Strengthening economic relations between Australia and New Zealand

Further submission by Telstra Corporation Limited to the Productivity Commissions' Joint Study, 10 August 2012.

Contents

1. Introduction

Telstra Corporation Limited of Australia ('Telstra') and its wholly owned New Zealand subsidiary TelstraClear Limited ('TelstraClear') lodged a joint submission on 31 May 2012 in response to the joint study being conducted by the Australian and New Zealand Productivity Commissions on strengthening trans-Tasman economic relations.[1]

Telstra and TelstraClear were provided with the opportunity to meet with researchers from the Productivity Commissions on 27 June 2012, to further discuss aspects of the joint submission. In that meeting Telstra and TelstraClear undertook to provide further information to the Productivity Commissions.

On 12 July 2012 Telstra announced that it would sell TelstraClear to Vodafone New Zealand, pending regulatory approvals.[2]

Notwithstanding the proposed sale of TelstraClear, Telstra continues to support the principles set out in its 31 May 2012 submission and articulated in several public statements since 2004, namely that Australia and New Zealand should work towards a Single Economic Market ('SEM') for telecommunications services on both sides of the Tasman. This goal continues to be relevant and desirable for Telstra as the largest telecommunications services provider in Australia.

The purpose of this submission is:

- as undertaken in the meeting of 27 June 2012, to provide the Productivity Commissions with a comparison of the regulation of telecommunications services in Australia and New Zealand, setting out the extent of current alignment of regulation, as well as addressing the costs of non-alignment; and
- to further articulate the benefits of working towards a SEM in telecommunications services given an industry environment in which both countries are facilitating the roll-out of next generation fibre networks.

2. Alignment of regulation of telecommunications services in Australia and New Zealand

In its previous submission Telstra and TelstraClear observed that, "[r]ecent developments in telecommunications regulatory policy and legislation in New Zealand mean that there are now far more similarities between the laws governing this sector, in Australia and New Zealand, than differences."

The full extent of current alignment between the two regulatory regimes is mapped in section A of the **Appendix** to this submission. While some areas of difference remain, telecommunications regulation is now aligned between Australia and New Zealand to the greatest extent in the past two decades.

The Appendix also contains a brief summary of the costs that are caused when trans-Tasman regulation is not aligned – see section B.

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[1] Telstra Corporation Limited and TelstraClear Limited, "Strengthening economic relations between Australia and New Zealand", 31 May 2012, available at: http://transtasman-review.pc.gov.au/sites/default/files/sub048-transtasman-review.pdf

[2] Telstra Corporation Limited, "Telstra announces sale of TelstraClear for NZ840 million dollars A660 million dollars", 12 July 2012, available at: http://www.telstra.com.au/abouttelstra/media-centre/announcements/telstra-announces-sale-of%20telstraclear.xml

Telstra submits that it is important to "lock in" the current level of alignment in respect of telecommunications regulation, and to minimise future deviation between the Australian and New Zealand regulatory regimes. The best manner in which this can be achieved is through the inclusion of a specific telecommunications services chapter in CER. As explained in the 31 May 2012 submission, such a chapter would not prevent the retention by each nation of its own specific policy responses where justified by different national and regional circumstances.

The Australian Productivity Commission has previously noted in regard to bilateral and regional trade agreements ('BRTAs') that, "[w]hile immediate reductions in services trade and investment barriers may be limited, agreements can create certainty by binding existing arrangements and can provide scope for future reductions in barriers ..."[3]

To be clear, Telstra is not proposing that there need be a single regulator or a supra-national regulator; rather, that at the very least CER be updated to be consistent with Australia's many other BRTAs which include specific chapters for telecommunications services. The immediate benefit of such a chapter in CER would be to require that consistent high-level regulatory principles as set out in the chapter are properly considered by policy makers. Any future deviation from these high-level regulatory principles would need to be justified by an explanatory statement for the relevant domestic measure, providing the reason for why deviation from the CER principles is justified in the particular case.

Looking to the future, by locking in the existing extent of alignment Australia and New Zealand will provide a consistent and predictable regulatory foundation for trans-Tasman services that exploit the scale of the next generation fibre networks currently being built in both countries – an important opportunity discussed in the next section.

3. Next generation networks: the trans-Tasman opportunity

Australia and New Zealand are currently building ambitious 'next generation' telecommunications networks of similar technology within similar vertically separated industry structures.[4] Both governments wish to develop and encourage applications and services which can utilise the enhanced broadband capacity that is being built.[5] It is highly desirable that scale in application and services development is encouraged between the two economies. Given the broadly similar network infrastructure and the vertically separated market structure, the areas where co-ordinated effort would be beneficial include:

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[3] Australian Productivity Commission Research Report, *Bilateral and Regional Trade Agreements* (November 2010) p89.

[4] The Australian National Broadband Network's obligation to supply services only to carriers and carriage service providers is set out in the *National Broadband Network Companies Act 2011 (Cth)* s 9. Structural separation was a condition of the Crown providing funding to Telecom NZ's network unit, Chorus: Telecom NZ, "Outline of UFB agreement between Chorus and Crown Fibre Holdings", May 2011, available at: http://investor.telecom.co.nz/phoenix.zhtml?c=91956&p=irol-ufb.

[5] Department of Broadband, Communications and the Digital Economy, "National Digital Economy Strategy", May 2011, p 3, available at: http://www.nbn.gov.au/files/2011/05/National_Digital_Economy_Strategy.pdf; New Zealand Ministry of Economic Development, "Government Action Plan for Faster Broadband", available at: http://www.med.govt.nz/sectors-industries/technology-communication/fast-broadband/government-action-plan-for-broadband.

- **encouraging common technical standards across the access services for NBN Co in Australia and the Local Fibre Companies (LFCs) in New Zealand.** Differences in standards and interfaces – even if relatively small – add significantly to costs for developers of applications.[6] Telstra notes that Crown Fibre Holdings in New Zealand has recognised the risk of fragmentation of standards between LFCs and appears to be proactively addressing this risk through the powers it has over standards under the LFC undertakings.[7] However, the LFCs, on the one hand, and NBN Co, on the other, appear to be developing their networks and operational support systems ('OSS') including wholesale technical interfaces without reference to each other. Ideally, the new fibre networks should be deployed to the same or interoperable technical standards, thus lowering barriers to developers in both countries. Such interoperability should be encouraged through consultation rather than by direct regulation. A good example is the recent trans-Tasman cooperation to develop the band plan for the 700 MHz "digital dividend" spectrum, discussed in the Telstra and TelstraClear joint submission of 31 May 2012. In that case the cooperative approach was spurred by the need for both countries to make submissions within a regional forum (the Asia-Pacific Telecommunity) under the ITU treaty level governance of radiocommunications. In the case of next generation fixed networks such cooperation may not occur without some level of encouragement under CER (or a wider regional agreement);

- **focusing on facilitating new services and applications which are more geographically independent than current services, including on mobile networks**. In the near future there is likely to be a proliferation of machine-to-machine (M2M) services which require connectivity across networks in both Australia and New Zealand but are not managed either technically or from a billing perspective in the same way as existing voice and data mobile services.[8] For example, a car manufactured in Australia with M2M intelligence built in, will need to be able to communicate with the same application whether it stays in Australia or is exported to New Zealand either as a new vehicle or at some subsequent point.[9] New non-national numbering arrangements may develop for some M2M services, though other addressing options may be more suitable for many M2M applications.[10] There is already considerable debate internationally on how to manage this problem across national borders and separate regulatory regimes.[11] An opportunity exists for Australia and New Zealand to pioneer cross-border M2M

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[6] A well-known example is the cost associated with developing applications for the competing Android and Apple mobile operating systems; however in the case of the trans-Tasman fibre network builds, they are confined to non-overlapping geographic locations hence they cannot compete with one another. In this case there is no competition justification for differing standards, in fact the opposite case holds true.

