



Government of the Cook Islands

Cook Islands Telecommunications Market Competition Policy 2019 – Final



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Prepared by the Economic Planning Division, Ministry of Finance and Economic Management and the ICT Division, Office of the Prime Minister, in collaboration with the Pacific Private Sector Development Initiative, a technical assistance project of the Asian Development Bank.

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Abbreviations and acronyms

ADB	Asian Development Bank
ccTLD	Country code Top-Level Domain. For the Cook Islands, .ck.
CM	Cabinet Minute
GB	gigabyte
ICT	Information Communication Technology
MB	megabyte
MEO	Medium earth orbit – satellite with an orbit within the range from a few hundred miles to a few thousand miles above the earth's surface
MFAT	New Zealand Ministry of Foreign Affairs and Trade
MFEM	Ministry of Finance and Economic Management
NICTA	National Information & Communications Technology Authority (Papua New Guinea)
NSDP	National Sustainable Development Plan
OTT	Over the Top – refers to content or messaging transmitted over the Internet rather than by traditional means e.g. Netflix, HBO Now (content) and Skype, WhatsApp (messaging)
PSDI	Pacific Private Sector Development Initiative
PABX	Private Automatic Branch Exchange – a telephone switch located in a customer's premises that primarily establishes voice-grade circuits between individual users (extensions) and the switched telephone network ¹
TCI	Telecom Cook Islands Limited
TCNZ	TCNZ Cook Islands Limited
TPP	Telecommunications Policy Principles – endorsed by Cabinet of Cook Islands Government in 2013
UN	United Nations
VoIP	Voice over Internet Protocol
VSAT	Very Small Aperture Terminal – a satellite communications system that serves home and business users

¹ Goleniewski, L (2007). *Telecommunications Essentials* (2nd edition), p 786.

Foreword

Kia Orana,

An efficient, effective and competitive telecommunications industry that provides high quality and affordable information and communication technology (ICT) services is essential to improving the standard of living across the Cook Islands.

Cook Islanders, at work and at home, rely daily on a wide range of ICT services to conduct business, connect with friends and family across the globe, and for entertainment.

The Cook Islands has been serviced by a single telecommunications operator, partly owned by the Government, under a legislated monopoly since 1989, with limited independent oversight.

While this approach has served the Cook Islands well to date, the ICT landscape, here and abroad, has changed dramatically since the *Telecommunications Act 1989* came into force. Innovation and development in the telecommunications industry in the form of new services – such as the ‘app’ economy – are posing new challenges and opportunities for established regulation.

The local infrastructure landscape is also changing. The Manatua Cable, which is expected to start service in mid-2020, will provide fast, reliable and affordable internet services.

In addition, experience elsewhere in the world has demonstrated the benefits of competition in the telecommunications industry: for consumers through access to new services and lower service prices, and for business through new investment opportunities.



The Government is committed to opening the telecommunications market to competition to secure these benefits, and at the same time adapting the regulatory framework so that it is fit for purpose in this 21st Century ICT environment. The Government’s policy in this regard is set out in the *Telecommunications Market Competition Policy 2019*.

A key element of the new policy is a Universal Access commitment. This will ensure that affordable and quality telecommunications and internet services remain available to all Cook Islanders, especially those living in the Pa Enua.

I would like to thank all those that have contributed to the development of this policy, including the Asian Development Bank-funded Pacific Private Sector Development Initiative. I would also like to thank all stakeholders that took the time to engage in the public consultation on the draft policy.

Kia Manuia,

Hon. Mark Brown
Deputy Prime Minister/ Minister of Finance

Document structure

This document is organised in five parts:

- **Part I: Policy rationale and objectives** describes the current state of affairs in the Cook Islands telecommunications industry, presents the Government's reasons – the policy need – for liberalising the market, sets out the Government's objectives in this regard, and the principles underpinning the policy.
- **Part II: Independent regulatory authority** presents the form and function of the independent regulatory authority that will be established to regulate telecommunications network operator and service providers under the new legislative arrangements.
- **Part III: Telecommunications regulatory framework** sets out the legislative arrangements that will open the Cook Islands telecommunications market to competition.
- **Part IV** sets out the key measures ensuring an orderly transition from the current regulatory arrangements to the new framework described in **Part III**.
- **Part V** summarises the Government's consultation on the draft policy and legislation, and key changes made in response to stakeholder submissions.

Executive summary

Introduction

The *Cook Islands Telecommunications Market Competition Policy 2019 (Policy)* sets out the Government's approach to opening the telecommunications market to competition and regulating service providers in an efficient and effective manner that achieves the Government's objectives for the telecommunications sector.

The Policy has been informed by feedback from stakeholders, both industry and the Cook Islands community, on a draft policy published in May 2019, and the draft Competition and Regulatory Authority Bill 2019 and the Telecommunications Bill 2019 that will give effect to the new framework, published in October 2019.

Policy rationale

Telecommunications services – fixed line, mobile, internet and other services – have been provided in the Cook Islands by a single operator, pursuant to a statutory monopoly since 1989 under the *Telecommunication Act 1989* (and amendments of 1991, 1992, 1997 and 2003).

The Government considers that the Cook Islands would benefit, as many other Pacific islands countries have benefitted, from the introduction of competition to the market for telecommunications services. Competition has been defined as 'a process of rivalry between firms seeking to win customers' business over time by offering them a better deal.'²

Competition is expected to deliver benefits to consumers through lower prices, increased consumer choice and service quality, and improved incentives to invest and innovate. Prices will be lower because the pressure of competition will force service providers to find the most efficient, lowest cost ways of providing services.

The provision of telecommunications services is not currently subject to formal independent regulation in the Cook Islands. In the past, while the telecommunications operator has been licensed by the Government and has agreed with the Government to meet certain services commitments, it has otherwise been largely self-regulating. Where there are no competitive forces at play nor independent scrutiny, there exists the potential for inefficiency in terms of either higher prices or lower service.

In addition, innovation and development are highly desirable in the Cook Islands telecommunications industry. The construction of the Manatua Cable will bring an important opportunity for innovation in services and will pose new challenges for established regulation.

Finally, the current statutory and regulatory framework for telecommunications in the Cook Islands has not been substantially revised since 1989, though postal services have been added and some changes made by amendments. That framework has not kept pace with the rapid developments in technology and business models in the telecommunications industry. The framework is also affected by various gaps and inconsistencies. The Government

² Competition Commission and the Office of Fair Trading *Merger Assessment Guidelines: OFT1254* (2010) para 4.1.2.

therefore considers that revising and updating the telecommunications regulatory framework is in the interests of the telecommunications industry and users alike.

Policy response

The Government's ICT vision, as stated in the National Information and Communication Technology Policy 2015–20 (**ICT Policy**), is:

ICT will be effectively utilized to achieve sustainable improvements in social, economic, cultural, and good governance thus improving the quality of life of all Cook Island citizens.

The *Cook Islands Telecommunications Market Competition Policy 2019 (Policy)* aims to further the achievement of the Government's ICT vision by creating a policy and legal framework under which service providers will have the opportunity to enter, invest in and competitively supply telecommunications services in the Cook Islands.

More specifically, the primary objective of the Policy is to enable the emergence and development of competition among suppliers of telecommunications services, for the long-term benefit of end users:

- promoting consumer welfare (e.g. access to new services and lower service prices);
- creating opportunities for investment; and
- ensuring high quality, sustainable reliable telecommunications infrastructure.

The Government will give effect to the new regulatory framework through two new Acts:

- the *Competition and Regulatory Authority Act 2019*; and
- the *Telecommunications Act 2019*.

The *Competition and Regulatory Authority Act 2019* sets out the form, function and general powers of the telecommunications industry regulator. The Government has also identified a need for independent regulation of the provision of monopoly services in the electricity and water and sewerage industries. The proposal, endorsed in principle by Cabinet on 15 August 2018 (CM (18) 0215), is to extend the role of the telecommunications regulator to include the two additional sectors, following its establishment. A separate regulatory authority Act will make it easier to accomplish this.

Table ES1 summarises the proposed key roles and responsibilities of the Authority that are set out in the new *Competition and Regulatory Authority Act 2019*. See **Part II** of the Policy for more detail.

Table ES1: Competition and Regulatory Authority summary

Key element	Policy position summary
<p>Competition and Regulatory Authority</p> <p>The independent statutory organisation charged with effective regulation of the telecommunications industry.</p>	<p>Establishment of an Authority:</p> <ul style="list-style-type: none"> • Minimum of 1 and maximum of 3 members. • Powers –investigative, apply to court for penalties for infringements. • Review – judicial, expert panel review. • Scrutiny – public consultation and publication of decisions. • Funding – joint industry and Government.

The new *Telecommunications Act 2019* sets out the new framework for regulating a competitive telecommunications industry. The key policy elements that are given effect to in the new Act are summarised in Table ES2. See **Part III** of the Policy for more detail.

Table ES2: Telecommunications competition policy summary

Key element	Policy position summary
<p>Overarching objective</p>	<p>Authority required to have regard to the long-term benefit of end users in exercising any power performing any function through:</p> <ul style="list-style-type: none"> • efficient pricing and use of, and sustainable investment in, telecommunications networks; • innovation in, and in the use of, radiocommunications and telecommunications services; • internationally competitive outcomes for end users; • effective and fair competition in the supply of radiocommunications, telecommunications services and customer equipment; • efficient use of scarce resources required for radiocommunications, telecommunications services, and telecommunications networks; • equitable access to telecommunications services and telecommunications networks for end users no matter where they live or work in the Cook Islands; • fair and transparent dealing between service providers and end users.
<p>Licensing of telecommunications service providers</p> <p>The means by which the Authority will exercise control, in the public interest, over the opportunity to offer telecommunications services to the public.</p>	<p>Authority to issue telecommunications licence by type for fixed period, with spectrum licences separate.</p> <p>TCI network operator licence set out in Schedule 2 to the Act.</p> <p>Initial core licence terms conditions set out in the legislation, subject to variation by the Authority: scope, term, fees, Universal Service Obligation etc.</p> <p>Power for the Authority to vary, suspend, cancel and renew licences.</p>
<p>Interconnection between telecommunications networks</p>	<p>Bill and keep charging regime – each operator recovers its costs of providing interconnection to other operators through its retail charges.</p>

Key element	Policy position summary
<p>Enables a customer of Network A to place a call to a customer of Network B.</p>	<p>Power for the Authority to:</p> <ul style="list-style-type: none"> • set ex ante bill and keep safeguards to avoid manipulation/ unfair burdens; • determine 'Interconnection Principles' applicable to licensed operators e.g. thresholds, location of traffic handover, form of interconnection; • assist in resolving an interconnection dispute. <p>Obligation to on operators to:</p> <ul style="list-style-type: none"> • supply interconnection services and carriage services on an equivalent basis; • endeavour to negotiate a commercial arrangement for interconnection.
<p>Access and resale</p> <p>'Resale' refers to the purchase of a network operator's wholesale services for the purpose of distribution to customers at the retail level, using the reseller's branding and billing arrangements.</p> <p>'Access' refers to the access of a network operator or a reseller to infrastructure (e.g. towers, poles, ducts, manholes, cabinets, etc.) that are owned by another operator or reseller.</p>	<p>Right for a telecommunications licensee to have reasonable access to the facilities of another licensee, either on a reciprocal basis or the Authority's estimate of reasonable incremental costs of shared access.</p> <p>Right for a licensed reseller to acquire services from a network operator for resale, at a price negotiated between the two or, failing agreement, at a price determined by the Authority.</p> <p>Authority power to:</p> <ul style="list-style-type: none"> • determine resale prices for (wholesale) acquisition of services by a reseller; based on the network operator's effective retail price minus a margin to be determined by the Authority; • mandate the provision of access to a specified facility on terms and conditions determined by the Authority.
<p>Consumer protection</p> <p>Telecommunications services are an important and regular consumer purchase, for very many Cook Islanders. The Government considers that consumers' rights require protection in relation to telecommunications services.</p>	<p>Licensees obliged to:</p> <ul style="list-style-type: none"> • establish consumer complaints-handling procedures, with the Authority investigating unresolved complaints; • not engage in misleading or deceptive conduct; • provide services that meet minimum quality/reliability standards (that may be prescribed by the Authority) and pay compensation if in breach; • protect the privacy of users' communications, subject to lawful interception with warrant; • protect the confidentiality of users' personal information. <p>Authority power to make a binding Consumer Code.</p>
<p>Numbering resource</p> <p>Telecommunications subscriber numbers are a finite resource which the Government considers should be managed in the best interests of Cook Islands telecommunications users.</p>	<p>Authority to:</p> <ul style="list-style-type: none"> • determine a National Numbering Plan; • allocate number ranges and codes to licensed operators; • determine rules around emergency services number assignment, priority, capacity and quality; • review number portability, at the request of the Minister.

Key element	Policy position summary
<p>Competition safeguards</p> <p>Means to safeguard against anti-competitive conduct and other acts that could undermine the Government's market liberalisation objectives.</p>	<p>Authority power to:</p> <ul style="list-style-type: none"> • make price control regulations via Executive Order, but only if there is no effective competition in the market for the telecommunications service in question and price control regulations are in the long term economic and social interests of end users; • specify 'rules of competitive conduct'; • apply penalties for anti-competitive conduct. <p>Prohibition on:</p> <ul style="list-style-type: none"> • licensee with substantial degree of market power engaging in conduct that will substantially lessen competition; • licensee with substantial degree of market power engaging in price discrimination at wholesale level, except based on substantiated differences in costs; • two or more operators engaging in concerted practices that would substantially lessen competition e.g. price fixing.
<p>Radio spectrum resource</p> <p>The radiofrequency spectrum is a resource which the Government considers should be managed in the best interests of Cook Islanders.</p>	<p>Authority power to:</p> <ul style="list-style-type: none"> • allocate, licence and assign Cook Islands radio spectrum frequencies; • declare vacant spectrum that has previously been assigned, and assign it to a different person, with or without compensation; • establish effective liaison on spectrum matters. <p>Minister to make regulations, on advice of the Authority, for licence fees, tenders, auctions or other means of allocating spectrum within specified bands.</p>
<p>Technical standards</p> <p>The telecommunications industry is technically complex, with the quality, reliability and security of services, and the safety and security of end users, dependent on operators' and customers' use of equipment that meets appropriate standards.</p>	<p>Authority power to:</p> <ul style="list-style-type: none"> • determine technical standards for interconnection or access between operators; • determine technical standards to protect against damage to networks/ facilities, degradation of service quality, public nuisance, environmental harm or danger to persons; • recognise and apply technical standards and rules of other countries; • prohibit the use or supply of equipment that does not comply with technical standards.
<p>Universal service</p> <p>The Government considers that all Cook Islanders should have access to a certain basic level of telecommunications, regardless of where they live.</p>	<p>Authority power to:</p> <ul style="list-style-type: none"> • make and update a Universal Service Plan (USP); • impose levies on service providers, end users or telecommunications services to support universal access; • establish and manage the USP fund, subject to transparency requirements.

Key element	Policy position summary
<p>Public emergencies</p> <p>The Government considers it desirable to confirm access to telecommunications services in circumstances of a 'disaster' or 'emergency' in terms of the Disaster Risk Management Act 2007.</p>	<p>Licensed operators to be compelled to cooperate with Emergency Management Cook Islands in making telecommunications continuation or restoration plans after a disaster or emergency;</p> <p>The Response Executive, after a state of disaster or emergency has been declared, may direct a licensed operator to carry, or refrain from carrying, messages of a specified nature, or to provide telecommunications services of a specified kind. The Government to pay compensation to any licensed operator for any costs it may incur in complying with a direction of this kind.</p>
<p>Access to land</p> <p>To facilitate network construction and maintenance, licensees' access to third parties' land (including public land) for the purposes of constructing or maintaining networks.</p>	<p>Powers for licensed network operators as an infrastructure manager under the <i>Infrastructure Act 2019</i> to gain access to land for repair, maintenance, installation, etc. of facilities.</p>
<p>Domain management</p> <p>The Cook Islands country code top-level domain (ccTLD) '.ck' is currently managed by the incumbent operator.</p>	<p>Power for the Authority to oversight the ccTLD and all domains under it.</p>
<p>Transition arrangements</p> <p>Arrangements for an orderly transition from the current to the proposed new regulatory framework.</p>	<p>The key arrangements for a 4-year transitional period are:</p> <ul style="list-style-type: none"> • TCI provided with a network operator licence in Schedule 2 to the <i>Telecommunications Act 2019</i>. • TCI not required to pay a network operator licence fee in the first 3 years. • TCI required to continue to provide Pa Enea, broadcasting, marine radio and postal services during the transitional period. • Current radiocommunications licences and certificates are continued under the new framework. • During the transitional period, the Authority will only issue one additional mobile network or mobile service provider licence subject to meeting eligibility criteria determined by the Minister.

