

Review of the Telecommunications Act

ISPANZ Briefing for Members

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Introduction

MBIE have conducted a review of the Telecommunications Act. This review resulted in Cabinet approving its recommendations. A Bill to effect the recommendations is being introduced to parliament today, 8th August 2017. The Bill will then go to Select Committee for consideration. Information about the Bill is here: <http://www.mbie.govt.nz/info->

[services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/telecommunications-new-regulatory-framework-amendment-bill](#)

This briefing document is to inform members and to gain feedback on any issues that members wish ISPANZ to submit to Select Committee. There are three areas in particular where we would welcome members' input:

- One of the proposed changes is to delete Sections 69R and 69S which prohibit Chorus from offering services above layer 2 and from offering end-to-end services. Do you think that a specific restriction on Chorus is still relevant, or should we rely on generic restrictions on the activities of all LFCs?
- Would ISPANZ be happy with LFCs, including Chorus, wholesaling any sort of service above Layer 2, or would we seek some sort of restrictions on that? Do we want a specific restriction on end-to-end services as in Section 69S?
- ISPANZ also needs to decide its position on the proposed provisions to strengthen consumers' rights and on Chorus' and LFCs' role in talking directly to end customers. This raises two questions for ISPANZ members. Is a strengthening of consumers' rights appropriate? Do you want Chorus or other LFCs talking directly to your customers, and, if so, what controls should there be?

History of the Review

The current review is a continuation of a process that started two years ago. On 8th September 2015 the Minister for Communications released a discussion document, 'Regulating Communications for the Future', that sought feedback on options for change as part of the Review of the Telecommunications Act 2001. Submissions closed in October 2015. Forty three individuals and organisations provided submissions. In April 2016, the Government announced high-level decisions on the review, including a move to a 'utility-style' regulatory framework for regulating fixed line communication services provided on the Ultra-Fast Broadband network and Chorus' copper network after 2020.

In July 2016 MBIE produced an options paper seeking feedback on a range of implementation issues including:

- the application of price–quality regulation based on the ‘building blocks’ model
- Commerce Commission rules on how assets are valued and costs recovered (input methodologies)
- ways to protect consumers from price shocks during the implementation period and
- disclosure of cost and revenue information by regulated suppliers.

Submissions on the options paper closed in September 2016. Thirty one organisations and individuals provided submissions.

On 10th February 2017 the Government released a consultation paper which outlined the core policy settings and proposed approach to regulating Ultra-Fast Broadband fibre, and sought feedback on the proposed approach for the regulation of the copper network. The consultation paper is here: <http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/further-consultation-on-fixed-line-communications-services/discussion-paper.pdf>

Submissions closed on 3rd March 2017. Some twenty organisations and individuals provided submissions, including TUANZ, Internet NZ and Chorus. The list of those that submitted, along with their submissions, is here: <http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/submissions-received-discussion-paper>

Mentions of Sections 69R and 69S

Given members' experiences it is worth examining mentions of Sections 69 R and 69 S during the consultation.

Chorus

On page 24 of Chorus' March 2017 submission they state a wish to "Simplify and modernise business line restrictions". They state that "Chorus is wholesale only and the business line restrictions should reflect that simply. While the largest RSPs are increasing their vertical integration, we have the complexity of the 3 existing business line rules entrenched in legacy speak. Modern regulation should not inadvertently hinder innovation." They state that this is linked to their submission in response to MBIE's Telecommunications Act Review Options Paper, 2 September 2016, Page 10. This earlier submission included the following; "Chorus and LFCs are, in contrast, prohibited from retailing under (overly) complex business line restrictions to retain the market structure determined in 2011." They go on to say that the regulatory framework should support "the role of wholesalers in increasing information, education and transparency for consumers about broadband, upgrades, outages and changes – rather than this being left solely to RSPs."

Other Submissions

A desire to delete Sections 69R and 69S is not apparent in any other submissions.

Relevance of Sections 69R and 69S

These sections are applicable only to Chorus. The current review of the Telecommunications Act tries to treat all UFB providers (Chorus and LFCs) in the same way. It can therefore be argued that business restrictions specifically for Chorus are out of date and that any relevant restrictions should be applied to all UFB providers equally.

