11 May 2018

Vanessa Howell
Commerce Commission | Te Komihana Tauhokohoko
Wellington
New Zealand

By email:

Dear Vanessa

Funding of for future fibre regulation

Introduction

Thank you for the opportunity to comment on the Commerce Commission's (the Commission) proposed funding requirements for the new Regulatory Regime set out in the Telecommunications (New Regulatory Framework) Amendment Bill (Bill).

The Commission has also sought feedback on a suggestion that the Commission might create and fund a consumer representative group to participate in the consultation process.

The New Zealand Telecommunications Forum (TCF) welcomes the Commission's transparency in setting out its proposed costs for this new work and providing the opportunity to comment.

Appropriate level of quality and trade-offs

The Commission has proposed that it will require additional funding of $12 million over three years to implement the proposed new regime. It is noted that this funding is required for the new Wholesale regime and the cost of the new Retail Service Quality Codes will be funded from the Commission's current annual Telecommunications appropriation. The $12 million is in addition to the annual $6 million levied on the telecommunications industry to cover the Commission's costs regulating the industry.

The TCF believes that the Commission should be adequately funded to competently and efficiently perform its role to a high standard. The Commission's decisions in implementing the new regulatory regime will have long lasting effects and need to be right. However, the TCF considers that this cost cannot be considered in isolation from the Commission's other work under the Telecommunications Appropriation.

When the Commission was given a regulatory role under the Telecommunications Act 2001, the industry was levied to pay the cost of the regulatory function and the cost was allocated across all participants in the industry. That levy has continued, with adjustments to its annual cost, since 2001 and the allocation methodology has also remained conceptually unchanged. The structure of the industry has changed significantly since that time, and the nature of the regulatory environment is about to change to a completely new regime as a result of an entirely new access network being rolled out.

These changes to the industry suggest that it would be more appropriate for the Commission to set out its overall funding requirements and priorities under the Telecommunications Appropriation. To provide stakeholders with better transparency of what will change with the new regime, what discretionary activities will cease, or be continued, and what priorities the Commission will set. Stakeholders would have a much better context for discussion about Commission funding and priorities, including the funding required for the new responsibilities.

The industry does not have the ability to generate additional revenue when the regulatory regime changes. Participants are constantly required to make decisions about costs and priorities. The Commission should be required to make the same decisions. For this reason, the TCF would like to see the Commission's costs and priorities set out so that stakeholders may see that the cost of the new regime is not simply being added to the existing work programme, but that trade-offs are being made and that priorities are being set based on a realistic view of what might be achieved by the Commission, and the industry. The TCF encourages timely and quality decisions by the Commission as it implements the new regulatory regime, but this should be achieved and costed as part of its overall work programme.

The industry is not in a position to respond overnight to a 60 percent increase in the Commission's work programme. It is clear that some of the Commission's discretionary activities must be reduced and reprioritised if the industry is to be able to respond to the Commission's consultative processes. A reduction in the current work programme would be reflected in a more even allocation of costs across the Commission's priorities.

It is acknowledged that the industry may not be in agreement about all of the Commission's priorities. Some aspects of the Commission's work will be seen as having a different priority by different participants in the industry. But in the absence of transparency about the trade-offs and reprioritisation of the Commission's discretionary work, that conversation cannot even begin.

Please note that Trustpower notes their support of the TCF's view that the Commission should be adequately funded to competently and efficiently perform its role under the new telco regulatory framework and that at some point a holistic review of the funding of the telco regulatory work is desirable as no changes have been made to the TRL since 2001 however Trustpower does not consider this holistic review necessarily needs to be done at this time or as a condition of the funding for the regulation of fibre services.

Consumer representation

The Commission has asked for comment about the concept of the Commission creating and funding a consumer representative group for the consultation process of the new regulatory regime. The TCF acknowledges that a consumer perspective will always be important to the Commission in its regulatory role. The industry has considerable experience in seeking consumer views and understands how difficult it is to obtain this perspective, due to the range of consumer perspectives, knowledge and experience. However, the Commission has not been clear about what aspect of the consumer view is currently missing from its regulatory consultation processes.

The Commission has a statutory function to set regulatory outcomes for the benefit of consumers. It does this through a process of gathering information, consultation and by employing independent experts. The Commission's role is to act on behalf of consumers to replicate competitive outcomes for the benefit of consumers. To this end it is a proxy consumer representative.

It is not the Commission's role to use an industry funded appropriation to create and fund consumer representative groups.

If the Commission were to fund an existing consumer group to engage with its stakeholders through surveys, focus groups and other activities to obtain information about consumer views, the consumer group would no longer be independent of the Commission. The Commission would be better to directly purchase consumer surveys and conduct its own focus groups. Managing its own processes would allow the Commission to control the quality and design of such activities. Likewise, engaging a panel of consumer representatives could be achieved by simply engaging those experts directly to provide advice, as the Commission already does with legal and economic experts.

Summary

The cost of the new regulatory regime needs to be considered against the overall cost of regulation in the telecommunications industry. The TCF requests that the Commission set out its funding requirements indicating its priorities and demonstrating which discretionary activities will be reduced or increased, what changes in priorities will occur, and what trade-offs will be made. Setting out the programme of work would allow the cost of the new regulatory responsibilities to be considered in the context of the Commission's overall funding requirements against its priorities.

The TCF understands the Commission's desire to encourage consumer participation on the regulatory consultative process. However, the Commission has not been clear about what consumer perspective it believes is missing from its current processes. The TCF does not believe that it is appropriate for the Commission to use an industry funded appropriation to create and fund consumer representative groups.

Yours sincerely

Geoff Thorn

Chief Executive Officer

New Zealand Telecommunications Forum (TCF)