

Communications Policy, Building, Resources and Markets,
Ministry of Business, Innovation & Employment,
PO Box 1473,
Wellington 6140

Attention: communicationspolicy@mbie.govt.nz

19 June 2024

Enhancing telecommunications regulatory and funding frameworks

To whom it may concern,

Thank you for the opportunity to provide our responses to the questions asked in the enhancing telecommunications regulatory and funding frameworks discussion document.

We believe that the current industry structure and funding framework has delivered its intended goal of accelerating the deployment of fibre networks that has led to significant benefits for end users by way of improved broadband services coupled with increased competition. Our market monitoring indicates that non-traditional retail businesses have captured ~20% market share with many of the end users benefiting from lower retail prices as a result. Any changes to the regulatory and funding frameworks should be carefully considered to avoid undoing the good work that the current structure has delivered.

How is Devoli positioned in the market

Devoli has quickly become one of the largest broadband providers in NZ with over 120,000 premises receiving services directly from Devoli or indirectly through one of our retail partners.

Our model is innovative where Devoli does not hold end user relationships but partners with other brands and companies to allow them to provide connectivity solutions and bundle those solutions with other retail services. Two of our largest retail partners are energy companies who have brought competition to the retail broadband market with innovative bundles and offers for end users. Our retail partners often are the best value / lowest priced offering in their respective segments across a wide range of connectivity solutions.

We, and our retail partners, would not have been successful if the current industry structure and regulations were not in place.

Our responses to the questions posed

Our detailed responses to the questions asked in the Discussion Document are appended to this letter.

Thank you for the opportunity to share our views and would be happy to explore them further with you if you so desire.

Kind regards

A handwritten signature in black ink, appearing to read 'Karl Rosnell', with a stylized, cursive script.

Karl Rosnell

Chief Executive Officer

Appendix – Devoli responses to MBIE questions

| Topic and Questions | Devoli Responses |
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| Introduction | |
| Q1: Do you have any feedback about the proposed criteria to assess the options in the next phase of this work? Are there other criteria that we should consider? | Devoli believes that the criteria set out are appropriate noting, as MBIE has, that some trade off's may be required between criteria for certain items. |
| Section 1: Consumer access to disputes resolution | |
| Q2: Do you consider that the lack of a mandatory requirement for telecommunications service providers to belong to an industry dispute resolution scheme is a problem that needs to be addressed? | <p>Devoli has provided feedback on the Telecommunications Dispute Resolution Scheme to the Commerce Commission. Our response can be found at: https://comcom.govt.nz/_data/assets/pdf_file/0018/355113/Devoli-Submission-on-2024-TDRS-review-launch-23-May-2024.pdf</p> <p>We do not believe, in todays telecommunications market, that an industry specific disputes resolution scheme is appropriate.</p> |
| Q3: For telecommunications service providers who are not members of the Telecommunications Dispute Resolution scheme, why have you chosen not to be a member? | Devoli is a member of the TDRS as a result of our membership of the Telecommunications Carriers Forum (TCF). Prior to joining the TCF, Devoli was not a member as the perceived benefits did not outweigh the direct and indirect costs. |
| Q4: Are you a member of another scheme, why or why not? For consumers who have had issues with their telecommunications service providers, what were your options for dispute resolution, and what was your experience? | Devoli is not a member of another scheme but we are aware that some of our customers are members of other schemes that are relevant to their business. |
| Q5: What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified? | Devoli believes that a new scheme that sits across all utilities under an ombudsmen remit would be more appropriate. |

| Topic and Questions | Devoli Responses |
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| Section 2: Accessing shared property for fibre installation | |
| <p>Issue 1</p> <p>Q6: What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?</p> <p>Q7: If you are a fibre provider who uses these rights, what are the implications of these options on your business? Please provide data and evidence to support your submission where possible.</p> <p>Q8: If the statutory rights were reinstated, what do you think is an appropriate expiry date (if any)?</p> | <p>Devoli does not hold any views on the issues identified.</p> |
| <p>Issue 2</p> <p>Q9: What are your views on the options we have identified? Do you have a preference, if so, why?</p> <p>Q10: If the statutory rights were expanded to cover some high impact installs, what type of 'high impact' installs should be permitted? If you are a fibre provider, please provide examples of what changes to the rights would make a significant difference to enabling more fibre connections.</p> | |
| <p>Issue 3</p> <p>Q11: What are your views on the options we have identified? Do you have a preference, if so, why? Please provide data and evidence to support your submission where possible.</p> | |