PART I: Policy need and objectives

Part I describes the current situation in the Cook Islands telecommunications industry, presents the Government's reasons – the policy need – for liberalising the market, sets out the Government's objectives in this regard, and the principles underpinning the *Cook Islands Telecommunications Market Competition Policy 2019*.

1.1 Background

1.1.1 Telecommunications services in the Cook Islands

Telecom Cook Islands Limited

Fixed and mobile telecommunications services are currently provided in the Cook Islands solely by Telecom Cook Islands Limited, trading as Bluesky Cook Islands (**TCl**). TCl, a company incorporated under the *Companies Act 1970-71*, is a 60:40 joint venture between TCNZ Cook Islands Limited (**TCNZ**) and the Cook Islands Government.

Teleraro Limited, a consortium led by the Bluesky Group, acquired the TCNZ shares in February 2015 from Spark New Zealand. The consortium includes a Trust which holds 10 per cent of the Teleraro shares on behalf of participating TCl employees in the Cook Islands. It also includes a Trust which holds 15 per cent of the shares of Teleraro for Cook Islanders to purchase.

In February 2019 Amalgamated Telecom Holdings Limited (**ATH**) of Fiji acquired the controlling interest in the Bluesky group of companies from Amper SA which gives ATH the controlling interest in TCl.³ In 2010 TCl contracted with satellite operator O3b Networks, for internet service to the Cook Islands by means of medium earth orbit (**MEO**) satellite transponders. This service was launched in Rarotonga in late 2013.

All internet connectivity in the Cook Islands is provided by TCl. Some commercial users obtain satellite internet connectivity via Very Small Aperture Terminal (**VSAT**) terminals under arrangements with TCl.

TCl describes its service offerings as follows:⁴

Bluesky's product range offers core telecommunication services of fixed-line, mobile, internet, postal and Moana TV (IPTV). Products for the home and individual users as well as corporate solutions to corporate clients (PABX, dedicated lines), international and national (long distance) calling services, prepaid calling cards, wifi/hotspots, e-charges services, mobile products and accessories.

TCl provides comprehensive fixed line, mobile phone and broadband network coverage, as shown in Table 1.

³ <http://www.ath.com.fj/images/athcompletespaymentbluesky.pdf>.

⁴ <http://www.bluesky.co.ck/about-us>. Accessed 22 January 2019.

Table 1: TCI service coverage indicators

Service	Detail
Network coverage	91 per cent of occupied premises connected by fixed line broadband service. 99 per cent geographical coverage for mobile services with over 15,200 active subscribers. 99 per cent broadband coverage with each populated island having access to fixed broadband, prepaid broadband over the mobile network or via wifi hotspots at popular locations.
Broadband speed	Broadband speeds range from 4Mbps/s to 15Mbps/s depending on subscription. Average achievable speed across the network is 21Mbit/s on ADSL2+ technology. Fibre connected businesses on Rarotonga can be provided 1 Gigabit line rate.

Source: TCI.

TCI broadband products and prices are available on the Bluesky website at <http://www.bluesky.co.ck>. Post-paid plans range from \$6.13 per gigabyte (GB) for the standard plan to \$2.33/GB for the Mega plan. Pre-paid products range from \$25/GB for the 3-day pass to \$16.67/GB for the one-month pass.⁵ Promotional rates on prepaid can be much lower.

Monthly post-paid mobile phone plans range from \$49 for 200 minutes of national calls, 1,000 SMS and 3GB data, to \$119 for 600 minutes of national calls, 1,500 SMS and 30GB data. Pre-paid products include the Visitor SIM, targeted at the tourist market, a 15-day product which provides 30 minutes of national calls, 300 SMS and 3GB data for \$49.

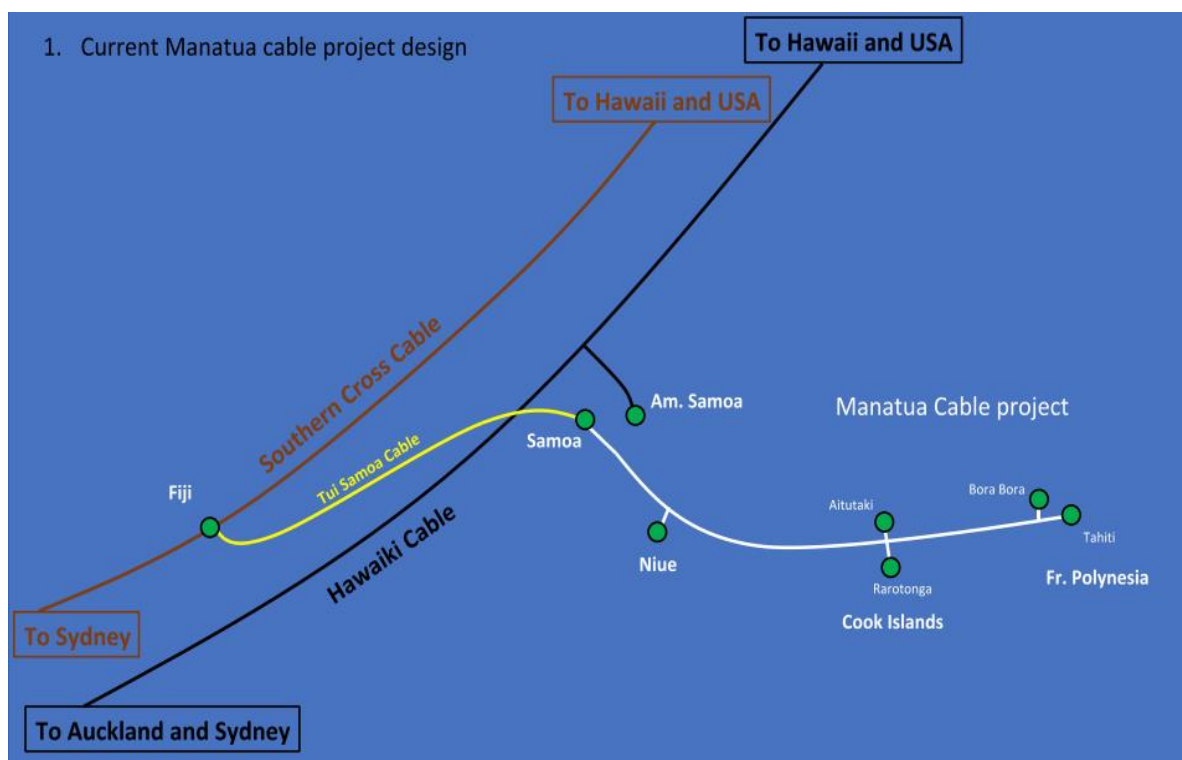
1.1.2 Submarine cable service

Manatua Cable

The Government is in the process of constructing a new submarine telecommunications cable under the auspices of the Manatua Cable project, a four-country partnership between the Cook Islands, Niue, French Polynesia and Samoa. The submarine cable will link Samoa (with onward connections through, for example, the Tui-Samoa and the Southern Cross cable) and French Polynesia (with onward connections to the Honotua Cable) and branches to Niue and the Cook Islands (Rarotonga and Aitutaki) enabling two reliable, high-capacity gateways to the global internet for the Cook Islands.

⁵ Prices as at 10 October 2019.

Figure 1: Manatua Cable configuration



The key objective of the Manatua Cable project is to be an enabler for the provision of reliable, high-capacity bandwidth at affordable prices by retailers for Cook Islands consumers. The Cook Islands' participation in the Manatua Cable project is supported and funded jointly by New Zealand's Ministry of Foreign Affairs and Trade (**MFAT**) and the Asian Development Bank (**ADB**):

- Grant Funding Arrangement with MFAT to fund up to \$15 million of the Cook Islands contribution to the construction of the Manatua Cable, with terms and conditions set out in the *Grant Funding Arrangement: Pacific Connectivity Project- Manatua Submarine Cable Contribution, Activity Code: A12815-A01*.
- 20-year loan agreement with the ADB for US\$15 million, with terms and conditions set out in the *Loan Agreement 3632-COO (Improving Internet Connectivity for the South Pacific Project)*.⁶

Recognising that effective market oversight, in particular price regulation and governance of telecommunications operators is key to ensuring the economic benefits of the proposed investment, the Cook Islands Government committed to the establishment of an effective telecommunications regulatory framework.

The [Cook Islands Government] will ensure that effective telecommunications regulation is established prior to the service date of the submarine cable. This includes the passing of

⁶ <https://www.adb.org/sites/default/files/project-documents/50110/50110-001-lna-en.pdf>.

legislation to enable the creation of [an Authority], as well as the establishment of such an office and the recruitment of an appropriate regulator to perform that function.⁷

.....

The [Authority] will ensure that pricing of internet capacity in both the wholesale and retail markets is set at a fair and competitive level, to ensure that the benefits of the submarine cable are delivered to the end consumer.⁸

The ADB loan agreement for the Manatua Cable also commits the Cook Islands Government to the establishment of an effective telecommunications regulatory framework, with section 5.01 requiring the Government to perform its obligations under the New Zealand GFA.

The supply and installation of the Manatua Cable is underway, with the contract between the Manatua Consortium and Subcom, a US-based undersea cable installation company, coming into force in November 2018.⁹

Avaroa Cable Limited

Avaroa Cable Limited (**ACL**), a wholly Government-owned company, has been established to build, own and operate the Cook Islands portion of the Manatua Cable and provide broadband services to the islands of Rarotonga and Aitutaki. ACL expects to begin providing services in mid-2020.

ACL's primary objective is to provide commercially sustainable, low cost, high quality, wholesale international connectivity services to the Cook Islands. ACL intends to provide a competitive alternative in the wholesale market to current satellite providers.

ACL was established in March 2017 as a limited liability company under Part IV of the *Companies Act 1970-71*. ACL is overseen by a majority-independent board, chaired by a private-sector board member. These steps have been taken to minimise the potential for conflicts of interest, perceived or real, between the Government's policy-making role and its ownership interest in a market participant.

ACL will be subject to the same rules as other telecommunications operators under the new regulatory framework set out in **Part III** of the Policy. This includes licensing by the independent Authority and prohibition on anti-competitive practices, for example.

1.1.3 Regulatory framework

Introduction

The current regulatory framework that governs the provision of telecommunications services in the Cook Islands by TCI comprises a mix of legislation and contractual arrangements. The

⁷ Grant Funding Arrangement: Pacific Connectivity Project- Manatua Submarine Cable Contribution, Activity Code: A12815-A01, p4.

⁸ Ibid, p7.

⁹ <https://www.subcom.com/documents/Manatua-CIF-SubCom-final-19NOV2018.pdf>.

primary legislation is the *Telecommunications Act 1989*, with the contractual arrangements set out in a Joint Venture Agreement (**JVA**) between the Government and TCNZ.

Legislation

The telecommunications industry in the Cook Islands is regulated at present under the *Telecommunications Act 1989* (and amendments of 1991, 1992, 1997 and 2003), and the *Radio Regulations 1993*,¹⁰ made under the *Telecommunications Act 1989*.¹¹

The *Telecommunications Act 1989* sets out:

- TCI as the monopoly telecommunications network operator;
- the powers TCI has in relation to protecting the network, such as tree removal and rights of entry;
- TCI's accountability requirements, including its commercial and non-commercial objectives, and provision of annual statements of corporate intent and annual financial reports to the responsible Minister;
- requirements related to the licensing and regulation of radio apparatus;
- powers for the making of regulations; and
- offences, enforcement and remedies relating to contraventions.

The *Radio Regulations 1993* sets out matters related to:

- the application and grant of apparatus licenses by the Minister;
- privacy in relation to radio communications;
- the management of radio frequency spectrum;
- certificates of competency to operate radio apparatus;
- interfering with radio communications;
- radio communication within territorial limits in relation to ships and aircraft; and
- fees, offences and penalties.

TCI holds the following licences, issued under the provisions of the *Telecommunications Act 1989* and the *Radio Regulations 1993*, to provide a range of services:

- wireless broadband communication service;
- GSM network operation;
- fixed and mobile satellite services;

¹⁰ Available at: <http://dir.bluesky.co.ck/admin/data/files/Radio%20Regulations.pdf>.

¹¹ The principal act is available at: http://www.paclii.org/ck/legis/num_act/ta1989214/. Amendments can found at: http://www.paclii.org/ck/indices/legis/Chronological_Table_of_Acts.html.

- maritime radio services;
- cellular mobile telephone service;
- radio paging network service;
- mobile radio service; and
- radio telephone service to the outer islands, as backup in case of satellite failure.

The following legislation may also apply to telecommunications providers and users, depending on their activities:

- *Broadcasting Act 1989* (and amendments of 1997);
- Consumer Guarantees Act 2008;
- Copyright Act 2013;
- *Crimes Act 1969* (and proposed computer crime amendments);
- *Fair Trading Act 2008* (and amendments of 2012); and
- SPAM Act 2008.

The Government notes that the *Broadcasting Act 1989* is out of date given that Cook Islanders are now viewing and listening to content in new ways. Reform of the *Broadcasting Act 1989* might therefore be considered, in consultation with broadcasters and the public, in the future.

Joint Venture Agreement

On 30 June 1997, the Government and TCNZ signed a JVA, which sets out the arrangements under which TCI provides services, including:

- operating domestic and international telecommunications systems to, from and throughout the Cook Islands;
- selected radio and broadcasting distribution services for Rarotonga and the outer islands; and
- postal services to Rarotonga and the outer islands.¹²

1.2 Policy rationale

1.2.1 Introduction

Liberalisation of the telecommunications market is a typical case of microeconomic reform. The fundamental objective of microeconomic – or structural – reform is to improve the economy’s technical, allocative, and dynamic efficiency, leading to improvements in social welfare – or standard of living. Effective microeconomic reform requires two things. The first

¹² ADB (2013) Cook Islands: Report on the Feasibility of an International Submarine Cable System for the Cook Islands, p.12; Raymond, J (2017) Bluesky Cook Islands Investment Case Study.

is a commitment to facilitating well-functioning markets and to letting market competition determine economic outcomes where competition is appropriate. The second is effective regulation to guide economic outcomes where competition is not effective.

1.2.2 Competition benefits

The Government's view is that competition in the telecommunications market will drive efficiency improvements that will in turn generate consumer benefits.

The Government's desire to open the telecommunications market to competition, overseen by an independent regulator, is not new.

Over the last decade, the Government has made several efforts to liberalise the market, including the preparation of a draft Telecommunications Bill in 2009. This followed lobbying from the business community for reform, and a report by the Pacific Islands Forum Secretariat in February 2007 on options and strategies to develop the Cook Islands telecommunications market. The report recommended a set of actions to be followed including an immediate tariff review, amendments to the *Telecommunications Act 1989*, and the establishment of a regulator to facilitate the introduction of competition to the sector.¹³

Competition can be defined as 'a process of rivalry between firms seeking to win customers' business over time by offering them a better deal.'¹⁴ In economic terms, competitive rivalry between telecommunications operators is expected to yield efficiency benefits for the economy through:¹⁵

- **better resource allocation** – in competitive markets, service providers respond to price signals, so that consumers can obtain the amounts of goods and services they require at the price they are willing to pay: service providers do not seek to restrict output.
- **more efficient production** – the pressure of competition forces service providers to deliver services at the lowest cost possible: to maximise their profits, service providers must find the most efficient ways of producing their goods or services.
- **innovation** – under competitive conditions, producers are more likely to innovate and develop new products and methods of supplying products or more efficient means of production.