[7] Crown Fibre Holdings has stated that it will "approve technical and operational standards to achieve national consistency across networks": Crown Fibre Holdings Limited, "Statement of Intent 2009–13", May 2010, available at: http://www.comu.govt.nz/resources/pdfs/cfh/cfh-sci-10.pdf.

[8] See OECD Working Party on Communication Infrastructures and Services Policy, "Machine-To-Machine Communications: Connecting billions of devices", DSTI/ICCP/CISP(2011)4/FINAL, 30 January 2012, p 27: http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/ICCP/CISP(2011)4/FINAL&docLanguage=En.

[9] Ibid p 7. See also pp 28–29 for discussion of the range of problems arising where machines are limited to communicating via a single mobile network.

[10] Ibid pp 37–38. Some M2M devices will be capable of supporting voice and/or SMS and will require mobile numbers. Other M2M devices may not require full numbers and could instead use other addressing such as IP or proprietary/private addressing to facilitate connection without the need for a public number.

[11] The ITU, for example, has a focus group dedicated to identifying a minimum set of common requirements to support a common M2M service layer. See ITU, "Terms of Reference: ITU-T Focus Group on 'M2M service

arrangements. Direct regulation is not appropriate in this case because Australia and New Zealand are 'technology takers' when it comes to global standards, so regulation would either be redundant (there is no choice other than the global standard) or worse, would lock the two countries into a globally incompatible 'orphan' standard. However, Australia and New Zealand could significantly influence the global or regional approach. As the APT 700 MHz band plan example shows, a regional or bilateral consultation context can promote cooperative trans-Tasman arrangements which deliver greater scale and hence lower costs and a larger available range of devices and supporting systems;

- **developing new business models for applications:** some of the most valuable applications which the new fibre networks will facilitate, such as high definition sensing telemedicine,[12] realise value by allowing for access to expertise in centres of excellence while enabling services to be provided remotely. The delivery of such applications enables greater equity of access and saves Governments money. There is limited incentive for private users to fund development of these applications. Pooling between the Australian and New Zealand Government may help with funding and commercialisation. Moreover, the opportunity to reach the entire trans-Tasman market in a seamless manner will make the funding of such innovation more attractive to private sector investors;

- **co-ordinated approach to addressing non-telco barriers to new applications**: there are a range of regulations which may be well outside the ambit of traditional telecommunications regulation, for example privacy and confidentiality protections for medical records, which could be harmonised (generally or for the project area) to reduce barriers to the development of applications and services that would scale across the Tasman; and

- **an agreement or commitment between the two countries on the "zone of competitive activity" on the two fibre networks**. This would be entrenched in the regulatory principles set out in a CER telecommunication chapter to confirm the commitment of both governments to limit the wholesale fibre operators to basic connectivity supply (referred to as "layer 2" supply in technical parlance[13]). Activity above layer 2 on both networks would be a "competitive zone" and the two Governments would commit that the wholesale-only fibre operators could not encroach into that zone (i.e. by vertical integration). This would provide certainty to investors in both countries and underpin the development of a trans-Tasman "innovation space" for applications and services which utilises the NBN environments in both countries.

In summary, Telstra believes that the fibre networks being constructed in Australia and New Zealand offer the potential for significant benefits, particularly in productivity. Having separately made similar decisions about the technology and industry structure for their next generation

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layer'", available at: http://www.itu.int/en/ITU-T/focusgroups/m2m/Documents/ToR/FG%20M2M%20-%20ToR.pdf.

[12] See for example Monash University, "Potential telehealth benefits of high speed broadband", August 2011, available at: http://www.dbcde.gov.au/__data/assets/pdf_file/0009/145584/Potential-telehealth-benefits-of-high-speed-broadband.pdf.

[13] 'Layer 2' supply is a reference to the second layer in Open Systems Interconnection (OSI) model, a reference tool for understanding data communications between any two networked systems. The OSI model divides the communications process into seven layers. Each layer both performs specific functions to support the layers above it and offers services to the layers below it. The three lowest layers (Layers 1 to 3) focus on passing traffic through the network to an end system. For a more detailed explanation see Microsoft, "The OSI Model's Seven Layers Defined and Functions Explained", at: http://support.microsoft.com/kb/103884.

networks, Australia and New Zealand will be in a much better position to realise the full potential of those networks by pooling scale in the development of services and applications which run over those networks.

Such an approach would also enable Australia and New Zealand to integrate next generation fibre-based applications and services with leading Asian jurisdictions such as Korea, which has set itself a goal of developing the "Internet of Things" across fixed and mobile networks.[14] The high-level regulatory principles contained in the CER telecommunications chapter would be designed to facilitate trans-Tasman scale for next generation applications and services. Further, these principles would be amenable to extension to other countries where similar fibre projects are under construction or being considered. Near-term prospects for such extension include Singapore, South Korea, Hong Kong and Japan.

4. Conclusion

In his recent address to CEDA, the Chairman of the Australian Productivity Commission observed that,

> "...much of the 'low hanging fruit' has been picked. Extending or deepening the trans-Tasman integration agenda will require tackling some more complex and contentious areas of policy and regulation."[15]

Telstra recognises that regulation of telecommunications services is a complex and contentious area, domestically in both Australia and New Zealand. This complexity makes the SEM and harmonisation project challenging, particularly in regard to determining the appropriate level of harmonisation between the two jurisdictions that would deliver benefit outweighing costs. The Australian and New Zealand telecommunications regulatory regimes have evolved as two solitudes. However, Telstra submits that there exists a significant opportunity to foster trans-Tasman scale for future applications and services. Both countries have taken decisions to make substantial investments in next generation networks because they provide for innovation on a transformative scale for each country. The trans-Tasman opportunity may be lost unless, at the very least, work is commenced in the near future on a telecommunications chapter in CER which would be designed to reflect current regulatory alignment and 'lock in' the underlying architecture to enable trans-Tasman scale for ubiquitous fibre-based applications and services.

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[14] OECD Working Party on Communication Infrastructures and Services Policy, "Machine-To-Machine Communications: Connecting billions of devices", above n 8, p 9. See also Korean Communications Commission, "KCC Plan for 2011", pp 8 and 11, available at: http://eng.kcc.go.kr/download.do?fileSeq=30198.

