



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Broadcasting Communications and Digital Media
Title of Cabinet paper	Changes to the Telecommunications Regulatory Levy to fund new Commerce Commission regulatory work	Date of release	24/05/19

List of documents that have been proactively released

Date	Title	Author
1/05/2019	Changes to the Telecommunications Regulatory Levy to fund new Commerce Commission regulatory work	Minister for Broadcasting Communications and Digital Media
6/05/2019	DEV-19-MIN-0091 Minute	Cabinet Office

Information redacted

YES / NO (*please select*) – N/A No redactions

In Confidence

Office of the Minister of Broadcasting,
Communications and Digital Media

The Chair, Cabinet Economic Development Committee

Changes to the Telecommunications Regulatory Levy to fund new Commerce Commission regulatory work

Proposal

1. The paper seeks Cabinet approval to specify levies in connection with the performance of the Commerce Commission's functions and duties, and the exercise of its powers, under the Telecommunications Act 2001. These levies are intended to recover \$12.3m in new Commerce Commission (the Commission) funding currently provided by Crown appropriation.
2. The paper seeks Cabinet agreement for an approach to cost recovery through the Levy that will be similar to the approach taken under the Commerce Act 1986, where regulated wholesale suppliers pay for the costs of the Commission's regulatory work, and are then permitted to recover those costs through wholesale prices.
3. The paper also seeks Cabinet agreement for me to:
 - 3.1. issue instructions to the Parliamentary Counsel Office to draft the required amendment regulations; and
 - 3.2. approve and release an exposure draft of the regulations, when available, for public consultation.

Executive Summary

4. On 10 September 2018, Cabinet (CAB-18-MIN-0035 refers) agreed to a one-off \$12.3m increase in the Communications: Enforcement of Telecommunications Sector Regulation appropriation to allow the Commission to fulfil its new statutory obligations resulting from the Telecommunications Amendment Act 2018.
5. Cabinet also agreed that the increase in appropriation would be fully cost recovered through a commensurate increase in the Telecommunications Regulatory Levy.
6. The Crown does not have to find money to pay for any increase to the Commission's telecommunications regulatory resourcing. The Commission's telecommunications regulatory functions are funded through the Telecommunications Regulatory Levy, which is paid by the telecommunications industry, and then passed through to end-users of telecommunication services.
7. Updated regulations are now needed to outline the Crown's approach to recovering the \$12.3m in new Commission expenditure.

8. I propose to introduce regulations to recover the new expenditure that will depart from the standard approach to levying the telecommunications industry. Chorus will pay a much more substantial proportion of the costs than would usually be the case. This is appropriate because the costs of regulation will be allocated to the company receiving the most benefit from the regulatory certainty that the funding provides.
9. Recovering expenditure from wholesale suppliers is the approach taken under the Commerce Act where electricity providers pay for the Commission's regulatory work.
10. The new regulations will levy Chorus for 97.5% of the costs for new regulatory work (\$11.9m). The remaining costs (\$400,000) will be shared across the other existing levy payers.
11. Under the new regulatory regime, Chorus can seek to recover the costs imposed under the regulations through its wholesale prices. The Commission can determine how Chorus will be able to recoup levy costs.
12. Officials estimate that the overall impact on consumers will be less than 0.18c on the average monthly internet bill.
13. In June 2018, the Ministry of Business Innovation and Employment (MBIE) undertook a targeted consultation with Levy payers. Chorus and all the retail service providers support the approach. Chorus believes that agreeing to pay for the new regulatory regime will expedite implementation of the new framework by providing funding certainty.
14. I therefore propose to make regulations under Section 11 (3) of the Telecommunications Act to set levies which will recover an amount equivalent to the \$12.3m in Commerce Commission funding, largely from Chorus.
15. I am also seeking Cabinet authorisation to instruct PCO to draft the amendment regulations and to approve the release of these regulations to enable officials to consult with industry and members of the public.

Background

16. In November 2018, Parliament passed the Telecommunications (New Regulatory Framework) Amendment Act.
17. To fulfil its statutory obligations resulting from the Act, the Commission sought a temporary increase to their funding of \$12.3m over four years.
18. The Commission will be using the additional funding to:
 - 18.1. establish price-quality regulation for Chorus (\$10.8m);
 - 18.2. develop a fibre information disclosure regime for Chorus and Local Fibre Companies (\$1.2m); and
 - 18.3. bring broadcasting transmission services into the telecommunications regulatory framework (\$0.3m).

19. In June 2018, MBIE undertook a targeted consultation with levy payers on the Crown's proposed approach to cost allocation and recovery of the Commission's costs through the Levy. Stakeholder engagement was generally constructive and provided a range of views:
 - 19.1. Strong submissions were made by retail service providers that the beneficiaries of regulatory certainty (regulated wholesale fibre fixed-line service providers) should face the initial costs of regulation;
 - 19.2. Chorus accepts the argument that it is appropriate for the companies benefiting most from regulatory certainty to initially pay for the costs of regulation, but it wants to be able to pass those cost through to its customers;
 - 19.3. Enable Networks Limited, Ultrafast Fibre Limited and Northpower Fibre Limited (LFCs) made strong submissions that MBIE should consider a model of cost recovery that reduces the overall financial burden on LFCs because they already face intense price competition.
20. On 10 September 2018, Cabinet (CAB-18-MIN-0035 refers) approved a one-off \$12.3m temporary adjustment to Commission resourcing.
21. Cabinet also agreed that the increase in appropriation would be fully cost recovered through a commensurate increase in the Telecommunications Regulatory Levy.