Competitive forces can exert strong pressure on service providers to find the least costly way of serving customer needs and to innovate, in order to better serve those needs. Individual service providers can benefit from cost savings they make in the form of higher profit, and consumers and commercial users downstream can also benefit, as competition from other service providers reduces those profits and drives prices down towards costs.

¹³ Budden, John (2007). Cook Islands Telecommunications Strategy 2007, Economic Infrastructure Advisor. Pacific Islands Forum Secretariat, Suva, Fiji. February 2007: p 3-5.

¹⁴ Competition Commission and the Office of Fair Trading Merger Assessment Guidelines: OFT1254 (2010) para 4.1.2.

¹⁵ See, for example, Whish, R. and Bailey, D. Competition Law (7th edition, 2012): p5-7.

This dynamic process leads to prices that reflect production costs, and to costs that are as low as possible. Both types of efficiency ensure the highest possible levels of income. Not only do falling costs and prices matter but so too do choice, variety and quality. Many consumers routinely look for new options and better delivery.

Another benefit of competition is that it can make an economy more flexible and robust to external shocks. Service providers used to out-guessing rivals daily will be better placed to react to adverse global market developments than producers who have no rivals. Furthermore, service providers with rivals will have a financial incentive to be better informed about likely global market developments.

Potential rivals can be as important as actual ones. Even a monopoly supplier will be unable to inflate costs or profits on a sustained basis if this attracts the entry of a competitor who can produce at lower cost or with a smaller profit margin. So long as it is possible for a competitor to enter at any time with few irreversible costs, this will discipline an incumbent's behaviour. So, the number of actual competitors may be less important than the absence of barriers to entry and exit. Contestability, or the threat of competitive entry, can be as potent an incentive to innovation and cost-cutting as actual competition.

Inevitably, some parts of the network cannot be efficiently duplicated by an entrant. Some degree of mandated access under regulation will remain necessary. The Government is addressing this in the new *Telecommunications Act* by means of "mandatory access services" and "declared access services."

1.2.3 Issues with current arrangements

The current statutory and regulatory framework for telecommunications in the Cook Islands has not been substantially revised since 1989, though postal services have been added and some changes made by amendments.

The framework has not kept pace with rapid development in technology and business models in the telecommunications industry. For example, the current *Telecommunications Act 1989* is premised on the incumbent network operator having a monopoly over the construction and operation of telecommunications networks in Cook Islands. Consequently, the Act makes no provision for interconnection, resale, or access to facilities or services.

The current legislation and regulations made under it also contain various gaps, duplications and inconsistencies. Examples of such problems were brought to light in a case recently before the High Court. In his judgment, Justice Doherty noted:

[T]he [*Telecommunications Act 1989*] has not one section but two dedicated to the making of regulations for the use of apparatus. Both sections 37 and 46 purport to allow the making of regulations concerning the prohibition, licensing and use of apparatus but the regulations themselves give no clue as to which of these sections is the genesis of the regulations. To

the contrary, the regulations purport on their face to be enacted by virtue of section 53 of the Act. There is no section 53, nor has there ever been.¹⁶

His Honour further observed:

[T]his case highlights that the form of the Act and regulations is not optimal in a telecommunications field that has moved so far technically since their enactment and which continues to move apace. The legislative changes foreshadowed by counsel for the Minister will be an opportunity to resolve any anomalies and to give clear guidance to parties wishing to enter and participate in the telecommunications industry in the Cook Islands.¹⁷

Other issues with the current regulatory arrangements include:

- Limited independent regulatory oversight of the telecommunications industry, particularly in relation to service standards, pricing and consumer protection.
- The lack of any formal consumer protection regulation for the telecommunications industry.
- Limited transparency around cross-subsidies that may be embodied in the current universal service arrangements.

The Government therefore considers that revising and updating the telecommunications regulatory framework is in the interests of the telecommunications industry and users alike.

1.3 Policy objectives

1.3.1 Policy purpose and context

This Policy has the following purposes:

- 1) to inform organizations and individuals, including providers and users of telecommunications, of the Government's intended approach toward the liberalisation and future regulation of the telecommunications industry in Cook Islands;
- 2) to provide guidance for telecommunications industry participants, officials and members of the public regarding the Government's objectives in respect of industry liberalisation; and
- 3) to elaborate on the National ICT Policy in respect of issues and proposals in the context of liberalisation of the telecommunications industry.

This Policy should be read together with:

¹⁶ Judgement of Doherty, J, OA No. 1/2017, In the matter between Orama Limited, Telecommunications Minister, Telecom Cook Islands Limited and Attorney-General, 30 November 2017. In the High Court of the Cook Islands held at Rarotonga (Civil Division): para 12.

¹⁷ *Ibid.* para 36.

- the National Information and Communication Technology Policy 2015–20;¹⁸
- the Telecommunications Policy Principles;¹⁹ and
- the National Sustainable Development Plan (NSDP) 2016–20.²⁰

1.3.2 Vision and objective

For the purposes of this Policy, the Government reiterates its vision as stated in the National Information and Communication Technology Policy 2015–20:²¹

ICT will be effectively utilized to achieve sustainable improvements in social, economic, cultural, and good governance thus improving the quality of life of all Cook Island citizens.

This Policy aims to further the achievement of the Government’s ICT vision by creating a policy and legal framework under which service providers will have the opportunity to enter, invest in and competitively supply telecommunications services in the Cook Islands. More specifically, the primary objective of this Policy is to enable the emergence and development of competition among suppliers of telecommunications services, for the long-term benefit of end users:

- promoting consumer welfare — the long-term benefit of end users (e.g. through access to new services and lower service prices);
- creating opportunities for investment; and
- ensuring high quality, sustainable reliable telecommunications infrastructure.

The Expected Outcomes identified in the National ICT Policy as being associated with the Government’s ICT vision are:²²

- All citizens will have Universal Service Access to affordable, reliable, resilient, secure ICT.
- All citizens will have the necessary knowledge and skills to effectively utilize various technologies to access information and online services such as e-learning, telemedicine, e-commerce.
- All citizens’ rights will be protected by appropriate cyber legislations and regulatory controls to ensure a safe and just society.
- Government will utilize ICT to more effectively achieve our national sustainable development outcomes.

¹⁸ Available at: <http://pafpnet.spc.int/resources/537-cook-is-national-ict-policy-2015-2020>.

¹⁹ Endorsed by Cabinet, 28 January 2013 (CM(13)018). Available at: <http://www.mfem.gov.ck/news1/121-finacial-secretary-office-news/479-cook-islands-telecommunication-principles>. Also see Appendix 1.

²⁰ Available at: http://www.mfem.gov.ck/images/documents/CEO_docs/Other%20Documents/National-Sustainable-Development-Plan_2016-2020.pdf.

²¹ Cook Islands Government (2015). National Information and Communication Technology Policy, p 7.

²² Ibid.

- The Cook Islands will be a fully functioning Knowledge Society.

This Policy aims to contribute to the achievement of the ICT vision, by promulgating legislation to give effect to outcomes one and three, above.

1.3.3 Links to the National Sustainable Development Plan

This Policy aligns with the following goals of the NSDP 2016–20:

- **Goal 1:** Improve welfare, reduce inequality and economic hardship.
- **Goal 2:** Expand economic opportunities, improve economic resilience and productive employment to ensure decent work for all.
- **Goal 5:** Build resilient infrastructure and ICT to improve our standard of living.

Of these, Goal 5 is engaged most directly by this Policy. The following four indicators are associated with Goal 5:

Improve ICT connectivity

Indicator 5.1 Broadband Connectivity Index

This indicator looks at broadband connectivity through two variables – speed and penetration. Broadband speed is used to measure how advanced our national telecommunications system is. This is also used internationally as an indicator of economic development (or potential for growth). ‘Penetration’ relates to ‘how many people have access to broadband internet’. Improved connectivity represents educational and economic opportunities which will spur continued investment in ICT infrastructure.

Improve broadband affordability

Indicator 5.2 Percentage of median income spent on broadband

This indicator looks at how much the average person spends on ICT as a percentage of their income. Affordability is a key consideration in improving access to ICT with access being determined not only by geographic proximity, but the financial means available to effectively use ICT.

Improved mobile connectivity

Indicator 5.3 Mobile Connectivity Index

This indicator assesses the connectivity of Cook Islanders using mobile technologies (such as smart phones and tablets) based on three variables – data speed, penetration and average data usage. Global trends indicate that mobile technology will become increasingly important in connecting people to the internet.

Build reliable and appropriate infrastructure

Indicator 5.4 Percentage of national infrastructure and public buildings that are fit for purpose

This indicator aims to measure the delivery of basic acceptable infrastructure and public buildings to all our people. After fifty years of self-governance, we have improved much of our public infrastructure including airports, ports, roads, water, sanitation, and buildings. However, with our diverse and ambitious development aspirations, we must ensure that our infrastructure is resilient and built to meet our environmental, economic, and social needs.

The Government considers that this Policy is aligned with the indicators outlined above. The introduction and development of competition is expected to drive improved connectivity, including in broadband and mobile services (indicators 5.1 and 5.3), as rivalry between service providers drives innovation in services delivery and deployment of new technologies. Rivalry between service providers under competitive market conditions is also expected to improve broadband affordability, as providers contend to win customers by offering more attractive pricing.

The proposed regulatory framework also will ensure a clearer delineation between policy-making in the telecommunications sector, for which the Government has responsibility; administration and enforcement, which is the role of the Authority; and commercial decision making within the framework set by the Government, which should be the concern of licensed operators.

1.3.4 Principles

The Government considers that the Guiding Principles previously articulated in the National ICT Policy provide relevant guidance for the purposes of developing this Policy. Those Guiding Principles are:

1. Coordination, collaboration and multi-stakeholder partnership

To maximize the benefits of ICT and achieve our vision, a coordinated multi-stakeholder approach between business, industry leaders, non-government organizations, communities, and government is needed. This will ensure the sustainability of new technologies or systems, and related national development initiatives, minimise duplication of efforts, and maximize the return on investment. This policy recognizes the importance of engaging with partners in the region, and strengthening networks is essential to maintaining positive relations and opportunities for information sharing.

2. Universal Service Access

Affordable and accessible ICT reduces inequality amongst Cook Islands citizens thus enhancing economic opportunities through improved access to information, markets and services. Government will ensure that affordable and quality telecommunications and internet services are available to all citizens, particularly those living in the Pa Enea. Universal service access remains one of the core principles that will ensure all citizens

take full advantage of the benefits on offer and can be achieved through resilient and secure ICT Infrastructure, strengthened legal and regulatory frameworks.

3. Transparency and Accountability

This policy recognizes that transparency and accountability are essential for optimising policy outcomes, improving quality decision-making, and enabling innovation. Government will ensure timely access to information that can be used by citizens, and all stakeholders to measure our progress and hold government accountable for its actions. Keeping stakeholders informed and engaged will improve Government effectiveness in successful policy implementation, strengthen collaboration and result in greater public confidence.

4. Equity and Inclusiveness

This policy recognizes the different perspectives of stakeholders and will actively engage with under-represented, minority groups through robust consultations to ensure fairness, inclusiveness, and strong ownership of the policy. Government will ensure all stakeholders have the opportunity to participate in the implementation of the ICT strategy.

In 2013, Cabinet endorsed a set of Telecommunications Policy Principles. These principles set out a range of commitments, including in respect of universal access, robust and secure network, encouragement of investment, promoting efficient interconnection, management of radio frequency spectrum and fair and efficient licensing of providers (see Appendix 1).

The Government has been guided by the principles set out in both the National ICT Policy and the Telecommunications Policy Principles in developing this Policy and will continue to be guided by them in its future implementation.

1.4 Identification of alternative policy options

Three policy options have been considered in relation to the Government's objectives for the telecommunications industry (set out in section 1.3).

Option 1: Status quo

The first option, the *status quo*, described in section 1.1, entails no change to the current regulatory framework, with a continuation of the current TCI monopoly under the *Telecommunications Act 1989* and the JVA. As described in section 1.2, the *status quo* is characterised by a single service provider, which is subject to neither competitive forces nor independent economic regulation. This would be out of step with the modern telecommunications world and entail a lack of transparency around universal service arrangements. For these reasons, the *status quo* does not meet the Government's objectives.

Option 2: Monopoly with independent regulation

A second option would be to retain the current monopoly service provider, but subject to the scrutiny of an independent economic regulator. The regulator would aim to promote efficiency by ensuring the service provider's costs were prudent and efficient and guarding against any abuse of market power, for example by regulating prices.

This approach is common in utility industries such as water and sewerage, and electricity and gas distribution, which are characterised by natural monopolies.²³ The Australian Energy Authority regulates monopoly electricity and gas distribution service providers under this model.²⁴ A 'heavy-handed' regulatory approach is common in this situation with service providers subject to regular price reviews that entail detailed scrutiny of operating and capital costs to ensure prudence and efficiency.

While certain elements of the telecommunications industry might have natural monopoly characteristics, such as the 'last mile' in fixed-line telephone networks, the current consensus is that there is little in mobile technology that is a natural monopoly. This implies that competition is feasible throughout a mobile network.

Independent economic regulation of a monopoly provider can never be a perfect substitute for competitive forces because of information asymmetry. A fully informed regulator with complete authority could, by micro-managing the firm, simply order the firm to choose the competitive – or first best – outcome. However, regulators are never fully informed and have limited powers.

As such, this option, while this option would be preferable to option 1 in terms of meeting the Government's objectives, it is unsatisfactory, because of the information asymmetry problem.

Option 3: Competition with independent regulation

The third option entails opening the telecommunications market to competition among operators, overseen by an independent regulator to ensure effective competition by curtailing any anti-competitive practices to which incumbents may resort. Effective competition substitutes market forces for the more 'heavy-handed' direct regulatory oversight that would be required under option 2.

For the reasons outlined in section 1.2.2, the Government's view is that competition will deliver benefits to consumers through lower prices, increased consumer choice and service quality, and improved incentives to invest and innovate. Prices will be lower because competition will drive down prices by compelling service providers to find the least cost ways of providing services.

As such, the Government's preferred option is option 3, a combination of competition and the establishment of a regulator. This option is explored in detail in **Part II** and **Part III**.

The Government considers that the proposed new regulatory framework set out in this Policy should apply in respect of all telecommunications technologies (e.g. fixed, mobile, satellite, cable, Internet-Protocol-based (IP), infrastructure-based and resale-based, circuit switched and packet switched) but that other legislation should continue to apply to particular kinds of activities that involve the use of telecommunications. For example, the *Crimes Act 1969* will apply to criminal misuse of telecommunications and the *Broadcasting Act 1989* will apply to regulated broadcasting activities.

²³ A natural monopoly arises where the least cost way to provide the service is by a single firm.

²⁴ <https://www.aer.gov.au/>.

1.5 Monitoring and evaluation

It is considered prudent to monitor any new regulatory arrangements to ensure that they have the desired effect on the behaviour of market participants, and do not have any unintended consequences.

The Government intends to rely on the Authority that will be established under the new legislation to undertake regular monitoring of the performance of the market and market participants. This may include key indicators such as network coverage and service quality, reliability and pricing. The monitoring report will be made publicly available to ensure transparency.

As industry liberalisation is a process rather than an event, the Government will keep the liberalisation process under review as it proceeds and will consider amendments to this Policy or the legislation implementing it, if necessary.

1.6 Lead agency

This Policy was compiled and developed by the Government in collaboration with its development partner the Asian Development Bank²⁵ and key stakeholders.

The Economic Planning Division, Ministry of Finance and Economic Management (MFEM) will lead the implementation of this Policy and the legislation that will give effect to this Policy, with support from the ICT Division, Office of the Prime Minister.