[15] Gary Banks, "Whither trans-Tasman economic relations? Some emerging themes", CEDA State of the Nation Conference, Canberra, 18 June 2012, available at: http://transtasman-review.pc.gov.au/newsroom/speech/ceda-speech-whither-trans-tasman-economic-relations-some-emerging-themes

APPENDIX:

A. COMPARISON – REGULATION APPLICABLE TO TELECOMMUNICATIONS IN AUSTRALIA AND NEW ZEALAND

The following table outlines some key comparisons between the Australian and New Zealand regulatory regimes that apply to the telecommunications sector. This table is not intended to be exhaustive.

Issue	Australian position	New Zealand position	Degree of alignment
Generic competition law – merger control			
Merger control test	Acquisition must not have the effect, or be likely to have the effect, of substantially lessening competition.	Acquisition must not have the effect, or be likely to have the effect, of substantially lessening competition.	Fully aligned.
Notification / clearance requirements	No mandatory notification requirement. Although a formal clearance process exists, in practice parties tend to rely on informal clearance.	No mandatory notification requirement.	Fully aligned.
Notification threshold	The ACCC encourages parties to notify the ACCC of the acquisition where: • the products of the merger parties are either substitutes or complements; and • the merged firm will have a post-merger market share of greater than 20 per cent.	There is no specific notification threshold.	Largely aligned in practice.
Conditions / undertakings that can be sought by the regulator before granting clearance	The ACCC may attach conditions to formal clearances. Because the informal clearance process is not set out in legislation, the ACCC may also attach conditions to informal clearances and seek behavioural or structural undertakings from the party applying for informal clearance.	The New Zealand Commerce Commission (**NZCC**) may accept structural undertakings but not behavioural undertakings.	Largely aligned in practice (except that NZCC cannot accept behavioural undertakings).

Issue	Australian position	New Zealand position	Degree of alignment
Authorisation procedure (ie where merger fails the merger control test)	The Australian Competition Tribunal may authorise a proposed acquisition where it is satisfied that the proposed acquisition would result, or be likely to result, in such benefit to the public that it should be permitted.	The NZCC may authorise a proposed acquisition where it is satisfied that the proposed acquisition would result, or be likely to result, in such benefit to the public that it should be permitted.	Largely aligned (except that different bodies responsible for authorisations).
Financial penalties for failure to comply	For a body corporate, up to the greater of the following: • $10,000,000; • 3 times the total value of the benefit obtained by the breach; or • if the benefit cannot be determined, 10% of the annual turnover of the corporation. Injunctions, divestiture and damages can also be obtained.	Up to $5,000,000 for a body corporate, $500,000 for a person. Injunctions, divestiture and damages can also be obtained.	Lower penalties in New Zealand.
Generic competition law – restrictive trade practices			
Types of restrictive trade practices that are prohibited	• Entering or giving effect to contracts, arrangements and understandings that restrict dealings or affect competition; • price-fixing and other cartels; • misuse of market power; • exclusive dealing; • resale price maintenance; and • boycotts affecting competition.	• Entering or giving effect to contracts, arrangements and understandings that restrict dealings or affect competition; • price-fixing; • misuse of market power; • exclusionary provisions (including boycotts); and • resale price maintenance.	Largely aligned (except for boycott provisions and the less specific treatment of cartel conduct in New Zealand). However, in practice some prohibitions (eg misuse of market power) are interpreted differently in Australia and New Zealand.

Issue	Australian position	New Zealand position	Degree of alignment
Are there any "per se" prohibitions?	The following are per se offences: • price-fixing; and • some types of exclusive dealing (including third line forcing); and • resale price maintenance. Other offences include an "effect" or "purpose" test.	The following are per se offences: • price-fixing; and • resale price maintenance. Other offences include an "effect" or "purpose" test.	Largely aligned (except that exclusionary provisions such as third line forcing are subject to an "effect" or "purpose" test in New Zealand).
Prohibition of cartel conduct	Cartel conduct is expressly prohibited. Cartel conduct means making or giving effect to a contract, arrangement or understanding relating to: • price-fixing; • restricting supply of goods or services some or all of the parties produce; • allocating customers, suppliers, or territories between the parties; or • bid-rigging, where at least two of the parties are, are likely to be, or would (but for the contract, arrangement or understanding) be competitors. Criminal penalties (including imprisonment) may be imposed on individuals who are involved in cartel conduct.	There is no express prohibition of cartel conduct but cartel conduct may already be caught by existing provisions (eg price-fixing). Amendments to specifically address cartel conduct were introduced to Parliament in 2011 but have not yet been passed.	Will be largely aligned once cartel conduct provisions are passed in New Zealand.

Issue	Australian position	New Zealand position	Degree of alignment
Authorisation procedure (ie where conduct would otherwise be prohibited)	The ACCC may authorise the following conduct: • cartel behaviour; • entering or giving effect to contracts, arrangements or understandings that restrict dealings or affects competition; • exclusive dealing; • secondary boycotts; and • resale price maintenance.	The NZCC may authorise the following conduct: • entering or giving effect to contracts, arrangements or understandings that restrict dealings or affect competition; • exclusionary provisions; and • resale price maintenance.	Largely aligned (except for cartels and secondary boycotts).
Financial penalties for failure to comply	For a body corporate, up to the greater of the following: • $10,000,000; • 3 times the total value of the benefit obtained by the contravention; or • if the benefit cannot be determined, 10% of the annual turnover of the corporation.	For a body corporate, the greater of the following: • $10,000,000; • 3 times the total value of the benefit obtained by the contravention; or • if the benefit cannot be determined, 10% of the annual turnover of the corporation.	Fully aligned.
Other enforcement powers available to enforce restrictive trade practices laws	Injunctions, actions for damages and disqualification of individuals from certain management positions. Cartel conduct may be dealt with as a criminal offence.	Injunctions, actions for damages and disqualification of individuals from certain management positions.	Largely aligned except cartel conduct not criminalised in New Zealand.
Telecommunications-specific competition law			
Is there a telco-specific competition law?	Yes – Part XIB of the *Competition and Consumer Act 2010*.	No. Only general competition law regulates competition in telecommunications markets.	Not aligned – no specific telecommunications competition law in New Zealand.

Issue	Australian position	New Zealand position	Degree of alignment
Telco-specific competition prohibitions	A carrier or carriage service provider with a substantial degree of power in a telecommunications market must not take advantage of that power with the effect or likely effect of substantially lessening competition, or engage in certain other conduct prohibited under the general competition law.	Under generic competition law, the misuse of market power offence is subject to a "purpose" test – there is no statutory "effect" test and the prohibition is interpreted differently in New Zealand.	Aligned only to the extent that there is a "misuse of market power" prohibition with a "purpose" test in both countries.
Penalties for failure to comply	For a body corporate, up to $10 million for each offence and a further $1 million for each day the offence continues. If the contravention continues for more than 21 days, up to A$31 million plus A$3 million for each day the contravention continues in excess of 21 days Injunctions, damages, orders for compensation and to disclose information or publish corrective advertisements are also available.	NA	Somewhat aligned – no additional statutory penalties for continuing competition offences in New Zealand (although there is a concept of "cease and desist orders" under general competition law, breach of which provides for a pecuniary penalty of up to $500,000. Multiple orders could be made while conduct continues).
Enforcement powers available to enforce telecommunications competition laws	The ACCC may issue two types of "competition notices". The notices can be issued if the ACCC has "reason to believe" that a carrier or carriage service provider has engaged or is engaging in conduct that breaches Part XIB: • A "Part A" notice enables the ACCC to institute proceedings about the conduct in the notice, if the conduct continues after the notice has been issued. The ACCC	NA	Not aligned – there is no requirement to issue a "competition notice" and no regime to reverse the onus of proof in misuse of market power proceedings in New Zealand.