| Topic and Questions | Devoli Responses |
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| Section 3: Telecommunications levy settings | |
| Issue 1 identifying liable persons | |
| Q12: Do you agree that our levy liability settings need to be adjusted to ensure all satellite broadband providers providing services to New Zealanders are captured (where they meet the revenue threshold)? | Yes. It seems unfair that certain satellite broadband providers are not caught while the likes of Sky Network Television are caught for delivering content over satellite infrastructure. |
| Q13: Do you agree adjustments to our levy liability settings are required to ensure our levy regime is flexible enough to respond to market changes (such as new market entrants)? If so, what changes do you consider would be appropriate in this regard? | Yes. Devoli believes that all networks delivering telecommunication services to NZ based end users should be captured (subject to a de minimis level of revenue and service provision). |
| Q14: Do you support MBIE's preferred option (option 2)? Why or why not? Are there any options we have not identified? | Yes. Devoli supports MBIE's preferred option. |
| Q15: What advantages and disadvantages do you consider could arise from introducing flexibility into the way telecommunications operators might become liable for the levy, for example the ability to be made liable through regulation? | Given the nature of the TDL as an industry levy (tax), then it is appropriate for the settings to be encapsulated in legislation. Application and interpretation of the legislation could be achieved through guidance in a manner similar to the way that Inland Revenue offer interpretation and application guidance supporting the Income Tax legislations. It could be possible for any network provider to seek some form of "binding assessment" of whether or not they are deemed to be captured. |

| Topic and Questions | Devoli Responses |
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| <p>Issue 2 Regulatory process to set the total Telecommunications Development Levy amount</p> <p>Q16: How well do you consider the process for setting the amount of the Telecommunications Development Levy (in the Act) works? What are the implications of having the amount set in the Act, in terms of consultation, timing, and flexibility for changing needs?</p> <p>Q17: Do you agree with MBIE's preferred option (option 2)? Why or why not? Are there any options we have not identified?</p> <p>Q18: What measures would you consider necessary to accompany any new regulation making power under MBIE's preferred option? For example, clarifying when relevant stakeholders should be consulted and what considerations should be taken into account.</p> | <p>Devoli believes that the current process is suitable and holds a high bar to determine the quantum of TDL. With the changing network environment and competing infrastructure, having a TDL set at minimal levels (i.e. the current \$10m or lower) would seem appropriate. Any increase would not appear to be justified given the level of investment being made by parties to deliver telecommunications to rural and remote areas.</p> <p>No. Devoli does not believe that having the TDL set by regulation is appropriate. The current process where the TDL is set through legislation remains appropriate.</p> <p>Should the TDL be set by regulation, it would be necessary for any impacted party (from end user to service and network providers) to be included in any consultation. The ultimate goal of the TDL should be to ensure that all NZ'ers can participate in a modern, broadband powered, community with the TDL's goal to ensure that rural and remote communities (i.e. those outside the fibre footprint) have access to a range of equivalent services to those inside the fibre footprint. Any capture and disbursement of the TDL should be network agnostic and not seek to "pick winners."</p> |

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| Section 4: Identifying participants in the market | |
| <p>Q19: Do you consider there is a need for a registration requirement for telecommunications providers operating in New Zealand (when entering the market, as well as updating contact and other business details over time)? Why or why not?</p> | <p>Devoli believes it would be beneficial for a more structured and comprehensive understanding of the industry participants to be held and regularly maintained. However, any registration process would need to be simple and easy to maintain to ensure that all providers are captured including a wide definition of telecommunications services. Examples include the inclusion of social media platforms that contain messaging and communication capabilities within their service.</p> |
| <p>Q20: What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?</p> | <p>While Devoli is supportive of Government agencies having a better understanding of how the market is structured and the participants within each part of the market, forcing business to pay for this privilege by way of a mandatory register appears unnecessary.</p> |
| <p>Q21: What would be the implications of a registration requirement for your business?</p> | <p>Any additional costs incurred to register would ultimately be passed on to end users while delivering no real benefit to them.</p> |
| <p>Q22: Do you see any benefits or problems with information provided for registration being released/disclosed publicly? If so, what types of information should or should not be disclosed?</p> | <p>Devoli does not perceive any significant benefits can be gained from developing a register and making the information public.</p> |

