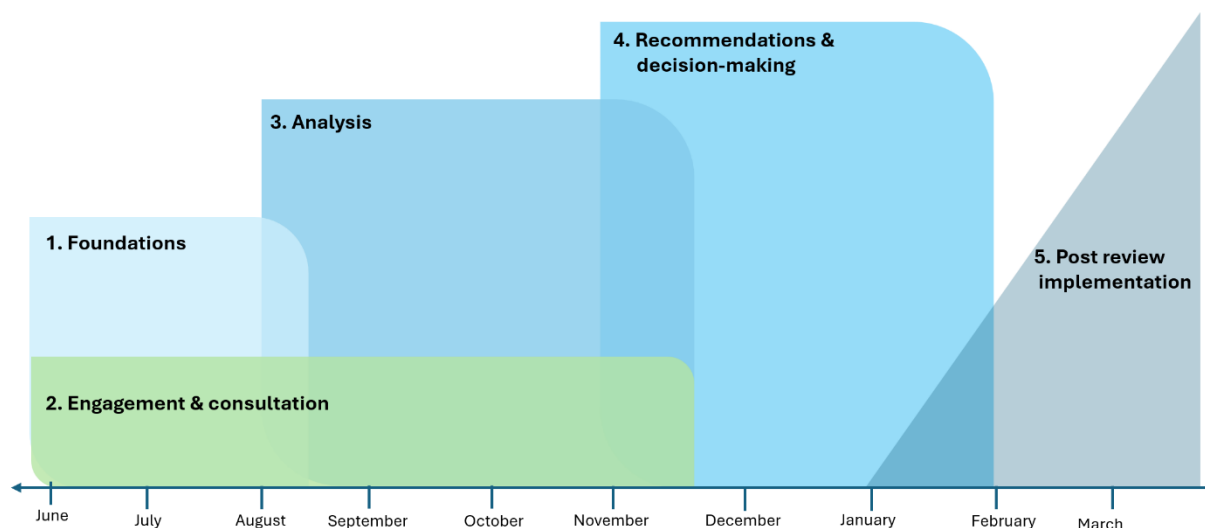
With implementation activities

25. The Ministry for Regulation will take an implementation-focused approach to the Review. Reviews are independent but findings and recommendations will be socialised with the MBIE and the Commerce Commission. Any recommendations identified through the Review will need to be agreed to by the Joint Ministers, agency decision-makers or Cabinet and made with sufficient analysis of implications including costs and resourcing.
26. The Ministry for Regulation will work in collaboration with the relevant agencies to develop the Review's recommendations.

27. It is expected that Ministers responsible for the regulatory systems will oversee the implementation and prioritisation of any Cabinet decisions.
28. If legislative change is required, it is expected that those changes would be progressed within six months of Cabinet consideration of the recommendations. The responsible portfolio ministers and their agencies are expected to lead the Bill through the legislative process. The Ministry for Regulation may provide some limited support through this period.

Timing and milestones

29. The Review is expected to be launched in **early June**, with a report (final or preliminary) delivered to the Joint Ministers in **October 2025**. It is expected that Cabinet will consider the recommendations from the Review in **early December 2025**.
30. The estimated timing of the different phases of the Review are indicated in the following figure:



Regulatory systems relevant to the Review

Regulatory system	Telecommunications sector
Key Legislation	Telecommunications Act 2001
Regulator	Commerce Commission (Crown entity)
Policy agency	Ministry of Business, Innovation & Employment
Responsible Minister(s)	Minister for Media and Communications

Other Ministers	<ul style="list-style-type: none"> • Minister of Finance • Minister for Disability Issues • Minister for Rural Communities • Parliamentary Under-Secretary to the Minister for Media and Communications
Purpose	To ensure that the current regulation remains fit for purpose in light of market changes, recognising the extensive work programme that is currently under way.
Regulated parties	Telecommunications sector

Additional definitions

Market failure means the situation where the allocation of goods and services under an unregulated market does not maximise the overall welfare of society. Common causes of market failure are public goods, externalities, market power and asymmetric information. The presence of a market failure does not necessarily mean the government should intervene because government intervention is also imperfect. The benefits that can realistically be expected from government intervention should be compared with the costs, accounting for the limitations and potential inefficiencies of regulation.

Regulatory systems are sets of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome.

Regulated party / parties are a person or organisation that is subject to behavioural expectations, obligations, and/or sanctions within a regulatory system.

APPENDIX A

Work recently announced or already underway

Work already underway

Changes confirmed by Cabinet in December 2024 [CAB-24-MIN-0472 refers] following the review of key aspects of the telecommunications regulatory system, including:

- Commerce Commission work to consider the de-regulation of Chorus' copper network and some fibre services;
- Permanently reinstating the rights that allow fibre providers to access shared property to install fibre in certain circumstances and make minor adjustments to the rights to improve their effectiveness;
- Expanding applicability of the telecommunications regulatory regime to offshore providers (e.g. Starlink) where relevant to the services they offer;
- Shifting the setting of the Telecommunications Development Levy (TDL) amount from the Telecommunications Act to regulations to provide greater flexibility of the levy to adjust to market developments e.g. to enable the TDL to be reduced in the event that artificial intelligence renders the deaf and hearing impaired relay service technologically obsolete;
- Amending the company constitutions of Enable Networks, Tuatahi First Fibre and Northpower Fibre to expand the range of permitted activities they can undertake; and
- Reviewing the Telecommunications Service Obligations (TSO) that require, amongst other things, Chorus and Spark to supply a local residential telephone service.

Commerce Commission Work Plan

Deregulatory workstreams

- Further to decision on 19 December 2024, undertaking a deregulation review for Voice service and Transport services for all Local Fibre Companies (LFCs), as well as Point-to-point services and Co-location and interconnected services in Non-Chorus LFC areas.
- Further to decision on 19 December 2024, undertaking a review of the Fibre Information Disclosure Determination.
- Further to decision on 27 March 2025, undertaking a review of the framework of rules for fibre services called input methodologies (Fibre IMs), which must be completed by 2027, including consideration of form of control for Chorus and anchor/declared services.
- Copper – Further to decision on 22 April 2024 (and draft recommendation on 12 March 2025), deregulation investigation of copper services in rural areas, which must be completed by December 2025.
- Mobile Termination Access Services (MTAS): Further to decision on 25 March 2025, commencing deregulation investigation.
- Mobile Co-location: Deregulation scheduled for 2025
- Number Portability: Deregulation scheduled for 2025
- Fixed PSTN Interconnection: Deregulation investigation scheduled for 2025
- National Roaming: Deregulation investigation scheduled for 2028