



OIA0119

19 September 2013

David Robinson

by email: fyi-request-1094-dfbab8b3@requests.fyi.org.nz

Dear David

OFFICIAL INFORMATION ACT REQUEST

Thank you for your email of 22 August requesting information under the Official Information Act regarding any analysis of the economic impact of the policy proposals for the Telecommunications (Interception Capability and Security) Bill (the Bill) during the formation of the Regulatory Impact Statement.

In response to your questions (1-4) about the economic impact of policy proposals for the Bill on IT companies, no analysis was done specifically on the effect for the policies on the IT sector, as the policies do not relate to IT companies unless they are actually providing telecommunications services to end-users in New Zealand.

The purpose of the Telecommunications (Interception Capability) Act 2004 (TICA), and Part 2 of the Bill, is to ensure that, when the Police and surveillance agencies are authorised to do so, it is technically possible for them to fulfil their legal mandate and intercept communications. The TICA, and Part 2 of the Bill, achieve this by imposing requirements on telecommunications companies to help fulfil interception warrants, and by requiring a smaller group of telecommunications companies to buy equipment and invest in the technical resources necessary to carry out interceptions across their network. Under the TICA and the Bill, telecommunications service providers have a duty to assist, that is, to take all reasonable steps to assist in the execution of a warrant if one is presented, but not to pre-invest in equipment and resources.

As the duty to assist for telecommunications service providers is not changing from the duty placed on them today (except what the duty may involve is made more explicit), no further analysis was required.

In response to your questions (5-6) about the impact on businesses if Google, Microsoft and other similar companies stopped providing their cloud service to New Zealand, no analysis was undertaken as the duty on these companies exists today and does not change.



The one change in the Bill that could affect a telecommunications service provider is the ministerial direction power requiring service providers to have the same obligations to pre-invest in equipment and resources for interception capability as network operators. This can only happen if there is a demonstrable operational need and following a structured decision-making process, in which the Minister must take into account factors such as:

- whether the cost of compliance would have a serious adverse effect on the business of the service provider; and
- whether the new duties would unreasonably impair the provision of telecommunications services in New Zealand or competition in telecommunications markets or create barriers to the introduction of new or innovative technologies.

During this process, the affected service provider may make a submission to the Minister, which the Minister must consider as part of his/her decision.

These considerations reflect that there may be competing interests and objectives, and the importance of balancing law enforcement and national security interests with economic impacts on the service provider and telecommunications market.

Regulations can be made to require a class of service provider to have the same obligations to pre-invest as network operators. This would follow the usual parliamentary process for making regulations.

Yours sincerely



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