



Mobile market study: terms of reference

Comment | Commerce Commission  
30 November 2017

## Introduction

1. Thank you for the opportunity to comment on the Commission's proposed terms of reference for a study in to the mobile sector.
2. The Commission's study has the potential to help it build a deeper understanding of New Zealand's mobile markets: how they are developing, and how they will develop. Outputs of a suitably focused study can lead to more informed decision-making and more predictable regulatory settings for the market which will benefit end-users and investors alike.
3. The very fact of the Commission's involvement in a largely unregulated and competitive part of the market will, however, inevitably introduce uncertainty for investors in mobile networks. When a competition regulator publicly examines a market - whatever the stated objective - markets and investors recognise that the result of that exercise may be a change in the regulatory settings for that market. They recognise that they are not able to perfectly predict what those changes might be, if any, and this leads to increased uncertainty. In this case, such uncertainty is exacerbated by recent lobbying by a small number of fixed-line providers for regulation of MVNO services.
4. In this context, careful and considered terms of reference for this study is essential. We recommend that the Commission confirm:
  - a. That the scope of this study is future focused: i.e. limited to building a deeper understanding of how New Zealand's mobile markets may develop in the next 5 years on both the demand and supply sides; and
  - b. As early as possible during the study, that it does not consider there to be grounds for investigating any specific form of mobile market regulatory intervention or regulatory remedies in current mobile markets.

## Scope

### **Separating out analysis of MVNO submissions, and addressing this issue early, will be important**

5. While the purpose of the study is to understand future sector changes, a small number of parties have lobbied for the Commission to consider MVNO arrangements in the current market. This lobbying threatens to undermine the Commission's objective: no party could sensibly comment on how they expect mobile markets to develop in the next 5 years if there is uncertainty as to the near-term regulatory settings. For example, the introduction of MVNO regulation would radically alter the network economics of each of New Zealand's existing mobile networks, and therefore radically alter the development of mobile markets in our country.
6. The concerns raised by those lobbying for MVNO regulation can only be resolved by considering current consumer outcomes and evidence of market failure, rather than the forward looking structural changes implied by the proposed purpose of the study. Accordingly, understanding MVNO issues implies different information requirements, analysis and engagement with mobile network operators.

## Confirming that the objective of the study is to understand the 5G future

7. Further, the scope and methodology applied to the study should reflect the forward looking and inquisitive objectives of the study. For example, the mobile sector is entering a period of significant change and key elements of the how the market will evolve have yet to emerge:
  - a. The next generation of wireless new radio technologies (5G) is being developed for commercial deployment from around 2020. 5G technologies enable operators to more efficiently meet exploding mobile data demand and support genuinely innovative new services. But more fundamentally, 5G has the potential to affect and re-order multiple sectors of New Zealand's economy and society;
  - b. Key decisions and investments for 5G are starting to be made. For example, network operators are considering the large investments required for 5G sites, spectrum, backhaul and core infrastructure, and the Government is in the early stages of freeing up necessary 5G radio spectrum. Overseas scale 5G deployments are expected to start from around 2020 and if New Zealand aspires to deploy 5G on that timescale operators will need to start acquiring new sites and spectrum very soon; and
  - c. Inevitably, there will be uncertainties relating to 5G deployment. 5G and new network management technologies make a number of different retail and network business models possible.

What is absolutely clear is that in every scenario, end-users will be well-served by multiple retail service providers. Who the service providers are is not yet clear - they may be mobile network operators, they may be global OTT application and/or handset providers, or they may be retailers from a multitude of industries that are not today considered to be connected in any real way to telecommunications (for example car manufacturers or utility providers). Further, new technologies – e.g network slicing and e-SIMs - mean that 5G network deployments could potentially be funded through a range of alternative investment models and, unlike today's mobile networks, be monetised not just by traditional connection revenue but increasingly through management of subscriber data, applications and integration opportunities.

8. Accordingly, the Commission will be faced with a different set of policy and competition issues to those it has traditionally considered in respect of telecommunications markets. We cannot and should not assume that the future market structure and issues will be the same as those in the past.
9. Therefore, the Commission's study terms of reference should be focussed on these mega-trends rather than on traditional telecommunications competition policy issues, which arise predominantly from a view that network access is a bottleneck and its control can, if unchecked, create distortions. These mega-trends suggest entirely different considerations.
10. Further, we expect New Zealand's policy framework will have at its centre a goal of ensuring New Zealand is served by multiple 5G networks, not a single 5G network. Infrastructure-based competition has been critical to the pricing, product, technology and coverage innovations our markets have delivered to New Zealanders in the last 15 years, and will be just as important in the next 5 years.

11. Commission monitoring reports show the sector, for example, delivering consumers lower prices, increased value and being able to access leading edge technologies. Consumers are receiving more value and lower prices. Five years ago, the highest end mobile plan would have set you back \$170 which offered 650 calling minutes, 2500 texts and 3GB of data. Now Spark's best mobile plan costs less than half of that (\$79.99), offers unlimited texts, calls and data, and includes Spotify Premium and Lightbox. What you get from our \$19 prepay value pack today (750MB, 200min & unlimited texts) plus extras (50% off Spotify, rollover data & talk and 1GB socialiser) would have cost \$469 in 2009 and only give you 1500 texts and no extras.