Issue	Australian position	New Zealand position	Degree of alignment
	does not need to observe procedural fairness when issuing a Part A notice; and • a "Part B" notice is prima facie evidence of the matters in the notice.		
Accounting separation regime	The ACCC may require a carrier or carriage service provider to comply with tariff filing requirements if it is satisfied that the carrier or carriage service provider has a substantial degree of power in a telecommunications market. Telstra is subject to specific tariff filing requirements. The ACCC may also make rules requiring a carrier or carriage service provider to keep records or prepare reports for the ACCC (and the ACCC has done so in relation to Telstra to implement accounting separation).	The accounting separation regime has been repealed.	Not aligned but both regimes have been overtaken by further separation.
Operational or structural separation regime in place	As part of the migration to the National Broadband Network, Telstra has undertaken (and the ACCC has accepted) to comply with a Structural Separation Undertaking (**SSU**). Under the SSU Telstra undertakes to: • progressively disconnect most of its own fixed-line local connections as the National Broadband Network rolls out; and • comply with equivalence obligations during the period of the rollout.	Telecom New Zealand's fixed-line infrastructure business, Chorus, was demerged in 2011. The demerger was voluntary, and was intended to ensure Chorus would be eligible to participate in the rollout of the Ultra Fast Broadband (**UFB**) initiative (and receive government subsidies for doing so).	Somewhat aligned – in New Zealand, structural separation of the incumbent completed and other LFCs to be wholesale-only. The wholesale-only National Broadband Network is rolling out in Australia.

Issue	Australian position	New Zealand position	Degree of alignment
	The legislation governing NBN Co provides a framework for the government to require functional separation or divestiture of assets of NBN Co in the future. Next-generation networks are also required to be provided on a wholesale-only basis.		
Telecommunications-specific access regime			
Is there a telecommunications-specific access regime?	Yes.	Yes.	Fully aligned.
Test for regulating access to a service	A service may be declared if the ACCC is satisfied that making the declaration will promote the long-term interests of end users of carriage services or services provided by means of carriage services. A service may also be regulated if the access provider has submitted and the ACCC has accepted a "special access undertaking", setting out the terms on which the service will be provided.	A service may be declared if the NZCC and the Minister consider it would best give effect to the purpose of "promoting competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand".	Largely aligned.
Procedure for making a decision about whether a service should be subject to regulation	A service may be declared by the ACCC. The service must be an eligible service (a listed carriage service or a service that facilitates supply of a listed carriage service). The ACCC must hold a public inquiry, prepare a report about the inquiry, publish the report and be satisfied that the	Regulated services are "designated services" (for which the price or non-price terms can be regulated) or "specified services" (for which only non-price terms can be regulated). These services are set out in legislation. To add	The basis for determining the need for regulation is similar but the decision-making power is not aligned –the process for deciding to regulate a service is more independent from political

Issue	Australian position	New Zealand position	Degree of alignment
	likely result of the declaration will promote the long-term interests of end-users. The ACCC may then determine that the service is a declared service.	a new service: • the NZCC must investigate whether to make a recommendation that the service be added (which it can do on its own initiative or on request of the Minister) and make the recommendation; • the Minister must accept that recommendation; and • the Governor-General may then implement that recommendation (by Order in Council made on the recommendation of the Minister).	considerations in Australia than in New Zealand (because of the Minister's involvement in the process in New Zealand).
Procedure for voluntary regulation	The ACCC may accept a "special access undertaking" from the provider of a service which is not yet declared to obtain regulatory certainty.	While the NZCC is considering a proposed regulatory change, the NZCC may accept an undertaking from an access provider governing the terms of supply of a service to all access seekers to obtain regulatory certainty.	Largely aligned – but undertakings can be accepted before a regulatory change is proposed in Australia.
Services to which access may currently be regulated	• Local bitstream access service; • wholesale ADSL; • digital set-top unit service (Foxtel); • domestic PSTN originating access; • domestic PSTN terminating access; • mobile terminating access service (voice); • line sharing service; • local carriage service;	Designated access services (where price and non-price terms may be regulated): • interconnection with a fixed PSTN; • retail services offered by means of a fixed telecommunications network; • local access and calling services offered by means of fixed telecommunications network; • retail services offered by means of a fixed	Somewhat aligned – some additional services regulated in New Zealand. Facilities access is regulated by the access regime in New Zealand – see below. Roaming services regulated in New Zealand. In New Zealand, backhaul

Issue	Australian position	New Zealand position	Degree of alignment
	• unconditioned local loop service; • wholesale line rental; and • domestic transmission capacity service.	telecommunications network as part of bundle of retail services; • Chorus's unbundled bitstream access; • Chorus's unbundled copper local loop network; • Chorus's unbundled copper local loop network co-location; • Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange); • Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point); • Chorus's unbundled copper low frequency service; and • mobile termination access services (voice and SMS). Specified services (where only non-price terms may be regulated): • national roaming; • co-location on cellular mobile transmission sites; and • co-location of equipment for fixed telecommunications services at sites used by Broadcast Communications Limited.	services are only regulated from certain types of access services. No category of services where only non-price terms may be regulated in Australia (but there may be other mechanisms to regulate mandatory non-price terms, eg, through industry codes).

Issue	Australian position	New Zealand position	Degree of alignment
Process for determining terms and conditions of access	The ACCC must make an "access determination" for a declared service, setting out the terms on which the access provider must provide the service. However, the access seeker and access provider may agree different terms. The ACCC may also make interim determinations and impose binding rules of conduct (without observing procedural fairness requirements) to address urgent matters.	An access seeker or access provider may apply to the NZCC for a determination about the terms on which the service must be supplied between the parties, but the applicant must first make reasonable efforts to negotiate those terms. In the alternative, the NZCC may on its own initiative make a "standard terms determination" setting out the terms on which a designated access service or specified service must be supplied, which applies to all access seekers and all access providers of the service. There is no ability to make a formal application to the NZCC for a standard terms determination. For a "specified service", the regulated terms of access may not include price-related terms.	Largely aligned except in New Zealand both "up front" terms or the "negotiate–arbitrate" option are available. In practice the NZCC commonly uses "up front" terms. Price regulation not permitted for all types of regulated services in New Zealand.
Penalties for failure to comply	The Federal Court may make orders requiring a person to comply with an obligation to provide access, to pay compensation and any other orders the court thinks appropriate. Breach of access obligations is a breach of carrier licence conditions with a penalty of up to $10 million.	The NZCC may serve a civil infringement notice requiring the person to pay a penalty, or may apply to the High Court if it has received a complaint of the breach for a pecuniary penalty of up to $300,000 and $10,000 for each day the offence continues (but not more than the value of any commercial gain resulting from the breach, less any compensatory damages which are awarded).	Not aligned – significantly lower penalties in New Zealand.