1.7 Effect

This Policy came into effect on 1 December 2019 following endorsement by Cabinet. The Government will give effect to the new regulatory framework set out in this Policy through two Bills, to be introduced to Parliament at the end of this year:

- the Competition and Regulatory Authority Bill 2019; and
- the Telecommunications Bill 2019.

²⁵ Pacific Private Sector Development Initiative, a technical assistance project of the Asian Development Bank.

PART II: Independent regulatory authority

Part II of this policy presents the form and function of the independent regulatory authority that that will be responsible for regulating telecommunications service providers under the new legislative arrangements set out in the new *Telecommunications Act 2019* and summarised in **Part III**.

2.1 Introduction

The Government has considered various forms of regulator for a competitive Cook Islands telecommunications industry.

In the past, while the incumbent telecommunications operator in the Cook Islands has been licensed by the Government and has agreed to meet certain services commitments, it has otherwise been largely self-regulating. This entails costs for the operator and does not provide a strong assurance of objective regulatory decision-making. The Government considers that self-regulation will no longer be appropriate in the liberalised industry.

With the shift away from self-regulation, the incumbent network operator and any new entrants will be entitled to expect transparency, consistency and a degree of predictability in the external regulatory framework. This will enable them to continue to make the efficient and sustainable investment decisions which are vital to the success of their businesses and on which consumers ultimately depend.

In many countries today, the telecommunications industry is regulated by an appointed authority (an individual or board) vested with powers and functions in respect of the telecommunications industry alone (e.g. the Telecommunications Commissioner in the Solomon Islands, and the National Information and Communications Technology Authority in Papua New Guinea) and supported by a full-time staff. In some countries, responsibility for regulation of the telecommunications sector is vested in an authority which has responsibility for other industries also (e.g. the Commerce Commission in New Zealand and the Office of the Regulator in Samoa).

Regardless of the form of the regulator, the relevant Minister must have oversight, to ensure the agency is properly run, is accountable, and has due regard to Government policy. Balanced against Ministerial oversight, the regulator must also have autonomy, to ensure it administers the law impartially and consistently over time.

2.2 Policy

The Government will establish a new regulatory authority in the Cook Islands, to be known as the Competition and Regulatory Authority (**Authority**). The Authority will have responsibility solely for the telecommunications industry, at first, but the Government will confer additional responsibilities in respect of other sectors on the Authority later. As the Cook Islands is a small

economy, the Government has determined that it will be more cost-effective to establish a multi-sector regulator rather than a regulator specific to the telecommunications industry.²⁶

A key study by the World Bank proposed ten key principles of regulatory governance, in summary:²⁷

- independence;
- accountability;
- transparency and public participation;
- predictability;
- clarity of roles;
- completeness and clarity in rules;
- proportionality;
- requisite powers;
- appropriate institutional characteristics; and
- integrity.

The Government has had regard to the above attributes of good regulatory governance, as well as to the immediate operational needs of a Cook Islands telecommunications regulator. Some of these attributes are in tension. For example, regulatory accountability to Government is in tension with regulatory independence from Government. Transparency may be in tension with integrity to the extent that the latter requires confidential treatment of information. The Government has had regard to the necessity of balancing such tensions in a regulatory authority that will be suitable for Cook Islands circumstances.

Options for a future telecommunications regulator in the Cook Islands could include self-regulation by the incumbent network operator or by the industry collectively but the Government considers that attributes of independence, role clarity and transparency would be too greatly compromised by this model. While industry participants have specialist knowledge, it would be difficult for them to act entirely objectively in a self-regulatory capacity, particularly in a setting in which competitive rivalry between operators is likely to be building. Similarly, the Government has considered, but rejected, the option of Ministerial (or Departmental) regulation of the telecommunications industry. While this option has the virtues of accountability and transparency, it would not ensure independence, which is valued highly by the industry and its investors.

The Government considers that, in summary, the Minister should retain policy responsibility, but an independent statutory authority should bear administrative and enforcement responsibility. In making this proposal, the Government recognises that an independent

²⁶ Cabinet has approved in principle the establishment of a multi-sector Utilities Regulator for the telecommunications, electricity and water and sewerage sectors (CM (18) 0215).

²⁷ Brown AC, Stern J, Tenenbaum B (2006). Handbook for Evaluating Infrastructure Regulatory Systems, World Bank: p 59–63.

statutory authority is likely to entail higher establishment and operational costs than either of the alternatives. The Government expects those costs to be justified by the value to the economy of independent and expert administration and enforcement of the new framework and will consider, later, the possibility of extending the authority's responsibilities to additional industries.

The Authority will be established under its own Act of Parliament. While the Authority will be accountable to the Government, and report annually to Parliament, it will be free to administer and enforce the new *Telecommunications Act 2019* independently from Government. The Authority's empowering Act provides for the appointment of a minimum of 1 and maximum of three members, supported by a small full-time staff. The Authority will be led by the Chair, appointed as such by the Minister. The Authority will have regard to published Government policies but otherwise will not be subject to direction or control by the Minister or any other person. The Authority will have a duty to consult before making significant decisions and to publish reasons for its decisions.

The Authority will be able to cooperate with overseas agencies, where appropriate, and its functions will include:

- promoting public understanding of the policy and law for which it has responsibility;
- advising the Minister on matters for which it has responsibility;
- promoting voluntary compliance with regulation;
- enforcing compliance with regulation, where necessary; and
- investigating possible infringements of the new *Telecommunications Act 2019*.

The Authority will receive and investigate any complaints under the new *Telecommunications Act 2019*. The Authority will be able to prosecute infringements of the new *Telecommunications Act 2019* and apply to a court for penalties and other orders but not impose penalties itself. The Authority's investigative powers will include the power to require production of documents, to require persons to attend and answer questions, and to require persons to make statutory declarations as to the truthfulness of their answers. The Authority will not be permitted to search premises or seize documents or objects unless it has a search warrant signed by a judge.

In addition to prosecuting infringements, the Authority will be able to issue warning notices and accept enforceable undertakings from operators and service providers.

The Authority will be able to carry out an inquiry into an issue affecting the telecommunications industry, on its own initiative or on request by the Minister. The Authority will report its findings to the Minister, for tabling in Parliament.

Any decision of the Authority will be subject to judicial review by the High Court, in accordance with Cook Islands common law and Part 1A of the *Judicature Act 2008*. Certain decisions of the Authority will also be reviewable by a panel of independent experts. A party to such a decision of the Authority will have a right to have the decision reviewed and reconsidered by an expert panel, the members of which will be appointed from time-to-time from a list of

persons recognised as having relevant expertise in telecommunications and regulation. The review panel will determine its own procedures but will undertake the review based on the evidence that was before the Authority. The review panel will then issue a reasoned opinion which either confirms the Authority's decision or substitutes, in whole or in part, its decision in place of the Authority's.

The Authority will be funded in part by budget appropriation and in part by cost-recovery from the industries it regulates.

PART III: Telecommunications regulatory framework

Part III of this Policy sets out the Government’s legislative arrangements that will open the Cook Islands telecommunications market to competition, including the specific powers of the Authority.

3.1 Licensing

3.1.1 Introduction

The business opportunity to offer telecommunications services to the public is a privilege over which the Government will continue to exercise control, in the public interest. The Government’s aim, however, is to encourage and not to limit entry by new telecommunications providers.

The Government notes that different countries adopt different approaches to authorising public telecommunications, including:

- “Individual licences”, which set out the rights and obligations of the operator to whom they are issued.
- “Unified licences”, which impose a uniform set of rights and obligations on operators that provide differing kinds of services.
- “Class licences”, which provide for standard rights and obligations for all operators within the bounds of a defined class.
- Free market entry, without a licence but imposing certain statutory responsibilities on operators who elect to enter the market.

In the Cook Islands, the incumbent network operator has been licensed to provide services under various instruments, over the years, including licences and Cabinet determinations. Having regard to current Cook Islands circumstances, individual licences will continue to be issued to each telecommunications operator, whether network-based or services-based, but by the Authority.

3.1.2 Policy

The telecommunications licensing regime set out in Part 4 of the new *Telecommunications Act 2019* will have the following features:

- Telecommunications licences will be distinct from spectrum licences (so a telecommunications provider using radiofrequency spectrum might require both).
- Telecommunications licences will be issued by the Authority, subject to Telecommunications Licensing Rules, for a fixed period.
- Licences types will include:
 - network operator – fixed, mobile, international – authorising a person to construct or operate a telecommunications network and provide telecommunications services;

- service provider - authorising a person to provide telecommunications services.
- To the extent possible, licences will be technology neutral, so that licensees are free to choose the technology they wish to use to provide the services for which they are licensed.
- Telecommunications licences will be subject to a set of core licence terms and conditions set out in the Telecommunications Licensing Rules.
- The Authority would have authority to vary the core licence terms or supplement them with other terms or conditions.
- A breach of a term or condition of a telecommunications licence would be a serious matter, in respect of which the Authority would be empowered to apply to a court for remedies or penalties.
- The Authority would have the power to issue a new licence to a network operator licensee on expiry of their existing licence.

The Government considers that “core licence terms” should reflect the following:

- provision of services to rural or remote or sparsely populated areas of the Cook Islands or to disadvantaged persons
- payment money in support of providing universal access;
- interconnection of the licensee’s telecommunications network with any other telecommunications network;
- connection of the licensee’s network equipment with any other network equipment;
- establishment and maintenance of information systems that are adequate to support customer billing and directory inquiry services;
- publication of charges and other terms and conditions applicable to services offered by the licensee;
- service quality indicators; and
- technical standards or requirements, including service performance standards.

Under the existing law, no person is permitted to ‘promote or facilitate any callback service in the Cook Islands or use any telephone in the Cook Islands for the purpose of any callback service.’²⁸ The Government considers that this prohibition is no longer relevant or beneficial, having regard to recent changes in international calling rates and the emergence of alternative means of making international calls (e.g. Skype, Viber and other platforms). The Government will therefore repeal this prohibition.

²⁸ *Telecommunications Act 1989* s 4(1A). A “callback service” typically allows a person to place an international call at a cheaper rate than is available locally, by first dialling an overseas number, then waiting for a call back, which provides dial tone and the opportunity to then dial the person they wish to speak with.

3.2 Interconnection

3.2.1 Introduction

“Interconnection” involves the physical and logical connection of telecommunications networks.²⁹

At the most basic, interconnection of networks is essential to enable a customer of Network A to place a call to a customer of Network B. Without interconnection, a customer of Network A would only be able to call other customers of Network A and competition could not be expected to develop between Network A and Network B.

The demands of interconnection and interoperability are expanding, due to:

- the ability and desire of consumers connected to one network to access applications and services hosted on other networks;
- the willingness of individual users to interchangeably use multiple fixed and mobile services from different providers; and
- the rapid emergence of ‘cloud’ applications which allow consumers to store content and data independently of their network providers.

Interconnection regulation needs to be capable of dealing with forms of interconnection and interoperability which have not existed in the past or have not traditionally been the subject of regulation.

The Government considers that licensed telecommunications operators in the Cook Islands should be required to interconnect their networks.

For separate networks and services to interconnect, a wide range of technical and commercial matters need to be resolved. Since interconnection is essential to competition, most countries around the world empower a regulator to intervene to set interconnection terms and conditions. Interconnection can be regulated in either of two ways:

- *ex post* intervention by the regulator if the operators are unable to agree, where the regulator seeks either to assist them to reach agreement or, failing that, imposes terms and conditions on them; or
- *ex ante* intervention where the regulator sets the key price and non-price terms upfront (to avoid drawn out interconnection negotiations, which delay market entry).

Interconnection regulation can be a complex matter, which can require considerable effort and resources on the part of operators and the regulator. Whether price terms are set *ex ante* or

²⁹ Linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken. WTO Telecommunications Services: Reference Paper (Annex to the Fourth Protocol to the GATS Agreement (effective 1 January 1998).

ex post, a regulatory requirement for cost-based interconnection (the principle commonly applied in paid interconnection models) can require modelling involving advanced economic skills.

The Government recognises the demands which an overly complex interconnection regulatory model would place on the regulator, the incumbent and new entrants alike in the Cook Islands.

3.2.2 Policy

The Government is therefore introducing a more straightforward model, which it believes will be simpler to administer while still securing its competitive and consumer objectives. Part 5 of the new *Telecommunications Act 2019* will promote network interconnection by providing for the following statutory rights and obligations:

- Introduction of a 'bill and keep' charging regime, as the primary cost principle of interconnection. Under this approach, each operator recovers its costs of providing interconnection to other operators through its retail charges. Bill and keep will be capable of applying between fixed and fixed networks, mobile and mobile networks and fixed and mobile networks.
- A power for the Authority to set, on an *ex ante* basis, safeguards to ensure that bill and keep is not open to misuse or manipulation and does not impose an unfair burden on one operator. Bill and keep will only apply only to classes of traffic which reasonably can be anticipated to be broadly symmetrical between networks.

The Authority will have power to specify thresholds of imbalance in traffic between two networks (i.e. when one network sends more traffic to another network than it receives from that network) which, if exceeded, could trigger a right by an operator to request negotiation of paid interconnection, with the Authority the having power to specify the cost principle to be applied.

It is also appropriate for bill and keep to apply between traffic which has similar characteristics e.g. bill and keep should apply to in-country originated and terminated calls but it may be inappropriate to apply to termination of inbound international calls. The Authority will have the power to exclude classes of traffic to which it is not appropriate to apply bill and keep (in which case the Authority could specify an appropriate alternative cost standard).

- An obligation to supply interconnection services and carriage services on an equivalent basis i.e. with functionality and services comparable to that which the operator provides to itself or related parties.
- A power for the Authority to determine Interconnection Principles applicable to licensed operators, which might address matters of the following kinds, for example:
- the thresholds for triggering a consideration of non-bill and keep interconnection (e.g. magnitude of traffic imbalance);
- the required location (or proximity) for traffic handover: as a general principle, each operator should be required to carry interconnected traffic through its network and hand it

over to a terminating operator at a location which is closest to the called or messaged party;

- the form of interconnection e.g. requiring virtual points of interconnection in each interconnected party's network can avoid complex arrangements for physical access to a physical interconnection point located in one party's premises;
- the sharing of space at physical points of interconnection; and
- the rules (including charges) for handling of transit traffic, which typically should not be subject to 'bill and keep.'
- An obligation on operators to endeavour to negotiate a commercial arrangement for interconnection within this framework. If agreement cannot be reached after reasonable efforts have been made, an operator would have the right to request assistance from the Authority to resolve the dispute. This includes the power for the Authority to make a determination of any interconnection term or condition on which the operators are unable to agree, with the costs of that proceeding to be apportioned between the operators by the Authority.
- The ability for the Authority to mediate, adjudicate and determine disputes.

3.3 Access and resale

3.3.1 Introduction

'Access' refers to the access of a network operator or a reseller to infrastructure (e.g. towers, poles, ducts, manholes, cabinets, etc.) that are owned by another operator or reseller.

Access is important to enable the sharing of items of infrastructure that are necessary to enable an entrant to the market to operate but that are expensive or impractical for it to duplicate.

'Resale' refers to the purchase of a network operator's services, at the wholesale level, for the purpose of distribution to customers at the retail level, using the reseller's branding and billing arrangements, without the reseller having to own extensive (or any) network infrastructure.

The competitive spectrum

Competition in telecommunications can take different forms. The different forms of competition fall along a scale:

- At one end of the scale, is full facilities-based competition – in which competitors are expected to build their own end-to-end domestic fixed or wireless networks over which they offer the range of voice, data and entertainment services to customers directly connected to their networks.
- At the other end of the scale is resale-based competition – in which service providers can purchase 'white label' or 'wholesale' versions of services from a network operator, which those service providers then re-badge, re-price and market as their own retail services.

