

Submission in response to the Commerce Commission's Mobile Market Study Terms of Reference

30 November 2017 – Public Version



EXECUTIVE SUMMARY

- 1 The Commerce Commission's (**Commission**) mobile markets study (**study**) is a good opportunity to increase transparency and understanding in an important part of the broader telecommunications sector that has had little attention for many years. In particular, the study is a good opportunity to consider whether mobile markets are delivering for consumers.
- 2 We encourage the Commission to both evaluate the current state of play and look ahead to the ongoing evolution of consumer demands and technology, and identify any risks and opportunities.
- 3 New Zealand's challenging geography and low population density makes network economics challenging. The fixed and variable costs for fixed and wireless technologies differ but, as demonstrated by the ultra-fast broadband rollouts, efficiency, investment and quality can be incentivised with the right up front settings. New Zealand ranks second in the OECD for its fibre subscription growth rate and has 92 retailers offering fibre connectivity.¹ This appears to contrast with mobile market outcomes.
- 4 We make the following observations with regard to the current status of mobile markets:
 - There is a significant pricing difference for mobile consumers as compared to fixed-wireless consumers (utilising the same current generation mobile capacity). We rank 10th out of 32, and 16th out of 31 in the OECD for 60GB and 500GB fibre broadband prices, respectively.² Major mobile providers aggressively price their fixed-wireless broadband services to compete with fixed-line broadband services. One major provider offers the same price across all three services (i.e. fixed-wireless, copper and fibre broadband services) for a 120GB broadband plan.³ Yet, we rank 31 and 33 out of 35 in the OECD for 1.5GB and 6GB mobile broadband plans, respectively.⁴ This suggests that there may be cross-subsidisation between fixed and mobile consumers which, in turn, raises questions about the competitive intensity in mobile services.
 - There are six commercial mobile virtual network owners (**MVNO**) holding less than 1% of the market.⁵ It is unclear why their market share is low when compared with other markets. It may be because MVNO retail service providers (**RSPs**) do not

¹ New Zealand ranks second to Australia. However unlike Australia, our fibre uptake is voluntary. IDC Opinion, *New Zealand Telecommunications: The Streets are Paved with Glass*, 2017, pages 23 and 109

² Commerce Commission, *2016 Annual Telecommunications Monitoring Report*, May 2017, pages 18

³ See Spark's broadband website <https://www.spark.co.nz/shop/internet/plans-and-pricing/>, last accessed 30 November 2017, where broadband prices across fixed-line services (copper and fibre, up to 100Mbps) and fixed-wireless services are offered at the same price per month.

⁴ *Ibid*, n 2, page 29

⁵ *Ibid*, n 1, page 86 (excluding Skinny, a subsidiary of Spark)

own mobile networks and may find it challenging to offer bundles of fixed and mobile services. The two largest mobile network owners are also the two strongest RSPs and account for 80% of the retail broadband market.

- Mobile termination rates were set in 2011 for five years and have not since been reviewed.
 - Roaming is not transparent noting the Commission released short commentary on a roaming arrangement it had been considering last month.
 - While announcements were made for funding and infrastructure build into some rural areas through the Rural Broadband Initiative 2 and Mobile Blackspot Fund, the location, quality, reliability and price of those services is also not yet transparent.
 - Further investment drives a need and opportunity to promote infrastructure sharing and greater mobile competition up front.
- 5 In addition to understanding the above issues we strongly encourage the Commission to consider challenges and opportunities likely to arise in the medium term. In particular, whether any lessons from the deployment of the significant fibre to the home upgrade can be applied.
- 6 Structural separation and an open access approach for fixed-line infrastructure has supported New Zealand's next generational access upgrades and has avoided wasteful duplication through shared open access. Up front certainty on fibre products and pricing from 2011 to 2020 has also supported and benefited the industry with much less contention. A fixed-line level playing field increasingly supports innovative wholesale offerings and investment that can be utilised by all RSPs and all consumers.
- 7 The benefits of inclusion into next generation access broadband translates to billions of dollars of economic and social benefits in New Zealand.⁶ Estimating the possibilities of innovation and benefits is of course challenging. But to date, they are likely only to be the tip of the iceberg given that there are numerous digital possibilities yet to be innovated and realised.
- 8 Developments in wireless connectivity including 5G and networks supporting the Internet of Things (**IoT**) and future services are not yet clear. Substantially more sites, supported by fibre, are likely to be needed. Due to the increased role of fibre, shared open access infrastructure should be explored to make investment cases efficient and to ensure consumers are able to benefit from increased retail competition and the quality of digital reliability and services. Particularly given New Zealand's unique position of high fibre penetration to 87% by 2022.
- 9 Revisiting spectrum allocation should also be a priority. Spectrum is a scarce resource. Better and more efficient utilisation of it, stimulation of competition and promotion of positive outcomes for end users should be at the forefront of policy decisions. We believe there is a good case to explore setting aside spectrum for open

⁶ Sapere Research Group, *Economic value of the take-up of ultra-fast broadband in New Zealand*, 2016

access, as is being done internationally, which will help enable efficient use and positive consumer outcomes.

