

Commerce Commission
44 The Terrace
PO Box 2351
Wellington 6140

28th June 2019

Dear Andrew,

RE: Mobile Market Study – InternetNZ’s feedback on study scope

1. Thank you for the opportunity to submit on the Preliminary Findings document, as part of the mobile market study.
2. This is a brief submission in response to the Preliminary Findings document. It is not a comprehensive response to this document, and should not be taken as the totality of InternetNZ’s response.
3. Instead, this is a distillation of the key themes that InternetNZ wishes to highlight in response to the Preliminary Findings document. We may extend our analysis at later stages of this process.
4. We have appreciated the approach that the Commission has taken to engaging InternetNZ in this process. We would welcome further discussion and engagement as this process develops.

Has the Commission taken a comprehensive approach to this study.

5. At the start of this process, we urged the Commission to be as comprehensive as possible. Our original letter on the scoping of the Mobile Market Study stated:

Our primary feedback to the Commission is that this Mobile Market Study will be most useful, and best deliver to the legislative wording of s 9 of the Telecommunications Act, if it is as comprehensive as possible. We list below the factors that we see as the minimum scope of this study in order for it to be comprehensive.

6. We then catalogued the issues present for any party that seeks to enter and compete in the mobile market in New Zealand, and asked the Commission to consider all of these. We encouraged the Commission to be broad in scope in undertaking this study, and that such breadth would require an assessment of the following sets of issues:

“The ability for parties to build their own mobile infrastructure to participate and compete in the New Zealand mobile market...”

“Wholesale arrangements as a means of entering the market, and an alternative to building new infrastructure...”

“The overall health and sustainability of the mobile market in New Zealand, with a reflection on both the state of the mobile market as it currently stands and as it may evolve in the future.”

7. InternetNZ understands that to conduct a study as comprehensive as we have laid out is a large, resource intensive undertaking.
8. InternetNZ appreciates that the Commission has been broad and comprehensive in its approach, and has, by in large, done a comprehensive assessment of these issues.

Spectrum and MVNOs require further analysis, thinking and policy rationale

9. InternetNZ has focused its feedback on spectrum availability and Mobile Virtual Network Operator (MVNO) arrangements.
10. InternetNZ believes that of all of the issues surveyed in this mobile market study, that Spectrum and MVNO arrangements are particularly important. They are both unusual in terms of how they operate in a New Zealand context, and seem to be critical to competitive pressures in building mobile infrastructure and non-facilities based competition.
11. With regard to spectrum, InternetNZ has long held that the current allocation regime does risk suboptimal competitive outcomes. We are surprised that the Commission’s Preliminary Findings document identifies and discusses these factors – but yet does not recommend significantly different provisions for changing the management of spectrum assets.

12. We refer to PF8:

We do not believe there is a case for regulatory intervention to facilitate a fourth national MNO to enter the market. However, the design of the upcoming 3.5 GHz spectrum allocation process should not foreclose the possibility for new parties (including parties who may complement or compete with the existing MNOs) to obtain spectrum.

13. In particular, InternetNZ highlights the critical issues upcoming in allocating spectrum resources, and competition for these allocation rights from non-mobile operators. We refer to the campaign started by the Wireless Internet Service Provider Association of New Zealand’s (WISPANZ) “Don’t Waste our Spectrum” campaign.¹ We support WISPANZ in this campaign, and the issues they are raising are relevant to the questions and trade offs in this mobile market process.
14. We urge the Commission to consider markets adjacent to the mobile market as part of this study.
15. With regard to MVNOs, we refer to PF12:

¹ https://www.wispa.nz/wp/wp-content/uploads/2019/06/dont_waste_our_spectrum.pdf.

In light of this, we do not consider MVNO access regulation to be appropriate at this time. There would need to be greater evidence of market failure to justify wholesale access regulation.

16. We see merit in much of the Commission's analysis here. However, InternetNZ also highlights that New Zealand continues to be significantly out of step with many other OECD markets.
17. The best piece of evidence of market failure that would justify consideration of MVNO access regulation that MVNO market shares remain under 1%. This is not a new issue – MVNO offers have been available in the New Zealand market since 2009; despite three MNOs.
18. InternetNZ wishes to understand just how much more failure the Commission would need to see in order to consider intervening in this market.

InternetNZ remains available to collaborate with this process

19. While this submission is short, we appreciate having the opportunity to participate. We remain available to discuss these matters with the Commission.

Kind regards,



Andrew Cushen
Engagement Director