- Between these two ends of the scale lie mixtures of facilities-based and resale-based competition, in different balances with each other. For example, resale-based competition might be mandated only for a transitional period, to allow new entrants to build the customer base and scale they require in order to justify network deployment (called 'climbing the ladder of investment'). Mandating access to support facilities, such as tower and site sharing, access to underground facilities and transmission services, on reasonable cost recovery terms can significantly lower entrant's costs of deploying network infrastructure. Or resellers can be given regulated access to certain services and facilities but be required to make some degree of their own investment, rather than rely entirely on a facilities-based operator's infrastructure. Mandating access to basic connectivity services, such as basic broadband carriage, can enable competition in services at higher levels of the network or service stack, such as internet access services, which otherwise would not be achievable if providers had to build their own delivery systems.

Weighing the alternatives

Facilities-based competition is generally considered to deliver better outcomes for consumers because each facilities-based operator is free to make its own decisions about the technology it deploys. Operators are better placed than policy makers to make investment decisions. Regulation will be less extensive and intrusive in markets characterised by facilities-based competition: the role of regulation is to enable operators to make the investment choices that give consumers the best outcomes under local market conditions. Even in the facilities-based model, however, there needs to be some level of *mandated* access to each operator's network to enable customers connected to one network to make and receive calls and send and receive data messages with customers connected to another network and to access and download content hosted on another network (the 'any-to-any connectivity' principle).

Demand for telecommunications services is growing rapidly in the Cook Islands, requiring continuing expansion in network capacity and capabilities, which provides opportunities for deployment of new technologies and an appetite for investment by new investors. Technology costs also are rapidly falling, and capabilities are rapidly expanding, improving the economic viability of infrastructure duplication. The new submarine cable system connecting the Cook Islands should also accelerate demand and therefore create 'space' for new entrants in the market.

Enabled by these technology developments, an expanding range of business models is available to support deployment of infrastructure, including in rural or outlying areas. Local businesses or local communities, for example, may come together to support the deployment of fixed wireless local area networks.

At the same time, the Government needs to be realistic about the prospects for facilities-based competition in the Cook Islands, given the small size of our economy. End-to-end duplication of the incumbent's network is unlikely. There will be areas where only one network is viable, whether built by the incumbent or a new entrant. There will be other areas where deployment of even a single network will be challenging, at least if not part of a network offering coverage to customers across a wider area.

Facilities-based competition also may be slow to develop. Networks take time to roll out and consumers can miss out on the benefits of competition in areas (e.g. rural and remote communities) where it is not feasible to deploy alternative infrastructure.

Resale is therefore important as a source of competition to the network-based operator(s) that does not depend on the entrant making a costly investment in physical infrastructure. While facilities-based competition potentially delivers greater innovation and efficiency, resale-based competition can be a steppingstone to facilities-based competition and, in small markets like the Cook Islands, can be an important generator of consumer choice in its own right.

Resale-based competition will typically develop more quickly than facilities-based competition. This ensures that consumers across the whole footprint of the current (and expanding) network can benefit earlier from having a choice of supplier. Resale-based competition enables a degree of price competition, although this depends on the level of the regulated wholesale price.

Mandating access to support services and facilities, such as tower and site sharing and transmission services, on reasonable cost recovery terms can significantly lower entrants' costs of deploying network infrastructure. Mandating access to basic connectivity services, such as basic broadband carriage, can enable competition in services at higher levels of the network or service stack, such as internet access services, which otherwise would not be achievable if providers had to build their own delivery systems.

Lastly, where it is feasible only to have one network, resale gives customers some measure of the benefits of competition enjoyed by customers living and working in more competitive areas. The additional usage which resale-based competition drives is beneficial to the underlying facilities-based provider also (who can realise benefits of increased scale because the traffic still remains on its network, even if a consumer chooses a competitor's retail service). Since the resale-based provider's offering necessarily uses the same underlying network technology as the facilities-based provider uses for its own retail services, resale-based competition provides less scope for service innovation.

Resale-based competition will generally require regulation to identify the services which should be subject to resale and to set fair terms and conditions for wholesale supply.

Mixed resale-based and facilities-based competition

The Government has considered the advantages and disadvantages of each form of competition. The Government's preference is that the new regulatory framework should promote the early emergence of competition but should also encourage some degree of investment in new telecommunications capability, capacity and infrastructure for the Cook Islands by new entrants as well as by the incumbent network operator.

The Government considers that enabling a degree of resale-based competition will allow Cook Islands telecommunications users to see early benefits from competition between providers. At the same time, encouraging investment by entrants and the incumbent alike is the best means of promoting innovation, which is one of the main benefits of competition in a technology-based industry.

To achieve this balance between resale-based and facilities-based competition, a defined set of ‘mandated access services’ at the wholesale level must form a key element of the new regulatory regime for the Cook Islands.

Table 5 sets out the Government’s views on the initial set of mandated access services, with some examples of how those services could be used to promote competition.

Table 5: Proposed mandated access services

Policy objective	Mandated access service	Examples
Any-to-any connectivity	<ul style="list-style-type: none"> mobile network terminating access for voice calls, SMS and MMS; fixed network terminating access for voice calls. 	<p>A new mobile operator might initially deploy its network in Rarotonga. It would be able to offer its customers the ability to call any customer connected to the incumbent’s fixed or mobile network anywhere in its coverage area across the Cook Islands.</p>
Access to facilities, to support entrants in building their own networks.	<ul style="list-style-type: none"> access to radio communications sites, including site sharing and tower sharing; access to underground facilities, such as ducts; access to exchange buildings; backhaul transmission services. domestic mobile roaming, subject to minimum network rollout requirements to qualify and to coverage or rollout commitments over time. 	<p>As the new mobile operator expands its network beyond Rarotonga, it might find it cost effective to share existing sites of the incumbent because the infrastructure is already in place or can be more readily upgraded. The incumbent would recover its reasonable costs of sharing. This would enable the new mobile operator to invest in extending its coverage further than if it had to build its own sites from scratch.</p> <p>In the transition period while it is rolling out its network, roaming would allow a new mobile operator to offer nationwide coverage using resale services on the existing mobile network, both to customers who live and work in areas within its initial network footprint (e.g. Rarotonga) when they move outside that coverage area (e.g. travel to another island to visit family) and also to compete in offering services to customers who live and work in areas where it has not yet built.</p>
Competition in services at higher levels in the network using mandated access to basic connectivity	<ul style="list-style-type: none"> a basic broadband carriage service; internet peering for domestic originating and terminating IP messages. 	<p>A new internet service provider would be able to acquire basic broadband carriage over the incumbent’s network to offer competing internet access services to residential and business customers.</p> <p>The new ISP would establish a platform in the Cook Islands to support customer authentication,</p>

Policy objective	Mandated access service	Examples
		customer management and value-added services and would acquire its own global connectivity to the Internet (such as over the new cable system).

As it is difficult to predict the pace and direction of emerging competition, the regulatory regime needs sufficient flexibility to recalibrate between facilities-based competition and resale-based competition. The Government intends that the Authority should have the power to declare a particular service to cease to be a mandatory access service and also to establish new ‘declared access services’.

A different balance between facilities-based competition and resale-based competition also may be required in different sectors to the extent that services are no reasonable competitive substitutes for each other: for example, facilities-based competition may be more feasible in mobile and other radio communications services than in fixed line services.

This flexibility to adjust regulatory settings needs to be balanced with maintaining predictability for investors, including the incumbent network operator. This will be ensured by requiring the new regulator to undertake a public inquiry process, for its decisions (including its reasons) to be published, and for its decisions to be subject to independent review.

Finally, the Government also recognises that mandated access is not the only mechanism to promote entry of competitors and expansion of networks and service capability. Other Government policies also have a role to play in assisting in the deployment of facilities and the availability of new services. The ready availability of radio communications spectrum would allow new entrants to connect facilities and customers using radio links, such as their mobile tower sites or hotels in which they supply internet services, rather than having to rely on backhaul services from the incumbent. The Government is also a major user of telecommunications services and it can aggregate demand so that it serves as a ‘cornerstone’ customer for new networks or services in an area. The Government can, through universal service funding or other financial assistance, help meet the costs of network and services in loss-making areas.

3.3.2 Policy

Part 5 of the new *Telecommunications Act 2019* will provide for:

- A right for a telecommunications licensee to have reasonable access to the facilities of another licensee, either on a reciprocal basis (where both have facilities in place) or on the basis of the Authority’s estimate of the reasonable incremental costs of shared access. Some overseas facilities-sharing regulatory regimes require operators to work with each other in the planning of physical infrastructure, to maximise opportunities for sharing and avoid unnecessary duplication. The Government sees advantages in taking a similar approach in the Cook Islands.

- A right for a licensed reseller to acquire services from a network operator for resale to business or residential users, at a price negotiated between the network operator and the reseller or, failing agreement, at a price determined by the Authority. Resale rights should not be applied in a way which might constrain innovation by operators, however. An important incentive to innovate is the first mover advantage from making the investment in product innovation. This can be undermined if the innovating operator has to share new products immediately with its competitors. The Authority should have the power to determine whether services (including a class of services) should be subject to a resale obligation, having regard to factors that include promoting competition, rewarding innovation and protecting the interests of consumers.
- A power for the Authority to determine resale prices for (wholesale) acquisition of services by a reseller, on the basis of the network operator's effective retail price minus a margin to be determined by the Authority. Resale prices, in particular, have proved amenable to applying benchmarking resale discounts in other jurisdictions, which tend to fall in a range below 20 or 25 per cent.
- A power for the Authority to mandate the provision of access to a specified facility on terms and conditions determined by the Authority.

3.4 Consumer protection

3.4.1 Introduction

Telecommunications services are an important and regular consumer purchase, for many Cook Islanders. The Government considers that consumers' rights require particular protection in relation to telecommunications services.

Consumers' rights that are relevant in this setting include:

- privacy of communications;
- confidentiality of customers' personal data;
- full disclosure of prices and charges for services; and
- accuracy in billing, including an ability for consumers to check their usage over a period.

3.4.2 Policy

Part 3 of the new *Telecommunications Act 2019* will provide for:

- Licensees to be obliged to establish consumer complaints-handling procedures.
- The Authority to receive and investigate consumer complaints that are not resolved by the licensees' complaints-handling procedures.
- A prohibition against any conduct by a licensee that is misleading or deceptive or likely to mislead or deceive.

- An obligation for licensees to provide services that meet certain minimum standards of quality and reliability (which may be prescribed from time to time by the Authority) and pay compensation if they breach these standards.
- A requirement for licensees to protect the privacy of users' communications (subject to lawful interception pursuant to a warrant).
- A requirement for licensees to protect the confidentiality of users' personal information.
- A power for the Authority to make a binding Consumer Protection Code, dealing with the above matters.

3.5 Competition safeguards

3.5.1 Introduction

The Government's primary objective in seeking to liberalise the Cook Islands' telecommunications industry is to enable the emergence and development of competition among suppliers of telecommunications services, in the interests of:

- promoting consumer welfare — the long-term benefit of end users (e.g. through access to new services and lower service prices);
- creating opportunities for investment; and
- ensuring high quality, sustainable reliable telecommunications infrastructure.

The Government is concerned that this objective could be frustrated if one or more businesses were able to engage in anti-competitive conduct in the Cook Islands.

Experience overseas indicates that competition can be excluded or hindered by various forms of behaviour by an operator that possesses power in a market. The operator that is the first to be established in a market enjoys incumbency advantages, which normally include a large market share and possibly a position of substantial market power or dominance. These advantages can enable an operator to engage in conduct that is detrimental to other operators attempting to enter the market, such as:

- failing to respond in a timely way to requests to provide (or upgrade) facilities access, resale services or interconnection;
- reducing retail charges to a level which does not cover costs and drives competitors out of the market;
- making the sale of one product (to competitors or customers) conditional on the purchase of a different product; and
- providing services to competitors at lower quality or higher price than the same service is provided to a wholly owned or affiliated retailer.

3.5.2 Policy

Part 3 of the new *Telecommunications Act 2019* will guard against the possibility of anti-competitive conduct by providing for:

- A power for price control regulations to be made by Order in Executive Council, but only if the Authority has previously determined that: (a) there is no effective competition in the market for the telecommunications service in question; and (b) price control regulations are in the long term benefit of end users.
- A prohibition on any licensee that has a substantial degree of power in a market engaging in conduct that has the effect or would be likely to have the effect of substantially lessening competition in any market.
- A prohibition on any licensee that has a substantial degree of power in a market engaging in price discrimination at the wholesale level, except on the basis of substantiated differences in costs.
- A prohibition on two or more operators entering into or giving effect to an agreement or arrangement or engaging in concerted practices (in any market affecting communications services or equipment) with the effect or likely effect of substantially lessening competition. Agreements, arrangements or concerted practices should be deemed to have the effect or likely effect of substantially lessening competition if they fix prices.

The power to impose price control is intended as a reserve power merely, to operate only where there is a persisting absence of competition. As safeguards, the Authority must determine that effective competition is absent from the market for the relevant service; the Authority must determine that control is in end-users' long term interests; control cannot be imposed by the Authority but only by Executive Order; and control can be imposed for a finite term only, e.g. two years.

The proposed rule against wholesale level price discrimination would operate as an *ex post* rule, with exemptions where there are commercially reasonable grounds (which the operator can substantiate) for the discrimination in question.

The Government recognises that the investigation and resolution of allegations of anti-competitive conduct can be complex, resource intensive exercises. While these powers will be an important part of the Authority's arsenal, it should also have power to specify, in effect, 'rules of competitive conduct' which upfront set a broad framework or 'guard rails' within which fair competition can occur. This power could be used, for example, to specify:

- maximum durations of service contracts or caps on exit fees to ensure that an operator does not unfairly 'lock up' customers;
- limits on bundling of different services, which also can unfairly 'lock in' customers; and
- rules that would apply when a customer 'churns' from one licensee to another licensee, to prevent the losing operator from imposing unreasonable procedural requirements.

The Authority will have the right to apply to the High Court for pecuniary penalties, orders and injunctions to restrain a licensee from anti-competitive conduct.

3.6 Numbering resource

3.6.1 Introduction

Telecommunications subscriber numbers are a public resource which the Government considers should be managed in the best interests of Cook Islands telecommunications users. The Government considers it necessary to make provision for:

- allocation of numbers and codes by the Authority to licensed operators;
- assignment of individual numbers and codes by operators to their customers; and
- the ability of customers potentially to move ('port') their numbers between networks and services.

3.6.2 Policy

Part 6 of the new *Telecommunications Act 2019* will provide for:

- Determination by the Authority of a National Numbering Plan, which shall replace any numbering plan previously in use and shall conform with any international treaties or commitments to which the Cook Islands is a party.
- Allocation by the Authority of number ranges and codes to licensed operators.
- Determination by the Authority of rules regarding the assignment and use of numbers.
- Determination by the Authority of rules regarding assignment of emergency services numbers and priority, capacity and quality requirements in respect of calls to emergency services numbers.
- An obligation on operators to use numbers allocated to them efficiently and in accordance with the National Numbering Plan and any applicable rules.
- A prohibition against operators using any numbers not allocated to them.
- Operators and end-users not to have property in any numbers allocated or assigned to them.
- The Authority to undertake a review, upon request by the Minister, on whether to mandate number portability, having regard to the costs and benefits of such in the Cook Islands and in consultation with telecommunications licensees and the public.

3.7 Radio spectrum resource

3.7.1 Introduction

The radiofrequency spectrum is a public resource which the Government considers should be managed in the best interests of Cook Islanders.

The Government observes that mobile services of various kinds (including mobile telephony, and Wi-Fi), which depend on access to radiofrequency spectrum, are soaring in popularity worldwide, raising challenges for the efficient allocation of spectrum and pricing of access to it. A range of approaches to spectrum allocation are in use around the world, including:

- the ‘command and control’ model, for allocation of exclusive but limited rights by the regulatory authority;
- the ‘property rights’ model, involving a freely tradeable exclusive right to spectrum;
- the ‘commons’ model, allowing shared access to spectrum for all users who comply with pre-set technical limits; and
- the ‘easement’ model, relying on intelligent technologies to permit subsidiary use of spectrum by unlicensed parties, where spectrum licensees are not fully utilising it.