Issue	Australian position	New Zealand position	Degree of alignment
Facilities access regime			
Test for regulating access to passive infrastructure	Access to a facility may be regulated under the telecommunications access regime (if access to the facility is considered a service that facilitates the supply of a listed carriage service). Carriers are obliged to allow other carriers access to their passive infrastructure such as ducts, masts and antennae (subject to certain conditions being met). The *Telecommunications Act 1997* also requires non-carriers who own or operate "fixed-line facilities" to provide access to those facilities to a carrier on request.	The telecommunications access regime described above applies to facilities access.	Somewhat aligned – but the New Zealand regime applies to a limited class of passive infrastructure. There is a complicated process to add new facilities access services in New Zealand.
Facilities to which access is currently regulated	Passive facilities including telecommunications transmission towers and underground facilities. Non-carriers are also required to provide access to passive facilities for use in connection with telecommunications lines.	• Chorus's unbundled copper local loop network co-location; • co-location on cellular mobile transmission sites; and • co-location of equipment for fixed telecommunications services at sites used by Broadcast Communications Limited.	
Process for making a decision about whether to regulate a facility	NA – the facilities are set out in the *Telecommunications Act 1997*.	As above – there is a complicated process involved in adding a new access service.	

Issue	Australian position	New Zealand position	Degree of alignment
Process for determining terms and conditions of access	The negotiate–arbitrate model still exists. The terms of access are to be agreed (and, where the access provider is a carrier, are subject to some mandatory terms set out in a Facilities Access Code made by the ACCC). Failing agreement, the terms are to be determined through arbitration (with the ACCC being the arbitrator if the parties cannot agree otherwise).	As above – the NZCC may make a standard terms determination to set "up front" terms.	Largely aligned. There is an ability to set "up front" terms in New Zealand.
Penalties for failure to comply	For a carrier, maximum penalty of $10 million per contravention. For a non-carrier, maximum penalty of $250,000 per contravention.	As above.	Not aligned – significantly lower penalties in New Zealand.
Market entry / licensing			
Requirement for a telecommunications licence	Yes. A carrier licence (or nominated carrier declaration) is required to own a network unit used to supply a carriage service to the public. However, Carriage Service Providers (CSPs) which do not own network units as described above, do not require a licence. There is, in effect, a statutory class licence for CSPs.	No requirement to hold a telecommunications licence. May also be described as, in effect, a statutory class licence scheme. However, a person may apply to the Minister responsible for telecommunications to be declared a "network operator". Network operators may exercise special powers to access land (see below).	Technically not aligned – no licensing requirement in New Zealand. However, practically the Australian licensing obligation is limited and is modest in terms of its qualification requirements. Barriers to entry are low in both jurisdictions.
Process for obtaining a telecommunications licence	Licences are granted by the Australian Communications and Media Authority (**ACMA**). This requires certain information to be provided to the ACMA and payment of an application fee.	NA	

Issue	Australian position	New Zealand position	Degree of alignment
Eligibility requirements for a telecommunications licence	A person may apply to ACMA for a carrier licence, so long as the person is: • a constitutional corporation; or • an eligible partnership; or • a public body. The ACMA may refuse to grant a carrier licence if the applicant is disqualified (eg because it has previously had a carrier licence cancelled or it has failed to make payments required under telecommunications legislation) or where the Attorney-General considers the grant would be prejudicial to security.	A person may apply to the Minister to be declared a "network operator". The Minister must declare the person to be a network operator if the Minister is satisfied that a declaration is necessary to enable the person to commence or carry on a business providing: • facilities for telecommunication between 10 or more other persons that enable at least 10 of those persons to communicate with each other; or • facilities for broadcasting to 500 or more other persons that enable programmes to be transmitted along a line or lines to each of those persons.	
Licence fees	Carriers whose gross annual telecommunications sales revenue in Australia exceeds a certain threshold (currently $25 million) must pay a variable annual charge based on their revenue to recover the costs of regulating the telecommunications industry.	NA	
Ability to transfer a licence	Carrier licences are not transferable. There are no special requirements where a change of control occurs.	NA	
Typical licence conditions	Examples of licence conditions include: • a requirement to comply with telecommunications legislation (including	NA	

Issue	Australian position	New Zealand position	Degree of alignment
	the facility sharing regime and declared services regime); • a requirement to provide access to facilities and information about the operation of their networks to other carriers on request; • obligations to inspect facilities regularly, take remedial action to address issues with facilities and comply with record-keeping obligations; and • obligations to obtain designated interconnection services to ensure any-to-any connectivity (there are currently no designated interconnection services). The Minister may also declare additional licence conditions, which may apply to a particular carrier licence or all carrier licences.		
Ability to appeal a decision not to grant a licence	Merits review is available at the Administrative Appeals Tribunal.	NA	
Penalties for failure to operate with a licence when required	Penalties of up to $2.2 million.	NA	

Issue	Australian position	New Zealand position	Degree of alignment
Penalties for failure to comply with licence conditions	Penalties of up to $10 million.	NA	
Other conditions that apply to other telecommunications operators	Telecommunications service providers may also be regulated as "Carriage Service Providers" (regardless of whether or not they are also carriers). A range of separate obligations apply to carriage service providers. The approach to CSPs is, in effect, a statutory class licence.	Other obligations apply to telecommunications service providers – see below for the obligations and penalties. These are, in effect, statutory class licence conditions.	
Land access rights			
Are there special land access rights for telecommunications operators?	Yes.	Yes.	Largely aligned – except more limited rights for infrastructure installation in New Zealand.
Summary of land access rights	A carrier has rights to enter onto land for inspection to determine whether land is suitable for its purposes, and for installation and maintenance of its facilities. The power to install facilities applies only in limited circumstances (primarily where the facility is a "low impact facility").	A person may apply to the Minister to be declared a "network operator". A network operator may enter onto land: • to access, inspect, maintain or repair existing works or lines owned by the operator; and • to install a line (but only after obtaining an order from the District Court). A network operator may also conduct certain works on roads. Owners and operators of fibre-to-the-premises networks may also access and perform work in multi-unit complexes relating to	

Issue	Australian position	New Zealand position	Degree of alignment
		the network.	
Who is able to exercise land access rights?	Licensed carriers.	Persons who have been declared “network operators”.	
Industry codes / standards and other technical regulation			
Process for developing mandatory codes and standards	Australian telecommunications legislation provides for mandatory: • industry codes – prepared by industry bodies, and which may then be registered by the ACMA. Following registration, the ACMA may direct industry participants to comply with the code; • industry standards – determined and registered by the ACMA; and • technical standards – determined by the ACMA on matters such as customer equipment and labelling, disability standards, interconnection and Layer 2 bitstream services. Industry bodies have also prepared a range of voluntary codes and standards.	New Zealand telecommunications legislation provides for two types of telecommunications access codes: • industry-prepared – the Telecommunications Forum (**TCF**) may prepare a code for NZCC approval (on its own initiative or at the request of the NZCC); and • NZCC-prepared.	Somewhat aligned but much larger scope for mandatory codes and standards in Australia.
Scope of issues covered by mandatory industry codes and standards	Industry standards cover telemarketing, research calls and fax marketing. Technical standards cover rules for providing customer cabling.	The TCF may produce codes of practice relating to designated access services or specified services. Once approved they become mandatory.	Somewhat aligned – many more mandatory codes and standards in Australia (only two in New Zealand).