- 10 We encourage the Commission to explore the issues and opportunities outlined above and promote a forwards looking path towards efficiency, increased competition and consumer benefits, and up front regulatory certainty. There may be elements from the current status quo or recent experience to inform ways to increase efficiency, quality, pricing, competition and transparency in wireless offerings.
- 11 We suggest the scope of the study include the following areas:
 - Whether there are competitive or efficiency distortions;
 - Potential for mobile wholesale market development, open access and sharing;
 - Improving transparency; and
 - Spectrum allocation considerations.

Introduction

- 12 Thank you for the opportunity to comment on the Commission's study released on 6 October 2017.
- 13 We are New Zealand's largest telecommunications infrastructure company, dedicated to bringing New Zealand an efficient, sustainable, and inclusive digital future. We are committed to significant and ongoing investment through the government's Ultra-Fast Broadband (**UFB**) and Rural Broadband Initiative (**RBI**). We are now more than 70% through our commitment of reaching over a million kiwis and are already achieving 40% uptake of our fibre service.
- 14 Once complete, New Zealanders will have access to our upgraded, world-class fibre broadband service and access to high-speed and reliable broadband at home, in schools and hospitals. It also puts Chorus in a unique position to support nation-wide connectivity with world-class fibre infrastructure.
- 15 Next generation connectivity will likely challenge current industry arrangements. Developments in wireless connectivity, including the move to 5G, continue to evolve. Substantially more cells, supported by fibre, are likely to be needed alongside alternative network technologies used to support IoT and other future services. Mobile will increasingly rely on fibre that is closer to the end-user for a better customer experience, bringing challenges for existing business models and opportunities for new ones.
- 16 Although normal practice is to refer to "mobile" networks and markets these networks are also used to provide voice and low level broadband services at a fixed location (**fixed-wireless services**). The costs and revenues associated with these services are intrinsically linked with the dynamics of wholesale and retail mobile and should form part of the Commission's understanding of mobile markets.
- 17 We already play a significant role in supporting mobile connectivity and are well placed to support the evolution of connectivity services in New Zealand. With the right policy and regulatory settings, consumers will benefit from the most effective and efficient use of existing infrastructure. Mobile developments or changes to mobile policy should not be looked at in isolation but within the wider telecommunications framework.
- 18 We recommend the Commission ensure the scope of the review is robust and wide enough to consider the effects of mobile issues on adjacent markets and that any proposed treatments are consistent across telecommunication markets.
- 19 Conclusions of the study in a timely manner also promote up front policy thinking and support increased certainty for industry. Investment and deployment requires significant planning.
- 20 To this end, we request the Commission add the following words in italics to paragraph 3.3 of the Terms of Reference:

"...emerging competition effects and its effect on adjacent markets and consumer outcomes; and..."

Wholesale market development

- 21 When compared with other developed economies, New Zealand appears underserved by MVNOs. We currently have six MVNOs (excluding Skinny, a Spark subsidiary) who together hold less than 1% of the market share.⁷ In contrast, MVNO market share in the United Kingdom is at 13%, and 9.4% in Australia.⁸ The reasons for this are not readily apparent. Given New Zealand's relatively generous spectrum allocations network capacity would not appear to be a reason for the lack of wholesale agreements.
- 22 Given there are 129 RSPs,⁹ the existence of three mobile network operators and six MVNOs indicates only some RSPs can offer fixed and mobile bundles. The Commission may wish to look into the significance of an RSP's ability to offer a range of services in light of its comments in the Sky-Vodafone merger determination regarding the importance of being able to offer a range of services and its effect on competition.¹⁰
- 23 We encourage the Commission to consider the state of wholesale competition in the mobile market to understand the health of the wholesale and retail market and whether it could be improved.