Cabinet Paper

The recent cabinet paper and the current Bill result from the above three rounds of consultation.

The cabinet paper's Executive Summary states that: "On fixed line services, I am proposing the following refinements to the overall regulatory scheme:

- regulated copper prices will be inflation-adjusted every year;
- the regulated fibre broadband anchor product should be an entry-level product, not the most popular product;
- a small change to the valuation method for pre-2011 assets to simplify the calculations;
- the Commerce Commission (the Commission) should not be required to assess the efficiency of pre-2020 investments; and
- price-regulation of a fibre product used by Retail Service Providers (RSPs) for backhaul and to supply large commercial customers and by mobile network operators to provide fixed wireless services that compete against copper. "

Just reading the executive summary, which is what most people would do, gives no clue to the proposed deletion of Sections 69R and 69S, which is mentioned only on Page 24 in Paragraph 52. In summarising stakeholder views in Appendix 3, the Cabinet Paper does not mention Chorus' submissions. In Appendix 4 it does not mention Chorus' desire to "simplify and modernise business line restrictions".

Other Matters

Consumer Matters

ISPANZ is considering the proposals in the Cabinet Paper relating to consumer matters. The paper asked cabinet to agree to the following three policy objectives for consumers:

- that consumers should be able to make informed choices about retail telecommunications services;
- that consumers should be able to expect service quality at competitive standards, as well as competitive prices; and
- that if problems arise, there should be efficient and responsive complaint and dispute resolution procedures.

These are reasonable objectives that no-one would object to.

In paragraph 72 the paper states that; “While RSPs deliver good service for many of their customers, the systemic nature of the issues and their persistence indicates that more interventions are necessary at the retail level.” In paragraph 73 it proposes “additional interventions to complement the work already underway by industry and the Commission. These will incentivise improved retail service quality for consumers.” Specifically, the paper proposes:

- Strengthening section 9A of the Act to facilitate informed consumer choice,
- Code-making power to facilitate improved retail service quality, and
- Monitoring and review of the Telecommunications Disputes Resolution Scheme.

Again, on the face of it, these proposals appear reasonable, but there is a potential issue around ‘informed consumer choice’.

Chorus Talking to ISPs’ Customers

Note that, in their September 2016 submission, Chorus hoped that the new regulatory structure would support “The role of wholesalers in increasing information, education and transparency for consumers about broadband, upgrades, outages and changes – rather than this being left solely to RSPs.” In their February 2017 submission they state that they “are continuously increasing

information and education for consumers”. In other words, they see a role for themselves in talking directly to your customers. ISPANZ should be very clear about where it is appropriate for Chorus to talk directly to end customers, and where it is not. Thinking of the utility-style regulatory model outlined in the cabinet paper, electricity lines companies do not talk directly to end users, electricity retailers do.

Decisions and Next Steps for ISPANZ – Members’ Input

The next step in the process is for the Bill to go before select committee. We then have the opportunity to make a submission on the Bill, in the same way that we did successfully on property access last year.

There are three areas where we would welcome members’ input and comment:

1. Firstly, the ISPANZ needs to decide if we want to try to have Sections 69R and 69S retained as they stand. The Board’s feeling is that a restriction just on Chorus, but not on other LFCs, is something that will not fly, but members’ input on this would be valuable.
2. Then we need to decide if a general provision limiting LFC activity to wholesale only is something that we are happy with, or do we want a prohibition on anything above Layer 2 – as in the current Section 69R? In other words, would ISPANZ be happy with LFCs, including Chorus, wholesaling any sort of service above Layer 2, or would we seek some sort of restrictions on that? Do we want a specific restriction on end-to-end services as in Section 69S?
3. ISPANZ also needs to decide its position on the proposed provisions to strengthen consumers’ rights and on Chorus’ and LFCs’ role in talking directly to end customers. The Board’s feeling is that strengthening consumers’ rights is a good thing, but that having Chorus and LFCs talk directly to members’ customers is likely to cause confusion. Your thoughts and comments on this would be most helpful.



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Best Regards,

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8th August 2017