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| Section 5: Enhancing information flow to the Emergency Location Information System | |
| <p>Q23: Do you agree with the potential risks relating to the provision of information into the Emergency Location Information System that we have identified? Why or why not?</p> | <p>Devoli does not hold any views on the issues identified.</p> |
| <p>Q24: Do you agree with MBIE's preferred option (option 2), to regulate the provision of emergency location information? Why or why not?</p> | |
| <p>Q25: If option 2 were progressed, which types of entities (e.g. mobile network operators, or other providers that hold information derived from mobile devices) should be captured by new regulatory requirements?</p> | |
| <p>Q26: What is your view on the potential impacts of progressing option 2, including on providers that would be in scope, and on the system as a whole?</p> | |

| Topic and Questions | Devoli Responses |
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| Section 6: Governance settings in 'other' local fibre company constitutions | |
| Issue 1: Governance of permitted business activities | |
| <p>Q27: Do you agree that it is appropriate to consider changes to the constitutional settings that govern the other LFCs? Why or why not?</p> | <p>Devoli believes that the current industry structure has delivered upon its ambition of accelerating network investment and introducing robust competition that provides benefit to end users. We therefore think that the current industry structure and rules by which the LFC's operate should remain largely the same as exists today. Ideally, the other LFC's would have similar constitutional settings as Chorus to promote fair competition amongst the LFCs as well as ensuring that there are nationwide, consistent settings for Layer 1 and Layer 2 network providers. To this end, Devoli would support inclusion of wireless access services into the existing framework (and that Mobile Network Operators should also be held to the same open access terms, equivalence of inputs for Layer 2 services). We do not support the re-establishment of vertical integration that had not delivered benefit to end users and that the LFCs (including Chorus) should not be allowed to deliver services directly to end users.</p> |
| <p>Q28: Do you agree with MBIE's preferred option (option 2), which would allow the other LFCs to operate in any market, with a restriction on supplying telecommunications services to end users? Why or why not?</p> | <p>Devoli supports Option 2. In order to promote fair competition of broadband access services, Devoli believes that Mobile Network Operators should also be held to the same non-discrimination, equivalence of input obligations for services delivered to premises.</p> |
| <p>Q29: What impact would there be on competition in other markets if the other LFCs were able to operate in those markets? Do you consider that this needs to be mitigated in some way?</p> | <p>If LFC's were able to successfully compete in alternative access services markets (i.e. wireless services), and assuming that those services are delivered as a Layer 2 type service under open access, non-discriminatory practices, then Devoli believes that increased competition will eventuate in those markets ultimately leading to increased benefits for end users.</p> |

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| Issue 2 Process to seek agreement to operate at layer 3 or 4 | |
| <p>Q29: If you are one of the three 'other' local fibre companies, do you have any feedback about the current process? How does the process impact your decisions to seek consent (or not) to operate at layer 3 or 4?</p> | <p>Devoli is a Layer 3 and 4 provider that has supported the introduction of competition, leading to improved customer experiences and innovative solutions. Allowing LFC's to provide Layer 3 and 4 services would undermine our business model potentially leading to undoing of the benefits that we have delivered for NZ end users. Any process to unwind the current industry structure should be fair to all impacted parties, be cognisant of the impact on end users. We support Option 2 where the process should be consistent for all LFC's.</p> |
| <p>Q30: Do you support any of the options described above? Why or why not? Are there any other options that we should consider?</p> | |

| Topic and Questions | Devoli Responses |
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| Section 7: Other matters | |
| <p>Q32: Can you provide examples of where non-regulated fibre service providers are deploying fibre, and what type of specifications this fibre is being built to (i.e. is it openly available or built for private use, is it wholesaled, or sold directly to consumers)?</p> | <p>There are a number of “niche” fibre providers such as Vector Communications, Network Tasman, and Vital Communications. Devoli is aware of industry speculation that other providers are considering deploying fibre-based services both inside and outside of the existing fibre areas.</p> |
| <p>Q33: What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?</p> | <p>As stated earlier, Devoli believes that the current industry structure has delivered significant benefits to end users and supported the level of network investment required to deliver fibre network services. There are “first mover” advantages in being the first to connect a premise to fibre that, should the first mover be non-regulated fibre network provider, lead to complex issues as to the end users ability to access retail services from their preferred provider should the non-regulated fibre network provider not be held to the same rules as the regulated fibre network provider. Examples exist from around the world where inefficient capital has been deployed in developing fibre access networks that ultimately come at a cost to the end user.</p> |
| <p>Q34: What provisions or minimum standards would need to be in place if fibre built by non-regulated fibre service providers were considered as part of the specified fibre area assessment?</p> | <p>Given the intent of the industry structure and the potential for the first mover to lock out competition, Devoli would prefer that any fibre network provider, regulated or not, should be held to the same level of open access, and non-discrimination as the LFC’s are. Non-regulated fibre network providers could be allowed to provide Layer 3 and 4 services under certain conditions that do not undermine the promotion of competition for delivery of services to end users.</p> |