3.7.2 Policy

Part 8 of the new *Telecommunications Act 2019* will provide for:

- The Authority to have the exclusive right to allocate and assign Cook Islands radio spectrum frequencies.
- The Authority to prepare, consult on, publish and maintain a National Radio Spectrum Plan and associated Frequency Band Plans.
- The Authority to prescribe and issue types of radio spectrum licences and radio equipment licences.
- The Authority to receive and respond to radio interference complaints and resolve them by means of mediation, appointment of an arbitrator, or making an appropriate order or direction.
- The operator of any radiofrequency emitter to be bound to comply with an order or direction issued by the Authority in respect of relevant equipment or emissions.
- The Minister to make regulations, on the advice of the Authority, for licence fees, tenders, auctions or other means of allocating spectrum within specified bands. This could include limits on the amount of spectrum which one or more existing licensees can hold, in order to ensure that there is spectrum available for new entrants.
- The Authority to have the power to declare vacant spectrum that has previously been assigned, and to assign it to a different person, without compensation, where:
 - necessary to comply with Cook Islands law or international obligations;
 - the previous assignee agrees to vacate the spectrum;
 - the previous assignee has failed to comply with the Act or a lawful determination of the Authority and failed to remedy that non-compliance;
 - the previous assignee’s application for the spectrum was false or misleading in a material particular;
 - the previous assignee has entered into liquidation, voluntary winding-up or dissolution;
 - or

- the spectrum in question is in demonstrable demand but the previous assignee has not made significant use of it and not made a credible commitment to make significant use of it.
- The Authority to have the power to declare vacant spectrum that has previously been assigned, and to assign it to a different person, with compensation, where:
 - the Authority determines that to do so is in the public interest; and
 - the Authority shall pay, or procure the new assignee to pay, reasonable compensation; and
 - the previous assignee may appeal to the High Court regarding the legality of the vacation and the amount of compensation.
- The Authority to establish effective liaison on spectrum matters with:
 - other countries and international organisations;
 - the Police and emergency services in the Cook Islands;
 - any military, defence or security services authorised to operate in the Cook Islands; and
 - radio and television broadcasters in the Cook Islands.

3.8 Technical standards

3.8.1 Introduction

The telecommunications industry is technically complex. The operation of networks and successful provision of services depends to a great extent on the interoperability of services and equipment. The quality, reliability and security of services, and the safety and security of end-users, depends on operators' and customers' use of equipment that meets appropriate standards.

The Government considers, therefore, that the new *Telecommunications Act 2019* should make provision for the specification and enforcement, where necessary, of technical standards for telecommunications equipment and services.

3.8.2 Policy

Part 9 of the new *Telecommunications Act 2019* will include provision for:

- Determination by the Authority of technical standards necessary for interconnection or access between one licensed operator and another.
- Determination by the Authority of technical standards and rules to protect against damage to telecommunications networks or facilities, degradation of service quality, public nuisance, environmental harm, or danger to persons.
- Recognition and application in the Cook Islands of technical standards and rules from other countries.

- Prohibition against the use or supply of equipment that does not comply with technical standards or rules in force in the Cook Islands.

3.9 Universal access

3.9.1 Introduction

Basic telecommunications services are an important part of daily life for most Cook Islanders. The Government considers that all Cook Islanders should have access to a certain basic level of telecommunications, regardless of where they live.

The Government recognises that the provision of submarine cable services to Rarotonga and Aitutaki, with attendant bandwidth and price benefits under the new regulatory framework has the potential to drive a service quality gap between these islands and the Outer Islands. This could potentially have implications for levels of income inequality between Rarotonga and the Outer Islands.

The National ICT Policy includes 'Equitable, Affordable and Non-Discriminatory Access to reliable quality ICT facilities and services for all' as a policy objective. To achieve that objective, the Government has committed to six strategies, as follows:³⁰

- 1.1 Develop appropriate pricing, policies and regulation to promote universal service access.
- 1.2 Promote fair competition in the telecommunication market that is conducive to achieving accessible and affordable communications for all.
- 1.3 Explore regulatory mechanisms [that] provide oversight and management of the ICT Sector.
- 1.4 Improve ICT access to all citizens regardless of economic status, geographic location, education level, age, or gender, to improve opportunities for all.
- 1.5 Improve ICT access for vulnerable groups to enhance their quality of life.
- 1.6 Improve ICT access and connectivity to people living in the Pa Enua to raise their standard of living.

For telecommunications operators, it is most profitable to offer services in densely populated locations, such as Rarotonga. It is less profitable, or unprofitable, to offer services in remote or sparsely populated locations, such as the Pa Enua. (Although, as the Government acknowledges, new technologies have the potential to change this.)

Over past years, the incumbent network operator in the Cook Islands, TCI, has built infrastructure and maintained services to many areas of the country with small populations and doubtful profitability, by agreement under the JVA. It is possible that these services have

³⁰ Cook Islands Government (2015). National Information and Communications Technology Policy, p 8.

been loss-making for the operator, which may have funded this activity from profits earned in other areas of its business.

The Government aims to promote the development of competition among service providers, in the expectation that competition will help to drive prices down and service quality up. An operator cannot be expected to continue serving loss-making locations voluntarily, however, if it faces competition in the locations that have hitherto been sufficiently profitable to fund its subsidies to loss-making activities.

Internationally, various means have been used to support an operator to deliver basic telecommunications service to loss-making areas. Traditionally, universal service regimes have involved:

- Definition of a specified service as a ‘universal service’. Traditionally, universal service has focused on voice telephony, but broadband access increasingly is viewed as the key service for consumers, including to support VoIP applications.
- Definition of specified geographic areas as ‘universal service areas’.
- Designation of an operator (often the incumbent fixed network operator) as the ‘universal service carrier’.
- Imposition on all operators of a ‘universal service levy’, calculated in proportion to their respective markets shares, calculated on a revenue basis.
- Disbursement of funds (from levies) to the universal service carrier in compensation for the costs incurred by it in providing the universal service in universal service areas.

In some places, newly licensed operators have also been required to commit to building network and providing services to specified locations (‘roll-out’ obligations).

It is important to bear in mind that these overseas universal service models were typically developed to support fixed line networks, before the ubiquity of mobile voice and data services. Mobile services can be more commercially viable to deploy in non-urban settings than fixed networks. Mobile network construction costs typically are lower, and operators have an incentive to promote their superior service coverage, to customers and potential customers in urban areas. While some funding support for extension of coverage in more remote areas might still be beneficial, the dynamics of mobile networks can change the focus and scale of universal service schemes.

3.9.2 Policy

Part 10 of new *Telecommunications Act 2019* will provide for a set of powers that are flexible, within reasonable bounds, for subsidising the provision of telecommunications to those areas, or those groups of customers, which the operators cannot reasonably serve on a profit-making basis. Such powers will involve:

- A power for the Authority to make (and from time to time update) a Universal Access Plan within 12 months of the Chair being appointed, which, among other things:
 - defines the characteristics and service standards of a ‘universal access service’;

- identifies geographic areas, or groups of telecommunications users, as universal service clients;
- identifies one or more operators, or a class of customers, or a service, or class of services as being subject to a universal service levy.
- A power to make regulations imposing a levy in accordance with the Plan.
- A power for the Authority to establish a fund (including banking arrangements) for the management of levies collected.
- A power for the Authority, subject to transparency requirements, to enter into arrangements to fund universal service. This might involve funding a licensee to extend or improve its network (i.e. the ‘traditional model’ used overseas for fixed network USO) but the Authority should also have the flexibility to utilise other models to achieve universal service, such as supporting co-funding by local communities.
- An obligation on the Authority to maintain proper financial records in relation to the universal service fund, obtain annual audit reports, and report annually to Parliament on the administration of the universal service fund.

3.10 Public emergencies

3.10.1 Introduction

Telecommunications services have become an important means for sharing information about imminent or actual emergencies, including natural disasters, and for supporting recovery work in their wake.

The Government has no reason to doubt the support of the incumbent network operator in the Cook Islands in such circumstances, but considers it desirable for the new *Telecommunications Act 2019* to confirm access to services in circumstances of a ‘disaster’ or ‘emergency’ in terms of the *Disaster Risk Management Act 2007*.

3.10.2 Policy

Part 12 of the new *Telecommunications Act 2019* will provide that:

- a licensed operator shall cooperate with Emergency Management Cook Islands in making appropriate plans for the continuation or restoration of telecommunications after a disaster or emergency;
- the Response Executive may, after a state of disaster or emergency has been declared, direct a licensed operator to carry, or refrain from carrying, messages of a specified nature, or to provide telecommunications services of a specified kind; and
- the Government shall pay compensation to any licensed operator for any costs reasonably incurred in complying with a direction of this kind.

3.11 Access to land

3.11.1 Introduction

The construction of telecommunications networks necessarily involves the installation of physical infrastructure (such as towers, poles, ducts and cabinets) on land owned or leased by third parties. To facilitate network construction and maintenance, licensees require access to third parties' land (including public land) for the purposes of constructing or maintaining networks, subject to appropriate safeguards.

The *Infrastructure Act 2019*, which took effect from 1 October 2019, provides a common framework for 'infrastructure managers' in the Cook Islands to deal with land access matters that balances public and private interests.³¹

3.11.2 Policy

Part 11 of the new *Telecommunications Act 2019* will provide for a network operator licensee and a service provider who owns or uses network equipment to be as an infrastructure manager for the purposes of the *Infrastructure Act 2019* and have all the powers and duties of an infrastructure manager.

3.12 Cybercrime and cybersecurity

3.12.1 Introduction

'Cybercrime' refers broadly to any crime involving a computer and network. The United Nation's Comprehensive study on Cybercrime identified three relevant categories of cybercrime offending:³²

1. Acts against the confidentiality, integrity and availability of computer data or systems
 - Illegal access to a computer system;
 - Illegal access, interception or acquisition of computer data;
 - Illegal interference with a computer system or computer data;
 - Production, distribution or possession of computer misuse tools;
 - Breach of privacy or data protection measures.
2. Computer-related acts for personal or financial gain or harm
 - Computer-related fraud or forgery;
 - Computer-related identity offences;
 - Computer-related copyright or trademark offences;

³¹ See the Infrastructure Cook Islands website for more information: <http://ici.gov.ck/news/infrastructure-bill-2019-consultation>.

³² UN (2013). Comprehensive Study on Cybercrime, p 16.

- Sending or controlling sending of Spam;
 - Computer-related acts causing personal harm;
 - Computer-related solicitation or 'grooming' of children.
3. Computer content-related acts
- Computer-related acts involving hate speech;
 - Computer-related production, distribution or possession of child pornography;
 - Computer-related acts in support of terrorism offences.

3.12.2 Policy

It is the Government's view that appropriate and effective provision must be made under the laws of Cook Islands to deter and sanction cybercrime. Such provision should be made in the *Crimes Act 1969*, rather than in the new *Telecommunications Act 2019*. To this end, the Government has proposed a range of new 'offences involving computers' (Part 7, Subpart 9 of the *Crimes Bill 2017*).

The Government intends to consider further the nature of threats to, and appropriate precautions to protect, the Cook Islands' cybersecurity.

3.13 Domain management

3.13.1 Introduction

The Cook Islands country code top-level domain (ccTLD) '.ck' is currently managed by the incumbent network operator, TCI. Whether TCI continues to manage the ccTLD or a different governmental or non-governmental body assumes that responsibility, internationally agreed domain management rules will continue to apply. The Government proposes that the Authority should have responsibility for oversight of the ccTLD and all domains under it.

3.13.2 Policy

Part 7 of the new *Telecommunications Act 2019* provides for:

- The Authority or a person nominated by it shall have responsibility for registration and allocation of all domains under the .ck ccTLD.
- The Authority may make rules, guidelines, orders and directions relating to registration of .ck domains by a nominated person.
- The assumption of responsibility for .ck domains by the Authority or a nominated person, shall be subject to approval by the Internet Assigned Numbers Authority.
- The Authority or a nominated person shall comply with the rules and procedures of the Internet Assigned Numbers Authority.
- The Authority to monitor the compliance of a nominated person with the requirements of the new *Telecommunications Act 2019*.

3.14 Broadcasting

Broadcasting in the Cook Islands is currently regulated under the *Broadcasting Act 1989* (as amended in 1997).

The Government considers that the *Broadcasting Act 1989* should continue to govern the activities of broadcasters, rather than provision being made in the new *Telecommunications Act*, though the Government does not rule out reviewing and updating the *Broadcasting Act 1989* at a future point.

PART IV: Transitional arrangements

Part IV of this Policy sets out the Government's intended approach to ensuring an orderly transition from the current arrangements to the new framework described in **Part III**.

Moving from an established legislative framework to a new regulatory environment, especially one that opens up a monopoly market to competition, requires certain arrangements to be put in place to ensure an orderly transition from one to the other.

This includes allowing time for the Government to put in place necessary administrative and enforcement arrangements, ensuring that there is no gap in the licensing of the incumbent network operator, and giving affected operators a fair opportunity to ensure they are in a position to comply with the requirements of the new framework.

The transitional arrangements, set out in Part 12 of the new *Telecommunications Act 2019*, provide a balance between providing sufficient time for an orderly transition and ensuring that the expected service and price outcomes for customers contingent on opening up the market are not unnecessarily delayed.

4.1 Licencing provisions

4.1.1 Network operator

TCl will be issued with a 15-year fixed term network operator license from the day the new *Telecommunications Act 2019* comes into force. TCl will not be required to pay a network operator licence fee in the first 3 years. The licence, set out in Schedule 2 of the new *Telecommunications Act 2019*, authorises TCl to construct and operate on a non-exclusive basis fixed line, fixed terrestrial wireless, public mobile and satellite networks. This will ensure continuity in the provision of network services across the Cook Islands.

4.1.2 Radiocommunications

The transitional arrangements provide for current radiocommunications licences and certificates to be continued under the new *Telecommunications Act 2019*. The continued licences are listed in Schedule 5 of the new *Telecommunications Act 2019*.

4.2 Savings provisions

A number of current regulations necessary for continuity in the provision of radiocommunications services are continued in the new *Telecommunications Act 2019* including:

- the parts of the *Radio Regulations 1993* that deal with the testing and certification of radio operators;
- the *Radio (Shipping) Regulations 1993*; and
- Part VIA of the *Telecommunications Act 1989* that deals with the provision of postal services in the Cook Islands.

4.3 Transitional competition

During a transitional period of 4 years from the day the new *Telecommunications Act 2019* comes into effect, only one additional network operator licence authorising the establishment or operation of a mobile telecommunications network or service provider licence authorising the provision of mobile telecommunications services, will be issued by the Authority. The new licensee will be required to meet eligibility requirements determined by the Minister.

4.4 Community service arrangements

In the interests of service continuity, TCI will continue to provide a range of services during the transitional period, at the current price and service quality level, including:

- Pa Enea telecommunications services — fixed line telephony services, fixed internet services and mobile telephony and internet services;
- broadcasting support services — the television and radio broadcasting services provided by Telecom Cook Islands Limited to broadcasters in the Cook Islands;
- marine radio services — High Frequency and Very High Frequency marine radio coverage and monitoring services provided to fishing boats and merchant ships maritime for the safety of life and property at sea and radio operator certification services; and
- postal services — including the production and sale of postage stamps, provision of postal box services and collection and delivery of postal articles.

The Pa Enea transition services are expected to continue be provided on the current basis until a Universal Access Plan has been approved by the Minister and the new universal service arrangements come into force. The other transitional services are expected to continue until other arrangements are put in place.

PART V: Consultation

Part V of this Policy describes the consultation undertaken by the Government on this Policy and legislation. It also summarises the key issues raised, and changes made between the Government's draft and final positions, both in response to stakeholder feedback and further consideration by the Government.

