



Telecommunications Review Team  
Communications Policy  
Ministry of Business, Innovation & Employment  
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Dear Sirs

This is the submission of Infratil Limited on the Ministry of Business, Innovation & Employment review of Telecommunications Regulation

1. This submission is motivated by a desire to see good regulatory practices and structures in New Zealand. Infratil's financial interest in telecommunication is via its use of services and Trustpower's provision of broadband and telephone to some of its energy customers.
2. The documents released by MBIE as a part of this consultation about potential regulatory changes illustrate the telecommunication sector's complexity and the hodge podge evolution of its regulation. Complexity is generally not a hallmark of good regulation and nor is ad hocery. The consultation documents were a reminder of an anecdote relayed by David Caygill from his time reviewing telecommunications regulation and reregulation in the 4<sup>th</sup> Labour Government. David noted that:
  - Regulations are very durable. As they worked through the then thicket of laws and regulations ministers discovered many that were still in force which dated from the 1930s. The lesson; be careful about writing rules, they often last a long time.
  - Technology changes create unpredictable outcomes. David told of chairing a regulation meeting at which someone's cell phone rang. Most of those attending had never actually seen a cell phone before then and the event caused an immediate recognition that they really did not know where telecommunication technology was heading and that they should be very cautious about reregulation. The lesson, if you are unsure of the outcomes, you can't be confident about the costs and benefits of regulation.
3. David told his anecdote about a decade ago in the course of a debate about the then reregulation of telecommunication. He mentioned it to counter a suggestion that New Zealand had had a "wild west telecommunications market" thanks to the deregulation wrought by the 4<sup>th</sup> Labour Government. The background to the current review illustrates that more heed should have been taken of his advice with regards to telecommunication reregulation in New Zealand.
4. At a practical level the decision in front of Government is how to rationalise the existing hodge podge of telecommunication infrastructure regulation so as to shift to a more transparent, simple, effective and efficient model. The obvious answer is no doubt to

restructure the regulation of infrastructure providers so it resembles what pertains for energy distributors or international airports. That is to say to shift to the Building Block Model where an entity such as Chorus would have certain assets defined as its regulated asset base (RAB) which would be valued in a formulaic way and allow an acceptable return (probably derived via the Capital Asset Pricing Model; the CAPM-WACC). Working backwards, the acceptable return will have acceptable cost added on to give acceptable revenue, which can (if the regulation goes this far) result in the calculation of acceptable prices, which can be controlled or just monitored. In essence that is the regulatory process/structure set out in the consultation paper.

We note that there is credible support for this approach. In particular, to deliver price stability, investor certainty and generally to reduce future surprises. Albeit presumably those benefits would be restricted to those parts of the industry subject to BBM regulation.

5. There are alternatives to the Building Block Model and MBIE and the Minister should consider them. The BBM is about inputs. As illustrated by any review of the debates fostered by the Commerce Commission regulation of energy distribution and airports, the conversation is almost entirely about what assets should be in the RAB, how those assets are valued, how changes to the value of those assets are treated, what costs should be allowable, and what target return is acceptable. In the Commission's recent review of Airport disclosures there were over 800 pages of pertinent material, with about 1% of this addressing outputs, ie. what consumers actually want and got.
6. The MBIE consultation document notes that the objectives are the provision of broadband that is high quality, widely available, reliable, secure and resilient. If the regulatory shift imposed on the sector is to the Building Block Model, the observation of those factors could become incidental. Input based regulation starts with identifying an acceptable amount of net revenue, but it tends to finish at that point too.

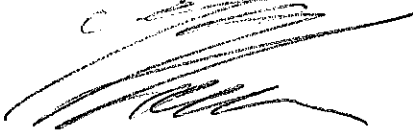
If the BBM is made a core part of the new regulatory regime it will be interesting to witness if it can be stretched, or augmented, to give due weight to quality, availability, reliability, etc.

7. Many of the concerns that have arisen in recent years over telecommunications were less about excess profits than about regulation distorting investment incentives right at a time when generational investment was (and is) required. In theory BBM regulation delivers fair prices and returns and incentivises investment, but will the high degree of prescription of the BBM and price/revenue regulation likely to create the right incentives? This is relevant for all infrastructure sectors impacted by new technologies and changes to the economics of different service-delivery models. Regulators play catch up and never seem to ask the question "are we really adding value?". A regular cost/benefit of existing regulation by a reliable third party is likely to be illuminating. In this particular case, the cost/benefit can and should be done now, in advance of imposing a new regime.
8. Whether the eventual preferred regulatory model ends up using the BBM or not, we suggest the following would encourage investment in broadband that is high quality, widely available, reliable, secure and resilient:
  - a. Have the regulator focus on what consumers are getting, are not getting, and their perspective of the services offered. Create a reliable nationwide database of service provision standards which allows comparisons and benchmarking. What does broadband cost in different regions? What is its availability? What is the take-up? What do users like

and dislike about the services they have? What changes are underway? How does provision and use in New Zealand compare to what is occurring internationally?

- b. Create a specialist regulatory agency as opposed to just a division of the Commerce Commission (eg. Financial Markets Authority or Electricity Authority) to manage the information gathering, its interrogation, and the provision of any regulation recommendations that arise. Ensure that this agency follows the FMA's governance lead; with a governance board that bring representation of a broad range of interested parties, and without connection with operational roles. Ensure these people are paid well enough to reflect the level of expertise and time required.
9. Economic regulation is changing in New Zealand. The Commerce Commission which manages the regulation of energy distribution and international airports does recognise the need for regulation to not impede innovation, and that innovation and technology are taking regulated businesses in unexpected directions. For broadband regulation, rather than starting with the traditional BBM and then seeking to add flexibility (as the Commerce Commission is doing), start with a clean sheet of paper. Not only will this benefit the telecommunications sector, it will provide a useful counterfactual for other regulatory models.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Brown', with a long horizontal flourish extending to the right.

Tim Brown