Potential competitive distortions

Mobile and fixed-wireless

- 24 The Commission rightly acknowledges that "potential competition and regulatory questions in the mobile markets have been accumulating for some time, for example, as a result of fixed-mobile convergence".¹¹ Mobile broadband is substantially more expensive for consumers than both fixed-line broadband and fixed-wireless broadband, even though the latter uses the same mobile generation capacity.
- 25 In its 2016 Monitoring Report, the Commission benchmarked New Zealand's fixed-line and mobile broadband prices. It ranked fixed-line broadband 10th out of 32, and 16th out of 31 in the OECD for 60GB and 500GB fibre broadband, respectively. Yet we ranked 31st and 33rd out of 35 OECD countries for 1.5GB and 6GB mobile broadband prices, respectively.¹²
- 26 While fixed-wireless services were not considered as part of the exercise, the Commission noted that pricing for fixed-wireless services has become "more

⁷ *Ibid*, n 1, page 86 and 94

⁸ *Ibid*, n 1, page 94

⁹ Taken from Commerce Commission's register of Chorus' non-retail users, dated 20 October 2017. This list represents the number of retail services providers who can buy and onsell Chorus' services.

¹⁰ Commerce Commission, *Vodafone Europe B.V. and Sky Network Television Limited [2017] NZCC 1; Sky Network Television Limited and Vodafone New Zealand Limited [2017] NZCC 2, 2017*

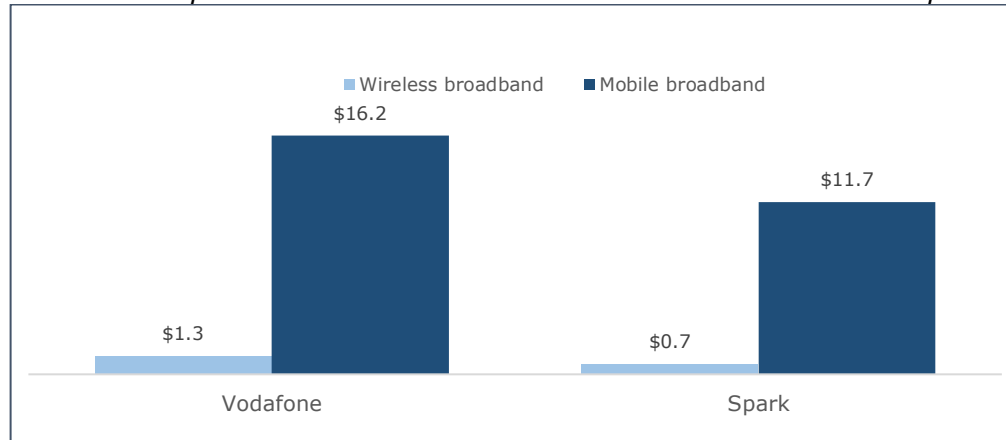
¹¹ Commerce Commission, *Mobile market study terms of reference*, October 2017, paragraph 2

¹² *Ibid*, n 2, pages 18 and 29

aggressive and data allowances increased”.¹³ This is illustrated through the broadband offers of a major provider, where the same price is offered across all three services (fixed-wireless, copper and fibre broadband) for a 120GB broadband plan.¹⁴ Its mobile broadband offers were significantly different.

- 27 This might suggest that mobile users are cross-subsidising fixed-wireless access providers and/or the substantially lower fixed wireless access pricing reflects the low quality of the service. The table below illustrates how the pricing difference between naked fixed-wireless broadband and mobile broadband translates to the price per GB.

Table 1: Comparison of naked fixed-wireless and mobile broadband prices, per GB¹⁵



- 28 This raises the question of the relative competitive intensity between fixed-line retail markets and mobile retail markets. These figures suggest that either competitive intensity in fixed-line retail markets is driving fixed-wireless broadband costs closer to incremental cost, or prices for fixed-wireless broadband are being driven below cost and are being subsidised by mobile users.
- 29 The outcome of shifting users of better fixed-line broadband to ADSL-like fixed-wireless might also be considered. From an overall market and New Zealand Inc perspective, promotion of less effective technology rather than the most effective technology choice goes against research about the benefits of the uptake of better

¹³ *Ibid*, n 2, page 9

¹⁴ See Spark’s broadband website <https://www.spark.co.nz/shop/internet/plans-and-pricing/>, last accessed 30 November 2017, where broadband prices across fixed-line services (copper and fibre, up to 100Mbps) and fixed-wireless services are offered at the same price per month.