5.1 Consultation

The Government undertook an extensive consultation process in the development of the Policy and the Competition and Regulatory Authority Bill 2019 and Telecommunications Bill 2019 over a 7-month public consultation period from the release of the draft policy in May 2019. This included:

- The public release of a consultation draft policy in May 2019 on the MFEM website.³³ Two public submissions were received and summarised in Appendix 2. Notices were published in the Cook Islands News and the Herald, along with a media release on the MFEM website, informing the general public of the release of the draft policy.
- The public release of the draft Bills on the MFEM website. Notices were published in the Cook Islands News, along with a media release on the MFEM website, informing the general public of the release of the draft policy. Seven public submissions were received and summarised in Appendix 2.
- Meetings with Island Governments and community in the Pa Enua including Mangaia, Mitiaro, Mauke, Atiu, Pukapuka, Rakahanga, Manihiki, Penryhn and Aitutaki. Appendix 3 provides a summary of the key issues raised in the Pa Enua consultation.
- Three community meetings in Rarotonga at the New Hope Church Hall, Parekura, Calvary Hall, Arorangi and Sunday School Hall, Titikaveka. Appendix 4 provides a summary of the key issues raised in the Rarotonga public consultation.
- Multiple meetings with a range of individual stakeholders including Telecom Cook Islands Limited, Amalgamated Telecom Holding Limited, Avaroa Cable Limited, Leader of the Opposition and Caucus, Cook Islands Chamber of Commerce, Cook Islands National Superannuation Fund and Orama Limited.

³³ <http://www.mfem.gov.ck/economic-planning/telecommunications-reform-2019>.

Figure 2: Community meeting, Manihiki



Figure 3: Community meeting, Mitiaro



Figure 4: Community meeting, Mangaia



5.2 Independent regulatory authority

5.2.1 Authority size

The Government's draft position envisaged a minimum of 3 and a maximum of 7 Authority members. On further reflection, in an effort to minimise costs while ensuring that there is adequate capacity to cover the scope of work the Authority will be required to carry out, the final position allows for the Authority to be constituted by a minimum of one and a maximum of 3 members. This provides scope for a single member Authority during the telecommunications regulation establishment phase, and for additional members to be appointed once the Authority's scope is extended to the electricity and water and sewerage sectors.

5.2.2 Appointment of members

The Government's draft position envisaged the Minister having responsibility for appointing members of the Authority. Following further consideration, an Evaluation Committee process was proposed in the draft Competition and Regulatory Bill 2019. While the Minister retains responsibility for appointing members, as an additional safeguard the Minister can only appoint a person recommended by an Evaluation Committee comprising the Financial Secretary, the Solicitor-General and the Public Service Commissioner.

Concerns were raised by the Chamber of Commerce, the Opposition and Orama Limited about the composition of the Committee. At the public meeting on 25 October 2019, the Chamber indicated a preference for the inclusion of a business representative, and restated this in its submission:

The Chamber would welcome the opportunity to be part of an evaluation team for the appointment of the Regulator.³⁴

At a stakeholder meeting on 23 October 2019, the Opposition raised concerns about the qualifications of the Financial Secretary and Public Service Commissioner. Orama Limited was quoted by the Cook Islands News as stating:

Apart from the Solicitor-General, who is on the panel from the legal point of view, I don't think the other two are qualified in terms of knowledge of the industry to make a proper decision. I think the recommendation on the regulator should come from Orama, Bluesky and Avaroa Cable Limited and those that are part of the industry.³⁵

In coming to a decision on the composition of the Committee, the Government has considered the balance between the benefits of business representation in the selection process and the potential harm arising from undue influence by industry participants. By any objective measure, the recommendation by Orama Limited to allow telecommunications companies the sole mandate to recommend a regulator would fall into the latter category.

³⁴ Chamber of Commerce Draft Telecommunications Bills Response, 2019: 2.

³⁵ Cook Islands News, 2019. 'Power struggle over who controls telcos'. Cook Islands News, 26 October 2019.

As to the concern about qualifications, this is not supported by any evidence. The Public Service Commissioner is directly responsible for the recruitment of Heads of Ministries and other senior positions across government. As for the Financial Secretary, not only do competitive markets and their regulation sit within MFEM's economic management responsibilities, the Financial Secretary is leading the telecommunications reform project on behalf of Government. Moreover, it is not clear what additional expertise in either senior level recruitment or industry regulation business representatives would bring to the table.

The Government considered the potential for including the Cook Islands Chamber of Commerce or the Law Society. However, both were discounted because of potential for conflicts of interest thanks to the small size of the Cook Islands business community and legal fraternity.

The Government also sought to minimise the potential for any perceived conflict of interest in relation to its shareholdings in TCI and Avaroa Cable Limited and the member selection process. This involved excluding any involvement of the Cook Islands Investment Corporation, the agency responsible for Government shareholdings, from consideration in the selection arrangements.

On balance, therefore, the Government is confident that the process it has set out in the draft Bill, which entails legislative requirements to be eligible for appointment as an Authority member, and an Evaluation Committee comprising relevant, objective, senior Government officers, will ensure that there is no undue influence in the selection of Authority members.

5.3 Telecommunications regulatory framework

5.3.1 Overarching objective

At the draft stage, the Authority, in exercising any power or performing any function under the new *Telecommunications Act 2019*, was required to have regard to the 'long term economic and social benefits of end users'. On further reflection, this objective has been changed in the final to the 'long term benefit of end users'. Although on the face of it a minor change, the change better reflects common regulatory practice in other jurisdictions in the region.

5.3.2 Claim for compensation

The draft position provided for a customer to claim compensation from a service provider within 2 years after the customer became aware or ought reasonably to have become aware of the circumstances giving rise to the claim. This timeframe was reduced to 6 months in the final position to mitigate service provider concerns that the 2-year period created a financial liability issue.

5.3.3 Interconnection

The draft policy position contemplated the provision of efficient decision-making tools to enable the Authority to determine disputes, however such a provision was not incorporated in the early draft of the Telecommunications Bill 2019. In the final position, this oversight was rectified, with provisions made in Part 5 for the Authority to play a mediation and adjudication

tole if interconnection contract negotiations between the Access Seeker and Access Provider prove to be unsuccessful.

5.3.4 Telecommunications licensing

Changes were made in response to submissions received on several aspects of telecommunications licencing, including the term, the ability to rollover licenses and variation of licence conditions by the Authority.

Variation

Orama Limited opposed the Authority's ability to vary licence conditions, stating that:

The ability of the Regulator to change the core terms of a licence (page 21) needs to have some checks and balances around it.³⁶

The ability for a regulator to vary licence terms and conditions in circumstances other than where the licensee agrees or the licensee is in breach of its licence conditions or relevant regulatory enactments, is a common approach internationally, in conjunction with appropriate safeguards.

The Part 4 provisions of the new *Telecommunications Act 2019* provides appropriate safeguards around this power. The Authority's power in section 36(3) to vary a licence is restricted to where there has been a material change in circumstances since the licence was issued or the variation would promote the long-term benefit of end users. As a further safeguard, the final position makes an Authority's decision to issue a notice in these circumstances reviewable by a Review Panel constituted under the new *Competition and Regulatory Authority Act 2019*, on application by the licensee.

Licence term

Avaroa Cable Limited submitted that it requires long-term regulatory certainty to allow it to optimise its ongoing investment plans and for it to deliver on the key goals of commercial sustainability, affordability, speed, resilience and reliability:

The investment case for ACL's involvement in the Manatua submarine cable is much longer, and approaches 25 years if ACL focuses on the low cost, high quality connectivity rather than maximisation of profit, as is the intent.³⁷

Orama Limited also proposed a longer licence term than 15 years for ACL to allow it to take advantage of IRUs (Indefeasible rights of use) that may extend beyond its licence term.³⁸ Orama Limited proposes:

³⁶ Orama Limited Draft Telecommunications Market Policy Consultation Response, 2019: 3.

³⁷ ACL Draft Telecommunications Market Policy Consultation Response, 2019: 3.

³⁸ An IRU is a permanent contractual agreement, which cannot be undone, between the owners of a submarine cable and a customer of that cable system, often for term of 15-years.

Alternatively, consideration might be given to perpetual licences (as in Tonga) but subject to termination for non-compliance. If not, then the legislation should specify a presumption in favour of licence renewal so as not to distort investment incentives in the latter years of the licence term.³⁹

Orama proposed licences should be perpetual but subject to termination for non-compliance, or the legislation should provide for a presumption in favour of renewal. Fixed-term licences are common internationally, but there are examples of 'perpetual' licences. TCI also separately raised concerns about investment certainty beyond the 15-year term.

Recognising that long-term investment decisions in network infrastructure will benefit from longer licence terms, for all operators but especially for the Manatua Cable which has invested in infrastructure with a much longer economic life, the Government has amended its telecommunications licensing framework. In the final position, Part 4 of the new *Telecommunications Act 2019* requires the Authority to rollover licences on expiry of the 15-year term at the request of the licence holder.

5.3.5 TCI network operator licence

At the draft stage, the Government proposed that TCI be licensed on a transitional basis to continue to provide the facilities and services that it currently provides, with TCI subsequently licensed for 15 years, under new licence terms to be determined by the Authority to provide network telecommunications facilities and services.

In response to concerns from TCI about certainty around licence conditions, the final position provides a network operator licence for TCI in Schedule 2 of the Telecommunications Bill 2019.

In response to the Bill consultation, TCI requested a 12-month transition period for various policies required under the licence, for example, the fair use policy:

In addition to the above comments, TCI's licence should contain a transition period to prepare and upload the policy.⁴⁰

The final position contains transition periods, 6-months for some policies and 3-months for others, to allow TCI time to formulate the required policies.

5.3.6 Transitional competition

The draft position contemplated one additional network provider licence being issued by the Authority during the transitional period. In recognition of the two mobile licence options: mobile network operator and mobile service provider, the final position provides for one or the other type of licence.

³⁹ Orama Limited Draft Telecommunications Market Policy Consultation Response, 2019: 3.

⁴⁰ TCI Draft Telecommunications Bills Response, 2019: 4.

5.3.7 Transitional period

The draft position contemplated a 3-year transition period commencing when the new *Competition and Regulatory Authority Act 2019* comes into effect. As part of the settlement arrangements with TCI, the final position provides for a 4-year transition period commencing when the Telecommunications Bill 2019 comes into effect.

5.3.8 Access to land

In the draft policy the Government proposed providing specific provisions in Telecommunications Bill 2019 to allow telecommunications licensees access to third party land. In this respect, Orama Limited noted that:

This is of course dealt with in the Infrastructure Act 2019 and telecommunications providers will be 'network operators' pursuant to the provisions of that Act.⁴¹

As the final position, the *Infrastructure Act 2019* provides a better solution, with network operators designated as 'infrastructure managers' under the *Infrastructure Act 2019* in Part 11 of the new *Telecommunications Act 2019*.

⁴¹ Orama Limited Draft Telecommunications Market Policy Consultation Response, 2019: 6.

Appendix 1 Telecommunications Principles

The policy framework and intentions

Telecommunications are a key driver of economic and social development in what continues to be an increasingly fast-moving knowledge intensive global environment. Telecommunication services today are akin to the old trade routes which opened up economic opportunities and transformed the global economic environment.

The sector requires dynamic and innovative participation, ensuring the sector delivers on the opportunities and potentials which are and will become available.

A clear policy mandate for the sector is required to enable participants to invest, innovate and deliver services to the community. The Government of the Cook Islands has endorsed the following key policy principles for the sector. The sector should:

- provide affordable and quality telecommunication services to all people in the Cook Islands;
- establish an environment for the sustained adoption of technology which will assist in the public sector delivery of services such as education and health;
- establish an environment where economic services such as banking and commerce can be delivered more effectively and real time;
- establish an environment where services which are/were traditionally delivered by analogue means can be provided through a digital service;
- establish an environment where new services can be quickly provided; and
- be an investor friendly environment for attracting additional investments into the sector.

The Government clearly believes that the provision of world class telecommunications infrastructure and information is the key to rapid economic and social development of the country. The availability of affordable and effective telecommunications for households and businesses is at the core of the vision and a major goal of these principles. The major actions of the Cook Islands Government going forward are aimed at this vision and will include:

- the introduction of a less prescriptive legislative regime;
- changes to management of the spectrum; and
- reduce barriers to enter the telecommunications market.

Additionally, the Government will continue to have several roles in the sector including:

- as the policy and law maker;
- a major consumer of telecommunication services;
- hosting an independent regulator; and
- as a minority owner of the incumbent network operator, Cook Islands Telecom.

As mentioned previously, telecommunications are, and will continue to be for the foreseeable future a key enabler for the continued economic and social development of the Cook Islands.

As a service-based economy the importance of reasonably priced effective telecommunications is a key to continued productivity and growth. Efficient and effective telecommunications is crucial to innovation and the creation of new services within the Cook Islands.

The Government wishes to ensure that the sector is structured in a manner that participants will maximise investment, strive for innovation and aim to provide improve service provision and reduce prices.

Universal access

The Government wishes to ensure that the people of the Cook Islands have access to universal service which entails the provision of affordable and equitable telecommunications and internet services to every individual or household on demand. Such universal access would encompass at the minimum the following, telephony and internet services need to be:

- provided at affordable rates;
- of good quality and acceptable standards;
- available or accessible regardless of where people are located within the Cook Islands; and
- accessible to a larger proportion of the population of the Cook Islands.

Efficient and reliable provision of telecommunications services

Telecommunications is ubiquitous; this basic service is required by almost all individuals, government agencies and industry. The Government will continue to advocate and promote the efficient and reliable provision of telecommunications services.

A network which meets the needs of the people of the Cook Islands

The Government wishes to see the development of a robust and secure telecommunication network which will provide seamless coverage aimed at closing the digital divide and driving socio-economic development. Essentially, this would revolve around:

- continuing to encourage an inclusive knowledge society by providing for the proliferation of affordable and high-quality broadband services across the Cook Islands; and
- allowing for innovation in the sector which will see a faster evolution of the mobile device as an instrument of socio-economic empowerment for Cook Islanders and visitors to the Cook Islands.

Encouraging investment

The Government believes that continued investment is required to ensure continued development in the sector. Market pressures and competition for the provision of improved and less costly services should lead to greater investments for those firms who wish to meet market demand and keep market share.

Therefore, the Government will create greater flexibility in the telecommunications market to ensure a competitive environment exists without compromising but rather complementing its other objectives, in particular universal and affordable access for all Cook Islanders.

Promote efficient interconnection arrangements between network providers and other providers

Competition in the sector will only occur if entrants are able to interconnect their facilities with those of the incumbent or other market players and to do so at terms that allow the entrant to provide the service at competitive levels of price and quality. A 'fair and reasonable' interconnection policy is a critical input to foster competition in telecommunication markets.

Spectrum management

The spectrum is a key government asset, and as a result it is crucial to promote the efficient use of spectrum.

The Government wishes to regain the management of spectrum. This will see a move towards liberalising spectrum use so that it will enable the use of spectrum in any band to provide any service in any technology and enable optimal utilisation of spectrum through an appropriate regulatory framework.

A new approach to spectrum management will allow the regulator to spectrum and allocate alternative frequency bands or media to service providers from time to time to make spectrum available for introduction of new technologies for telecom applications.

Fair, objective, and transparent licensing regimes for service providers and network providers

Establishment of a commission to licence the three major areas including:

- spectrum licensing;
- service provider licensing; and
- network provider license.

Additionally, it will allow for an efficient approval regime for apparatus.

Multi-media approach

The Government recognises the convergence of electronic media and will take a 'whole of media' approach with all forms of telecommunications, including radio and television broadcasting, incorporated into one piece of legislation.