Issue	Australian position	New Zealand position	Degree of alignment
	Industry codes cover: • cabling requirements for businesses; • customer and network fault management; • network performance for the standard telephone service; • the eMarketing Code of Practice; • rights of use of numbers; • the connect outstanding process; • preselection; • the Internet Industry Spam Code of Practice; • call charging and billing accuracy; • calling number display; • priority assistance for life threatening medical conditions; • local number portability; • the Integrated Public Number Database; • consumer protection standards; • accessibility features for telephone equipment; • number portability; • handling of life threatening and unwelcome communications • emergency call service requirements;	The only mandatory industry codes are: • the Customer Transfer Code; and • the Mobile Co-location Code.	

Issue	Australian position	New Zealand position	Degree of alignment
	• mobile premium services; • Unconditioned Local Loop Service network deployment rules; and • mobile base station deployment.		
Scope of issues covered by voluntary industry codes and standards	Various technical guidelines are covered in voluntary industry documents.	The TCF has produced a number of voluntary or self-regulated codes. These self-regulated codes are only binding on signatories and are subject to the compliance and enforcement procedures outlined in each code. Voluntary codes have been produced on many subjects including: • co-siting; • customer complaints; • disconnection; • emergency voice calling services; • interception; • information on international mobile roaming charges; • spam; • provision of content via mobile phones; • mobile messaging services; • the trusted mobile payment Payforit framework; • premises wiring;	Somewhat aligned but most industry codes and standards voluntary in New Zealand.

Issue	Australian position	New Zealand position	Degree of alignment
		• telecommunications infrastructure for new subdivisions; • unauthorised use of cellphones; and • community engagement.	
Numbering			
Process for allocation of numbers	Numbers are allocated by ACMA via the *Telecommunications Numbering Plan 1997* (which the ACMA is required to produce under the *Telecommunications Act 1997*). A carriage service provider may apply for allocation of a number or range of numbers. Different allocation processes apply for different number ranges. The Numbering Plan also regulates how carriage service providers may assign numbers to end users and recover assigned numbers.	Numbers are allocated under the Number Administration Deed and its Numbering Allocation Rules. The Deed is governed by a Management Committee, which primarily comprises representatives from operators and administered by a Number Administrator. A party to the Deed may apply for an allocation of numbers from the Number Administrator. Different allocation processes apply for certain number ranges.	Largely aligned in practice but process governed by legislation in Australia and by agreement in New Zealand.
Key obligations re use of numbers	The Numbering Plan regulates (among other things): • when a carriage service provider is entitled to be allocated a number; • how the carriage service provider may assign the number to an end user; • when the carriage service provider may recover a number from an end user and how renumbering may occur;	The Deed and Rules: • set out a number of broad principles which govern administration of numbering resources; • regulate when a party to the Deed is entitled to be allocated a number; and • set out processes for relinquishing and transferring numbers.	Somewhat aligned but more prescriptive regulation about the use of numbers in Australia.

Issue	Australian position	New Zealand position	Degree of alignment
	• the surrender and quarantining of numbers; and • when transfers of numbers between carriage service providers is permitted.		
Requirements for number portability	Provision of local, mobile, local rate, freephone, and premium rate number portability is mandatory. Carriers and carriage service providers must ensure that, from the date on which a service becomes portable, they have: • the technical capability required to provide number portability for the portable service; and • the technology available for use within their network to provide number portability in such a way as to provide equivalent service and enable end-to-end connectivity. The Numbering Plan sets out obligations on carriage service providers to facilitate number portability. Processes to deliver portability are also dealt with in industry codes and standards.	Local, mobile and national toll-free number portability are regulated services. The NZCC has made determinations setting out obligations on service providers to support portability.	Largely aligned except that broader range of numbers subject to mandatory portability in Australia.
Requirements for pre-selection	Carriers and carriage service providers which provide certain types of carriage service must provide pre-selection in the manner determined by the ACMA.	Telecom's fixed PSTN to mobile carrier pre-selection service is a regulated service. Pre-selection must allow an end user to make a call on the Telecom NZ fixed PSTN to a cellular	Somewhat aligned – in New Zealand, pre-selection applies only to Telecom NZ. In Australia (unlike New Zealand) pre-selection accessed through

Issue	Australian position	New Zealand position	Degree of alignment
	Pre-selection must allow an end user to dial an override dial code to select an alternative carriage service provider on a call-by-call basis.	network using a service provider other than Telecom NZ for a part of the fixed network segment of the telephone call, without having to enter an additional number or prefix.	override codes.
Interception			
Obligation to retain call data	There are no express data retention obligations (although legislation does deal with access to call data that is retained by carriers and carriage service providers). The Federal Government is considering the introduction of data retention obligations.	There are no express data retention obligations (although legislation does deal with access to call data that is retained by carriers and carriage service providers). The New Zealand Government is considering the introduction of data retention obligations.	Largely aligned.
Obligation to allow / facilitate interception	Carriers and carriage service providers must ensure their networks are capable of interception for law enforcement purposes (including through the preparation of annual "interception capability plans").	Network operators must ensure their networks and services are capable of interception for law enforcement purposes.	
Radio spectrum			
Requirement for separate licence for radio spectrum	Yes.	Yes.	Largely aligned, except no concept of management rights in Australia.
Process for obtaining licence	Licences are allocated by the ACMA. Spectrum licences are most relevant for the telecommunications industry, and are generally allocated via auction.	Licences are allocated by the Ministry of Economic Development (or by a person who has acquired the Management Rights to the band, the Band Manager). Spectrum licences are most relevant for the telecommunications industry, and are generally allocated via auction.	

Issue	Australian position	New Zealand position	Degree of alignment
Licence fees	In addition to the "spectrum access charge" payable for the issue of a spectrum licence, a licensee must pay an annual spectrum licence tax.	In addition to the amount payable at auction, a licensee must pay annual fees and an annual licence administration fee.	
Typical licence conditions	Spectrum licences generally permit use of designated frequencies in designated areas. Licence conditions typically specify (among other things): • technical requirements about the authorised transmissions (eg the permitted frequencies and geographic areas, and in-band and out-of-band emission limits); • an obligation to pay all applicable fees and charges; • that transmitters can only be operated if they meet the ACMA's registration requirements; • that when the licensee derives profit from operating devices under the licence, the licensee must be an Australian resident or the profits must be attributable to a permanent establishment in Australia; and • an obligation to comply with any rules set by the ACMA about authorising third parties to operate devices using the	Spectrum licences generally permit use of designated frequencies in designated areas. Licence conditions typically specify (among other things): • technical requirements about the authorised transmissions (eg the permitted frequencies and geographic areas, and in-band and out-of-band emission limits); • an obligation to comply with the International Radio Regulations and with relevant technical specifications or standards; • an obligation to comply with any directions given by the regulator; • an obligation to hold any required certificate of competency; and • requirements about providing information to the regulator.	