¹⁵ Data was sourced from suppliers’ own websites, last accessed 30 November 2017. Each provider offers only one (non-rural) naked wireless broadband plan that must only be used a fixed location (i.e. at home). Spark offers \$84.99 a month for a naked 120GB plan (<https://www.spark.co.nz/shop/internet/plans-and-pricing/>), while Vodafone offers \$49.99 a month for a naked 40GB plan (<https://www.vodafone.co.nz/broadband/internet-plans/>). Mobile broadband prices were derived from each suppliers’ largest GB plans, with Spark offering \$69.99 a month for a 6GB plan (<https://www.spark.co.nz/shop/mobile-plans/mobilebroadband/plansandpricing.html>) and Vodafone offering \$80.99 a month for 5GB (<https://www.vodafone.co.nz/mobile-broadband/open-term-data/>).

broadband, may promote inefficient use of capital and may not promote digital inclusion.

- 30 We encourage the Commission to better examine and understand the dynamics of this issue, namely the allocative inefficiency in the use of spectrum and other mobile network users.

Mobile termination rates (MTRs)

- 31 MTRs are currently a Designated Service under the Telecommunications Act 2001 but the regulated glide path for MTRs finished in 2014 for voice and 2011 for text messages. In its 2015 Monitoring Report, the Commission acknowledged the difference in MTRs between New Zealand, Australia and Europe:

"We last reviewed the mobile termination rate on 5 May 2011, and the last regulated reduction prescribed in that determination was to 3.56cpm (excluding GST) on 1 April 2014. The ACCC last year [2015] set the mobile termination rate for Australia at A1.7cpm, and as at July 2015 the weighted average for Europe was 1.22 eurocents per minute".¹⁶

- 32 Given the MTR glide path has finished and international evidence suggests that the cost of mobile termination is decreasing, we encourage the Commission to consider its treatment of MTRs to ensure there are no unintended distortions caused by outdated cost-structures.

Infrastructure sharing – risks and opportunities

- 33 Developments in wireless connectivity (5G) are not yet clear. It has not yet been internationally standardised and may be quite a different proposition from previous mobile upgrades. Due to the increased role of fibre, sharing models may need to be explored to make investment cases efficient and to ensure consumers are able to benefit from increased quality of digital reliability and services.
- 34 Structural separation and an open access approach for fixed-line infrastructure has promoted New Zealand's next generation access upgrades, avoided wasteful duplication and promoted competition from a level playing field. Up front certainty on fibre products and pricing from 2011 to 2020 has supported uptake by providing certainty for all market participants.
- 35 Increased infrastructure sharing can improve efficiency and outcomes for consumers. In our view the current model for the provision of fixed-line fibre service is a testament to this. As is reflected in the structural and behavioural remedies applied to fixed line infrastructure, sharing can raise competition issues and it would therefore be useful for the Commission to consider what these issues might be, how it would identify any such emerging competition issues and whether it has the tools to address them.

¹⁶ Commerce Commission, 2015 Annual Telecommunications Monitoring Report, 2016, page 30

Improving transparency

- 36 The Commission commits considerable resources to monitoring segments of the fixed-line wholesale markets. This will further increase from 2020 under the regime proposed by the Bill. As outlined above, there are several mobile market issues where consumers and industry would benefit from further examination and understanding. This study provides a useful platform for establishing a better information and monitoring system to improve overall transparency of the market.
- 37 In addition, the Commission could consider a “summary and analysis” type of programme to monitor the health of mobile retail and wholesale markets. This should include greater transparency around customer experience including speed, latency and congestion.

Spectrum allocation considerations

- 38 Although the Commission does not manage spectrum allocations, we think spectrum allocation is a relevant issue for the study. Spectrum settings need to be right to support next generation connectivity evolution and the findings of this study will support policy-makers in the spectrum area.
- 39 We believe there is a good case to explore setting aside spectrum for open access as is being done internationally, which will help enable efficient use and positive consumer outcomes.
- 40 Under the current allocation regime the majority of spectrum is held nationally and for long-term periods (15-20 plus years) by the three largest MNOs (Spark, Vodafone and 2degrees). This may have led to inefficient use and underutilisation of spectrum in certain geographic areas (mainly rural), and in certain bands.
- 41 Most of the spectrum is coming up for renewal in the coming years, including bands that will be allocated to 5G. 5G is bringing many new opportunities into this market, and may introduce new connectivity options and/or services. We think this creates an opportunity to review the allocations regime and ensure it is allocated more efficiently and available to greater mix of providers.
- 42 An improved regime would see a “use it or lose it” policy for inefficient use of spectrum that would drive better use and consumer outcomes. Internationally the concept of spectrum parks, including setting aside spectrum for open access, is becoming prevalent. We recommend that these issues and opportunities are explored in the Commission’s study.