Appendix 2 Stakeholder public submissions

	Date received	Submitter	Topic	Key issues raised
1	1 June 2019	Avaroa Cable Limited	Long term certainty	Recommends a longer regulatory purview timeframe of 25 years to match the ACL investment case
			Critical national infrastructure	Recommends recognition of the critical national infrastructure status of the submarine cable by better balancing quality with any pricing controls
			Level playing field for international operators	Raises concerns that international satellite operators will not be licenced leading to market distortion
			Restricting additional cable licenses	Recommends transitional arrangements to protect existing investments in mobile infrastructure be extended to submarine cable infrastructure
			Unbundling	States that ACL's infrastructure is not suitable for unbundling as providing external control of wavelengths within the cable is not practical
			Wholesale and retail distinction	Recommends a delineation of retail and wholesale operations and services to create readily understood boundaries between network elements and services that are, and are not, shared
			Investment threshold	Does not support
2	13 June 2019	Orama Limited	Universal access	<p>Justification for any subsidisation should be provided after careful analysis of expenses</p> <p>Universal service levy should be determined by the Authority or the Minister upon the advice of the Authority</p> <p>Opportunities for competition should be considered in the Universal Service Plan, citing the Vanuatu model</p>
			Licencing	<p>Does not support TCI transitional then 15-year licence proposal, recommends 15-year licence issued subject to compliance with the Act</p> <p>Does not support the proposed \$5 million investment threshold for a new licence applicant:</p> <ul style="list-style-type: none"> does not strike a balance between encouraging investment while also not limiting entry by new providers

Date received	Submitter	Topic	Key issues raised
			<ul style="list-style-type: none"> • may encourage inefficient investment <p>Does not support Authority ability to vary core licence terms citing investment uncertainty – recommends checks and balance, or alternatively perpetual licences subject to termination for non-compliance</p> <p>Does not support service-based licences stating that this conflicts with the Government's technology neutrality goal – recommends license to supply telecommunications services or alternative individual vs class licence regime</p> <p>Does not support separately licensing international and national networks/services</p> <p>Does not support the requirement for the Authority to conduct a public consultation process on an application</p> <p>Supports a longer than 15-year licence for ACL to allow for IRUs beyond a 15-year term</p> <p>Contends that ACL should be restricted by legislation or licence conditions to be an open-access wholesale-only operation</p> <p>Queries whether private use of telecoms equipment and services will require a licence – raises concerns about banks and hotels using VSAT and fracturing demand</p> <p>Recommends no licensing of OTTs</p>
		Authority	<p>Recommends the Authority is self-funding to ensure independence</p> <p>Recommends that Authority costs be recovered through telecoms and spectrum licensing fees and that telecoms sector licences should not cross subsidise the regulation of the electricity or water sectors</p> <p>Recommends that the Authority have the ability to impose fines directly and be required to report annually to Parliament</p> <p>Contends that the review process for regulatory decisions may be compromised by challenges in finding appropriate expertise</p>
		Access and price regulation	<p>Support list of mandatory access services recommending that access is available from the day the Act comes into force</p> <p>Recommends a focus on cost-based pricing for determining wholesale prices with Authority discretion to determine the appropriate method</p>

Date received	Submitter	Topic	Key issues raised	
			Supports bill and keep but raises concerns about a threshold for traffic imbalances after which termination charges are allowed restricting new entry	
		Number portability	Recommends mandating number portability from the day the Act comes into force rather than subjecting its introduction to a cost benefit test	
		Postal services	Does not support TCI continuing to have the monopoly on providing postal services	
		Other Acts	Recommends amendment or repeal of the Broadcasting Act 1969 References interaction with the <i>Infrastructure Act 2019</i> in respect of access to land States that Fair Trading Act 2008 and Commerce Act 2008 should be able to deal with consumer complaints and misleading and deceptive conduct matters	
3	31 Oct 2019	Chamber of Commerce	General	Supported liberalisation and establishment of independent regulator
			Ownership of the fibre optic cable	Raised compensation concerns about the relationship between the owner of the cable asset and other operators accessing the cable
			Authority	Queried the wisdom of establishing a multi-sector regulator
			Penalties	Queried penalty calculation and payment time frames
			Definitions	Recommended definition of service provider, affordable and vulnerable people
4	13 Nov 2019	Avaroa Cable Limited	General	Supported liberalisation and establishment of independent regulator
			Authority role	Concerned about risk associated with Authority determining certain matters rather than the legislation
			Search powers	Concerned about lack of safeguards around Authority search and seizure powers
			Performance	Recommends performance of Authority and operators be judged by international benchmarks set in legislation

Date received	Submitter	Topic	Key issues raised	
		Unbundling/wholesaling	Concerned that the legislation does not make wholesaling and unbundling of the incumbent's infrastructure a more significant theme	
		Satellite regulation	Concerned that satellite operators will not be captured by the anti-competitive conduct provisions	
		Universal access fund	Concerned at the lack of safeguards to ensure public funds go toward 'open access' solutions and minimise market distortion	
5	11 Nov 2019	Telcom Cook Islands Limited	General	Supported greater competition and responsible regulatory reform
		Licence exemption	Recommended removing Authority power to exempt a person from having a licence	
		Licence eligibility	Recommended that licence eligibility criteria (e.g. finances, experience) be set in Regulations rather than by the Minister on the advice of the Authority	
		TCI network licence	Concerned that the licence is too prescriptive and unfair to TCI as no conditions are imposed on TCI's competitors Recommended that licence conditions be left to the Authority to determine Requested a transition period for the various policies TCI is required to promulgate Recommended Schedule 2 name be changed to TCI Licence	
		Domain administration	Recommended Government subsidise TCI for continuing to provide this service	
6	18 Nov 2019	Maureen Hilyard	Universal access	Recommended inclusion of definition of universal access and concerned that 'reasonable quality of service' will conflict with equitable access Recommended publication of information on any subsidy of Pa Enea services by Rarotongan customers Recommended inclusion of definition for 'affordability'
		Competition and consumer protection	Queried what would constitute a price below cost and why this is an issue Queried powers of the Authority where a service provider fails to stop discrimination	

Date received	Submitter	Topic	Key issues raised
			Queried the role of the Authority in price caps set by Regulations
		Domain administration	Queried safeguards around domain name abuse, cybersecurity and data protection
7 20 Nov 2019	TCl employee Share Trust	Cost of regulation	Concerned that TCl is bearing the cost of regulation and community service provision
		Regulatory model	Concerned that the regulatory framework being introduced carries high risks for trust members and potential to harm the share trust scheme

Appendix 3 Pa Enea consultation

Date	Location	Audience	Key points raised
29/30 Aug 2019	Mangaia	Island Government, Administration, staff and community	<p>Current services</p> <p>Poor quality internet, landline and mobile services</p> <p>Lack of radio service means can't hear what's happening in Parliament</p> <p>Have to shout into phone, both landline and mobile, to be heard in Rarotonga</p> <p>Very expensive, too expensive</p> <p>Not many hotspots on the island</p> <p>Applauded current operator's actions action to date, even though services not what they could be</p> <p>Telco reform</p> <p>Support for competition so prices come down</p> <p>Fast internet will help attract people back to Mangaia</p> <p>Support for competition but concern whether it will work in a small remote market</p>
2 Sep 2019	Mitiaro	Island Government, Administration and community	<p>Current services</p> <p>No AM radio service on the island</p> <p>Current service very bad — education and communications are a priority— poor communications means poor results</p> <p>Telco reform</p> <p>100 per cent support for opening up market to other operators to get cheaper price and better-quality service</p> <p>No need for another competitor as not enough room for many players</p>

Date	Location	Audience	Key points raised
3 Sep 2019	Mauke	Island Government, Administration and community	<p>Current services</p> <p>Poor communications mean poor education results</p> <p>Plea not to be treated as second class citizens — need to get the Outer Islands on a par with Rarotonga</p> <p>Difficult to send education work to New Zealand with no internet</p> <p>Telco reform</p> <p>Support fast internet for education — e.g. USP — and online business opportunities</p> <p>Support for more competition to provide a better-quality service at lower prices</p> <p>Query about whether Government will give up its shares in TCI</p> <p>Request not to see Pa Enea as second class citizens compared to Rarotonga</p> <p>Query about why the Pa Enea is not getting a submarine cable</p> <p>Query about whether 2G phones will work if the network infrastructure is upgraded</p>
4 Sep 2019	Atiu	Island Government, Administration and community	<p>Current services</p> <p>Communications is a key issue — the only good spot to text is within 100m of the Island Administration, email service is variable</p> <p>Internet is very bad</p> <p>Banking communications system is often down</p> <p>Telco reform</p> <p>Good to hear that systems will be upgraded</p> <p>Communications reform is a good enabler for economic development</p> <p>Improved services will help education and help keep children on the island</p>

Date	Location	Audience	Key points raised
			<p>Query about Government's plans for its telecommunications shareholdings after the reform</p> <p>Support for unlimited internet downloads for better access to online education</p> <p>Not convinced that the reform will lead to a better service for Atiu</p>
9 Sep 2019	Pukapuka	Island Government, Administration and community	<p>Current services</p> <p>Quality of current telecommunications service is poor:</p> <ul style="list-style-type: none"> • overseas calls cannot hear person on other end or phone calls get cut off • internet connection only lasts few minutes and then cuts off, very frustrating • service is slow, worsens when the weather is bad • costly Wi-Fi top up/no Wi-Fi connections/ lose promotions when connectivity cuts off • Internet cuts out for days (3-4) days at a time <p>Cost of telecommunications is too high</p> <p>Poor internet services/connections are concerning especially during emergency/cyclone situations, especially in Nassau with no connectivity</p> <p>Service delivery has been very slow however phone bill payments are expected to be paid straight away otherwise disconnected</p> <p>Telecom offered better service than Bluesky when they were in operation</p> <p>Satellite phones are costly to operate</p> <p>Telco reform</p> <p>Public is supportive of the changes especially if it results in better service and reduced prices for Pukapuka/Nassau</p> <p>Currently Bluesky provides free internet for schools in Pukapuka, this allows teachers and students to take courses online, and will this continue under the new changes?</p>

Date	Location	Audience	Key points raised
			<p>Why can't the cable run by Pukapuka considering its proximity to Samoa?</p> <p>Include in new Pa Enea Service plan for island wide coverage so that network can be accessed while on the lagoon in event of emergencies</p>
10 Sep 2019	Rakahanga	Island Government, Administration and community	<p>Current services</p> <p>Can't get radio since mast was taken down – rebroadcast radio is not working</p> <p>Internet connection is poor and no radio</p> <p>Although the current provider has increased usage, internet is now slower</p> <p>Bad connections impacts education and online courses</p> <p>Close inshore coverage, used to have wider coverage before however not anymore</p> <p>No internet for the past 4 days, cannot complete or work required for online courses</p> <p>Request for a copy of the policy changes to read</p> <p>Slow data and costly</p> <p>Pay \$80 per month however we are only able to connect for two weeks</p> <p>Promotions purchased however no connectivity</p> <p>Service provided by the current provider is going backwards prefer Telecom services</p> <p>Telco reform</p> <p>Rakahanga has to connect/link via Manihiki dish – they need their own dish</p> <p>Need to extend network coverage so that it is accessible from the other islets as well as inner ocean limit</p> <p>Rakahanga needs its own dish/equipment, not depend on Manihiki</p>

Date	Location	Audience	Key points raised
11 Sep 2019	Manihiki	Island Government, Administration and community	<p>Current services</p> <p>Telecom provided better service than current provider</p> <p>Although usage has increased, connectivity has worsened</p> <p>Te Kura Uira (refer to Manihiki Strategic Plan) no longer being implemented due to bad internet service/connection</p> <p>Remoteness of island, need telecommunications for work</p> <p>Better service required</p> <p>No AM Radio/FM Radio/Internet is poor — we are in the dark</p> <p>No longer able to pay online – services have been stopped</p> <p>Only given 20 days to pay bills – otherwise service gets cut off</p> <p>Tsunami Alert texts – can this service be imitated for cyclones?</p> <p>‘Out of mind out of sight’ seems to be the way the Pa Enea is treated</p> <p>Expect a certain level of service with the amount of money we pay</p> <p>Have to go to Tukao to pay phone bills</p> <p>Why hasn’t 4G already been established in the Pa Enea and how much does Pa Enea pay the current provider?</p> <p>Transmitter for TV needs to be replaced</p> <p>Mobile Network coverage needs to be extended out minimum 5 miles</p> <p>Since removal of mast, no AM Radio, no connection to Rarotonga — need a solution in the interim as we’re heading into Cyclone season</p> <p>Telco reform</p> <p>Social issues arising from being connected to internet – everyone is on their phones</p>

Date	Location	Audience	Key points raised
			<p>Include in regulations protection for businesses. Also, will provision for mobile products be included?</p> <p>Bluesky know how to operate/fix issues – this needs to be included in new Service Plan</p>
12 Sep 2019	Penrhyn		<p>Current services</p> <p>Current service is not good, cuts out regularly, poor connection</p> <p>Vouchers/Top ups is wasted due to poor connection, also expires before credit can be used</p> <p>Cannot connect to emails for days – cannot complete work</p> <p>Poor signals for mobile services</p> <p>Telecom service was better than current provider</p> <p>When it's good its good, but it's bad, it's frustrating'</p> <p>Emailed telephone bills to commence November 1st — what about people without email?</p> <p>Complaints lodged with Bluesky and nothing gets done</p> <p>Telco reform</p> <p>With one service provider no urgency to fix issues/ seems like they don't care, another service provider to compete/reduce prices</p> <p>Competition required so changes to legislation would be beneficial</p> <p>Internet required for businesses</p> <p>Fishermen – 2 miles out and connection cuts out/extend coverage further out for safety</p>
23 Sep 2019	Aitutaki	Island Government, Administration and community	<p>Current services</p> <p>Current service is not good, and we are lucky to be getting the submarine cable</p> <p>Query about the lack of VHF repeater on the island for fishing vessels</p>

Date	Location	Audience	Key points raised
			<p>Fully support the reform program — can't run a business like that with the current levels of service</p> <p>Telco reform</p> <p>Query about what happens if the cables is cut as happened in Tonga</p> <p>Support for opening the market and happy that it is happening — will provide the technology to enable Island meetings from home</p> <p>Thorough endorsement of reform project</p> <p>Concern raised about cherry picking Rarotonga and Aitutaki customers when the market is opened up</p> <p>Query about the licensing of individual satellite providers under the new framework</p> <p>Query about the cost of the cable</p> <p>Query about why Government plans to regulate the telecommunications companies but not Air Rarotonga</p> <p>Plea for Government to retain ownership of cable company to ensure people aren't held to ransom</p>

Appendix 4 Rarotonga public consultation

Date	Location	Audience	Key points raised
25 Oct 2019	New Hope Church Hall, Parekura	General public	<p>Query about whether the Authority will be able to appoint a mediator in an interconnection dispute</p> <p>Query about the process for selecting members of the Authority and whether the Evaluation Committee will ensure no Ministerial interference</p> <p>Query about plans for Government's shareholding in TCI and Avaroa Cable Limited</p> <p>Concern raised about how to ensure equitable provision of telecommunications services to all Cook Islanders, including vulnerable groups</p> <p>Concern raised about foreign investor interest in telecommunications companies and potential for tax avoidance through company structures</p> <p>Concern raised about data protection and cyber security</p> <p>Query about whether the Authority might take on a broader consumer protection role</p>
30 Oct 2019	Calvary Hall, Arorangi	General public	<p>The changes to be brought about by telecommunications reform were well received by the community as this will bring about opportunities previously untenable in this sector due to the high costs. Such opportunities include the provision for data storage services as well providing electronic based services through utilising 'smart systems'. It was also mentioned that protection from larger companies should be given to those smaller businesses wanting to start up in this area, especially with accessing existing infrastructure.</p>
31 Oct 2019	Sunday School Hall, Titikaveka	General public	<p>The attendees at the community are receptive of the changes that will result from telecommunication reform. There were questions put forward relating to affordability of the telecommunications service and how this will be defined. This question particularly relates to Pa Enuia prices in comparison with Rarotonga prices and the how much differences can be expected especially with the two different services provided. Also, questions were raised regarding licenses for telecommunications and how long the terms will be and who determines this.</p>