Issue	Australian position	New Zealand position	Degree of alignment
	licence and to notify such third parties about their obligations under the *Radiocommunications Act 1992*.		
Ability to appeal a decision not to grant a licence	Merits review of a decision not to issue a spectrum licence is not available. However, an application may be made to the ACMA to reconsider a decision not to issue an apparatus licence.	There are no provisions which specifically grant an ability to appeal a decision.	
Ability to transfer a spectrum licence	Spectrum licences may be transferred after providing the ACMA with information about the transfer. The ACMA may make rules about transferring spectrum licences, and may vary the conditions of a spectrum licence to give effect to a transfer.	Licence conditions may indicate whether the spectrum licence may be transferred and whether or not the Band Manager's consent is required. Transfers must be executed in the prescribed form.	
Potential consequences of a failure to comply	For a body corporate, penalties of up to $165,000 apply for failing to hold a radiocommunications licence when required ($2,200 if the device operated is a receiver). A court may also order an injunction, damages, forfeiture or sale of devices, or such other order as the court thinks just.	For a body corporate, penalties of up to $200,000 apply for failing to hold a radiocommunications licence when required. A court may also order an injunction, damages, forfeiture or sale of devices.	
Telecommunications consumer protection			
Contracting arrangements	A carriage service provider may contract with an end user for the supply of certain carriage services, by incorporating a "standard form of agreement" by reference.	No similar regime.	Not aligned – no ability to incorporate a standard form of agreement by reference in New Zealand.

Issue	Australian position	New Zealand position	Degree of alignment
Untimed local call obligations	All carriage service providers must provide consumers and charities with an option for untimed local calls.	As part of the universal service arrangements, a Deed between Telecom NZ and the Crown (the TSO Deed for Local Residential Telephone Services) provides that Telecom NZ's residential subscribers are entitled to a "local free calling option".	Somewhat aligned but local call requirements apply only to Telecom NZ in New Zealand.
Who is subject to retail price controls and how are they determined?	Telstra is subject to a specific price control regime. Telstra's retail price controls are determined by the Minister. The Minister may determine the price controls by way of a "cap" or by setting out principles with which Telstra may change its retail prices.	Only Telecom NZ. There is no legislative regime for price regulation but the TSO Deed for Local Residential Telephone Services provides that: • the standard residential line rental fees may not increase in real terms (unless it would impair Telecom NZ's overall profitability of its fixed business); • rural line rental fees will be no higher than standard residential rental fees; and • Telecom NZ's residential subscribers are entitled to a "local free calling option".	Not aligned – no regulatory ability to impose generic retail price controls in New Zealand other than through universal service arrangements. In practice, much broader retail price controls in Australia.
Obligation to provide emergency call services	The ACMA must make a determination imposing requirements on carriage service providers relating to emergency calls. All CSPs are required to ensure their end users can access emergency call services free of charge, and are required to do their best to ensure the carriage of emergency calls to the emergency call person (with limited exceptions).	No legislative obligation to provide emergency call services. There is a voluntary Emergency Calling Code. The telecommunications development levy can be used to pay for and upgrade emergency call services.	No legislative obligation to provide emergency call services in New Zealand (voluntary code only). However practical outcome in terms of availability of emergency calling is similar.

Issue	Australian position	New Zealand position	Degree of alignment
Obligations about minimum standards of service	Carriage Service Providers must comply with a "customer service guarantee", comprised of: • performance standards about wholesale services made by the Minister; • performance standards for retail services made by the ACMA; and • benchmarks in relation to those performance standards made by the Minister. Compensation must be paid to customers if the performance standards for retail services are not met. The ACMA may also direct a carriage service provider to take specified action to ensure the provider does not contravene a performance standard or that the provider's compliance reaches a certain goal or target. A range of generic consumer protection laws also apply.	No specific obligations impose minimum service standards on service providers. However, generic consumer protection laws apply.	Not aligned – no telecommunications-specific service standards in New Zealand.
Other telco-specific consumer protection obligations	Carriage service providers must participate in the Telecommunications Industry Ombudsman scheme for dealing with customer complaints. The ACMA may determine that specified payments made by residential customers to carriage service providers are "protected" against the service provider failing to provide the contracted services.	None.	Not aligned – no telecommunications-specific consumer protection standards in New Zealand.

Issue	Australian position	New Zealand position	Degree of alignment
	A specific regime applies to the use of numbers to supply telephone sex services.		
Spam regulation	Spam is regulated under the *Spam Act 2003*. The Act covers email, instant messaging, SMS and MMS (text and image-based mobile phone messaging) of a commercial nature. It does not cover faxes or voice telemarketing. A person must not send, or cause to be sent, unsolicited commercial electronic messages subject to certain exceptions. Australia's e-marketing and internet industries have developed separate, complementary codes of practice dealing with unsolicited commercial messaging.	Spam is regulated under the *Unsolicited Electronic Messages Act 2007*. The Act covers all electronic messages except for voice calls. A person must not send, or cause to be sent, unsolicited commercial electronic messages.	Largely aligned but broader scope of electronic messages regulated in New Zealand.
Telemarketing scheme	Voice telemarketing and faxes are regulated through the *Do Not Call Register Act 2006*. The Act creates a secure database where phone and fax numbers can be listed to avoid receiving unsolicited telemarketing calls and marketing faxes. There is also an industry standard for telemarketing and research calls which the ACMA enforces.	No binding scheme. A voluntary scheme (the Do Not Call scheme) applies to members of the Marketing Association industry body. However, the *Privacy Act 1993* may prevent information being used for voice telemarketing.	Not aligned – no binding scheme regulating telemarketing in New Zealand.
Regulation of data offshoring	The *Privacy Act 1988* requires private sector organisations (except for small businesses) to protect the privacy of personal information collected by them, including to transfer personal information about an individual offshore only in	The *Privacy Act 1993* governs management of personal information, and there is a Telecommunications Information Privacy Code made under the Act. There is no express prohibition on data offshoring but the New	Largely aligned.

Issue	Australian position	New Zealand position	Degree of alignment
	limited circumstances (such as where there recipient is subject to similar principles to those set out in the *Privacy Act 1988*). There are also telco-specific privacy provisions which apply to carriers and carriage service providers in the *Telecommunications Act 1997*.	Zealand Privacy Commissioner may prohibit offshoring of personal information if satisfied that that the recipient State does not provide comparable safeguards and there would be a contravention of the OECD privacy guidelines.	
Universal service			
Is there a concept of universal service?	Yes.	Yes.	Largely aligned except that there is more flexibility in New Zealand to determine the scope of universal services.
Liability to make contributions	A "participating person" is liable to make contributions. A "participating person" is a carrier whose gross annual telecommunications sales revenue in Australia exceeds a certain threshold (currently $25 million).	A service provider is liable to make contributions if it generated NZ$10 million in revenue for that financial year from supplying telecommunications services by way of or which rely on the existence of a public telecommunications network.	
Allocation of universal service obligation	Under new reforms, the universal service obligation is managed by Telecommunications Universal Service Management Agency (**TUSMA**). TUSMA will contract with Telstra to deliver universal service (and after an interim period, future contracts for the delivery of universal service will be allocated by tender).	The obligation to provide universal service is allocated by Deed between the Crown and the provider.	
Scope of universal service obligation	The obligation is to ensure standard telephone, payphone and carriage services are supplied, installed, maintained, and are reasonably accessible to all people in Australia regardless of their place of residence or business. The	Obligations may be declared by the Minister. There are currently two relevant instruments: • the TSO Deed for Local Residential Telephone Service between the Crown and Telecom NZ; and	

