

16 February 2022

Tēnā koutou,

### **Terms of Reference for broadcasting transmission services market review**

1. We are undertaking a review of the broadcasting transmission services market in New Zealand (**review**) under s 9A(1)(b) of the Telecommunications Act 2001 (**Act**). These terms of reference outline the purpose, context, and scope of the review.

### **Purpose and objectives**

2. The purpose of the review is to better understand the broadcasting transmission services market in New Zealand, how it is performing, and how it might develop, including by reference to trends in other markets. In particular, the Commission seeks to achieve the following objectives through the review:
  - 2.1 develop a better understanding of the forward-looking competitive landscape for the broadcasting transmission services market; and
  - 2.2 inform the need for, and level of, monitoring of broadcasting transmission services as part of our wider telecommunications market monitoring approach.

### **Context for our review**

3. The Telecommunications (New Regulatory Framework) Amendment Act 2018 (**Amendment Act**) removed the exclusion of “broadcasting transmission” from the definition of “telecommunication”.
4. The commentary surrounding the removal of this exclusion indicates to us that Parliament intended for broadcasting transmission to be included within the definition of “telecommunication” under the Act.
5. This understanding is supported by the recent judgment of the High Court in *Commerce Commission v Kordia Group Ltd*, which established that broadcasting networks are “used, or intended to be used, in whole or in part by the public for the purpose of telecommunication.”<sup>1</sup>
6. Section 9A(1)(a) of the Act requires the Commission to monitor competition in telecommunications markets and the performance and development of telecommunications markets. Section 9A(1)(b) of the Act allows the Commission to conduct inquiries, reviews and studies into any matter relating to

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<sup>1</sup> *Commerce Commission v Kordia Group Ltd* [2021] NZHC 2777 at [38].

telecommunications industry or the long-term benefit of end-users of telecommunications services within New Zealand.

7. Our view is that the removal of the exclusion of “broadcasting transmission” from the definition of “telecommunication” means that we are required to monitor competition in the broadcasting transmission services market under s 9A(1)(a) of the Act, and we may conduct inquiries, reviews, and studies into the broadcasting transmission services market under s 9A(1)(b) of the Act.
8. Therefore, we are electing to conduct a s 9A(1)(b) review of the broadcasting transmission services market to inform our future work programme, including how we can best fulfil our obligation under s 9A(1)(a) of the Act to monitor competition in the broadcasting transmission services market.

### **Scope of this review**

9. The review will:
  - 9.1 Provide the Commission with a snapshot of the broadcasting transmission services market in New Zealand, including a description of the key market players, services, and infrastructure, and how it has developed to date.
  - 9.2 Provide a summary of the trends and themes in broadcasting transmission observed in comparable jurisdictions.
  - 9.3 Identify and explain how the broadcasting transmission services market is likely to develop in New Zealand including: (a) exploring emerging technologies; (b) convergence and potential for disruption (including from OTT providers); and (c) changing trends in traffic and consumer preferences.
10. We will publish a report summarising the matters above and outlining our preliminary findings and proposed next steps in relation to any monitoring requirements by the end of June 2022, which will conclude this review.
11. If you have any questions about this review, please email [Regulation.Branch@comcom.govt.nz](mailto:Regulation.Branch@comcom.govt.nz) with “Broadcasting review” in the subject line.

Ngā mihi nui,



**Tristan Gilbertson**  
Telecommunications Commissioner