The Telecommunications Operators (Commerce Commission Costs) Levy Regulations

22. The Levy is currently paid by companies that provide telecommunications services in New Zealand and have gross telecommunications revenues over \$10m per annum.
23. In 2017/18 there were 18 companies liable to pay the Levy, including wholesale providers (such as Chorus and Ultrafast Fibre), and retailers (such as Spark, Vodafone and 2degrees).
24. Under the status quo, all of the telecommunications industry would be required to contribute to the Commission's costs for the new regulatory regime proportionately to their revenue. However, the beneficiaries of early regulatory certainty are predominantly fibre fixed-line wholesale suppliers.
25. Amendments to regulations are now needed to outline the Crown's approach to recovering the \$12.3m in new Commission expenditure through the Levy.

Key features of proposal

26. The regulations will reflect the approach taken for regulated industries under the Commerce Act 1986 where wholesale suppliers (rather than all of industry) pay for the Commission's regulatory work on wholesale services. This is appropriate because the costs of regulation should be allocated to those companies benefiting most from the regulatory certainty that the funding provides.

27. The key features of the regulations include:
 - 27.1. Chorus will pay for the Commission's new work relating to wholesale fibre price-quality regulation, which will only apply to Chorus (\$11.9m).
 - 27.2. Costs for the Commission's work relating to the information disclosure regime (\$1.2m) will be apportioned between Chorus (\$1.12m) and LFCs (\$0.08m) using the current allocation method.
 - 27.3. Companies will only be able to pass the costs through to their customers after the new regulatory regime comes into force in 2022;
 - 27.4. All liable telecommunications operators will contribute to new Commission costs (\$0.03m) relating to the inclusion of broadcasting transmission in the telecommunications regulatory regime. These costs will also be apportioned on the basis of each company's revenue;
 - 27.5. The Commission's existing \$6m baseline funding will continue to be paid for by all liable telecommunications operators;
 - 27.6. Following implementation of the new regime, Commission funding for telecommunications regulatory work will revert to the original \$6m level.
28. Officials estimate that the overall impact on consumers will be less than 0.18c on the average monthly bill.
29. The total impact on each company is less than 0.5% of a single year's annual revenue. The total impact will be spread across a four year period and each company will be able to pass costs through to their customers.
30. The Commission will be able to specify that Chorus can only recover the costs of the Levy over a number of years. This will ensure that consumers are protected from price shocks and fluctuations.
31. The preferred funding model has been the subject of extensive consultation and has the support of industry.

Consultation

32. The Commission, the Treasury, and other portfolio responsibilities within MBIE were consulted. DPMC have been informed and PCO has been consulted.
33. Section 13 of the Telecommunications Act states that the Minister must not make any recommendation under section 11(3) or section 12(4) without first consulting those persons and organisations that the Minister considers appropriate having regard to the subject matter of the proposed regulations.
34. In June 2018, MBIE conducted a one month industry consultation with levy payers, consumer groups, and other interested stakeholders on both the appropriate level of funding for implementing the Commission's new statutory obligations and on the Crown's preferred approach to cost recovery through the Levy.

35. The responses received in that consultation process have informed the recommended approach to cost recovery.

Financial Implications

36. There are no financial implications resulting from these proposals. The proposals will allow the Crown to recoup expenditure through an industry levy and are therefore fiscally neutral to the Crown.

Legislative Implications

37. The proposals in this paper will require the making of regulations under section 11 (3) of the Telecommunications Act. PCO has been consulted on the legislative implications of this paper.

Impact Analysis

38. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Stage Two Cost Recovery Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to take informed decisions on the proposals in this paper.

Human Rights

39. There are no human rights implications

Gender Implications

40. There are no gender implications.

Disability Perspective

41. There are no disability implications.

Publicity

42. The communications approach to these regulations will be managed by my office, in consultation with other entities as appropriate. I expect minimal level of business and media attention on MBIE's consultation.

Proactive Release

43. I intend to publicly release a copy of this paper and associated decisions in accordance with Cabinet's proactive release policy.

Recommendations

The Minister of Broadcasting, Communications and Digital Media recommends that the Committee:

1. note that in September 2018, Cabinet agreed to a one-off temporary \$12.3m increase to the Communications: Enforcement of Telecommunications Sector Regulation appropriation to allow the Commission to fulfil statutory obligations resulting from the Telecommunications Amendment Bill 2018;
2. agree to make regulations under Section 11 (3) of the Telecommunications Act to recover the \$12.3m described in recommendation one above.
3. agree that the regulations should:
 - 3.1. prescribe that only Chorus Limited will pay for the Commerce Commission's costs relating to wholesale fibre price-quality regulation;
 - 3.2. prescribe that only Chorus Limited and Local Fibre Companies will pay for the Commerce Commission's costs relating the information disclosure regulation, and that the costs will be apportioned on the basis of each company's revenue;
 - 3.3. prescribe that all liable telecommunications operators will contribute to the Commerce Commission's costs relating to broadcasting transmission service regulation, and that costs will be apportioned on the basis of each company's revenue.
 - 3.4. Continue to prescribe that all liable telecommunications operators pay for the Commission's annual baseline budget.
 - 3.5. prescribe the levies described in 3.1 to 3.3 should be payable for the financial years commencing on 1 July 2018, 1 July 2019, 1 July 2020 and 1 July 2021.
4. authorise the Minister to:
 - 4.1. issue instructions to the Parliamentary Counsel Office so that these regulations may be drafted; and
 - 4.2. approve and release an exposure draft of the regulations when available and related commentary for public consultation;
5. agree to delegate to the Minister the power to make decisions consistent with proposals in this paper on minor issues that arise during the drafting process.

Authorised for lodgement

Hon Kris Faafoi
Minister of Broadcasting, Communications and Digital Media