Issue	Australian position	New Zealand position	Degree of alignment
	universal service arrangements also include the "national relay scheme" (which provides a telephone typewriter solution for people with a speech or hearing impairment).	• the TSO Deed for Telecommunications Relay Services (TRS) for the hearing impaired between the Crown and Sprint. Services that form part of the obligation include residential telecommunications services and relay services (which provide a solution for people with a speech or hearing impairment). The Crown may also use universal service funds for non-urban telecommunications infrastructure development or any other purpose the Minister considers relevant. A review of the local service TSO arrangements will take place during 2013.	
Telecommunications-specific administrative arrangements			
Foreign ownership restrictions	No more than 35% of Telstra shares may be held by foreign entities, and no more than 5% by any single foreign entity.	Under the Telecom NZ constitution: • the consent of the Minister of Finance and the Board is required before any person may hold more than 10% of shares; and • the consent of the Board is required before a non-NZ national may hold more than 49.9% of shares. Under the Chorus constitution, the consent of the Crown is required before • any person may hold more than 10% of shares; and	Both jurisdictions maintain amongst the most open telecommunications industries in the world in terms of foreign ownership, save for legacy restrictions on ownership of the former incumbents. The latter rules are somewhat aligned but less restrictive in New Zealand.

Issue	Australian position	New Zealand position	Degree of alignment
		• a non-NZ national may hold more than 49.9% of shares.	
Enforcement powers available to investigate and enforce telecommunications laws	Telecommunications legislation provides for a suite of enforcement powers including: • injunctions against persons engaging in contravening conduct on application by the Minister, ACMA or the ACCC; • pecuniary penalties; • enforceable undertakings; • infringement notices for contravention of certain provisions.	In addition to the enforcement powers contained in the *Commerce Act 1986* (NZ), telecommunications legislation provides for investigation and enforcement powers including: • orders to enforce determinations or undertakings; • pecuniary penalties; and • civil infringement notices.	Largely aligned.
Regulator's information gathering powers under telecommunications laws	The ACMA may obtain information from carriers, carriage service providers and other persons where the information is relevant to, or capable of giving evidence relevant to, the performance of any of the ACMA's telecommunications functions or the exercise of any of the ACMA's telecommunications powers. Searches may be undertaken under warrant, with consent or in emergencies. The ACCC may require a person to provide information if it has reason to believe the person can provide evidence relating to a possible contravention of competition law (including the telco-specific access and competition regimes). As noted above, the ACCC may also make rules	The NZCC may obtain information from access providers about their operation and behaviour. The information that must be disclosed includes: contracts, price, terms, transaction details, performance measures, statistics, plans, forecasts and network capacity information.	Somewhat aligned – power to obtain information significantly broader in Australia.

Issue	Australian position	New Zealand position	Degree of alignment
	requiring a carrier or carriage service provider to prepare and provide reports to the ACCC.		

It is also relevant to consider the way in which regulatory mechanisms are implemented in practice. The NZCC and the ACCC / ACMA often adopt different regulatory approaches even in areas where legislation itself is largely aligned. For example:

- in preparing Standard Terms Determinations, the NZCC has expressly relied on industry bodies or participants (such as the New Zealand Telecommunications Forum, Telecom NZ or Vodafone) to prepare initial drafts, service descriptions and technical standards. In comparison, in preparing access determinations and (previously) model terms and conditions, the ACCC has prepared the initial drafts of the documents itself and then sought industry comment through consultation; and

- the public conferences that take place before a Standard Terms Determination is finalised in New Zealand are formal proceedings. Transcripts of the proceedings are publicly available and in practice these conferences have proven helpful in reaching consensus between access seekers and access providers on many issues. This contrasts to the Australian approach where hearings are less formal and their efficacy in achieving consensus or assisting the ACCC to prepare access determinations, remains to be seen.

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B. COSTS OF INCONSISTENT REGULATION

Differences between the Australian and New Zealand telecommunications regimes do impose costs on those market players operating in both, or wanting to operate in both, the Australian and New Zealand markets. Generally, these cost impacts fall into the following categories:

2.1 Barriers to entry

A lack of harmonisation hinders the convergence of the Australian and New Zealand markets. For instance, harmonised regulation could enable more seamless provision of services across both countries resulting in a larger customer base and encouraging market entry in both countries. As examples of seamless provision of services, harmonised regulation could ensure both countries' consumer protection regimes allow service providers to use the identical billing format and could ensure both countries' technical regulation allow a service to be provided with the same specifications.

2.2 Direct costs imposed on market players

For market players operating in both markets, a direct effect of inconsistent regulation is the extra cost associated with complying with two separate regulatory regimes. These direct costs include the resources required to ensure compliance with both regimes and to report to two sets of regulators. This can significantly increase the cost of rolling out a service to both countries – as issues like numbering, competition law, and obtaining access to regulated services all need to be separately considered for both countries, and there may be significant costs involved in adapting a service to comply with each country's regulatory requirements.

2.3 Costs and efficiency of regulation

Harmonised regulation across jurisdictions would enable regulators to reduce their costs by sharing resources, pooling expertise, improving their efficiency and encouraging consistent decision-making.[16]

Both the Australian and the New Zealand telecommunications regulatory regimes adopt "cost recovery" mechanisms – where the cost of regulation is imposed on service providers (eg, for carrier licensing fees in Australia and numbering fees in New Zealand). Barriers to regulatory efficiency increase the costs of regulating these schemes, meaning that market players face higher regulatory fees which are passed on to end users.

2.5 Limiting innovation

A lack of regulatory harmonisation can limit the ability of service providers to create economies of scale, which would benefit end users. An example of harmonised regulatory policy is the joint work of the ACMA in Australia and the Ministry of Economic Development in New Zealand on the band plan for the 700 MHz "digital dividend" spectrum, as discussed in the Telstra and TelstraClear joint submission of 31 May 2012. Because of this mutually agreed band plan, equipment manufacturers will give much higher priority to designing and supplying equipment that can be used in the Australian and New Zealand markets than would be the case if they had adopted divergent band plans.

[16] Tania Voon and Andrew Mitchell, *Achieving a Common Market for Telecommunications Services in Australia and New Zealand*, Australian Year Book of International Law Vol 26, p149, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1083002

At present, differences between Australian and New Zealand laws may require regulators to emphasise different factors or adopt different priorities in their decision-making.[17] This may lead to divergent regulatory outcomes – even if a harmonised solution would deliver greater overall benefits for both countries.

[17] For example, there is no equivalent in the *Radiocommunications Act 1989 (NZ)* to the Object set out in section 3 of the *Radiocommunications Act 1992 (Cth)*.