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Submission to the Commerce Commission: Mobile Market Study – Preliminary Findings

Introduction

1. Nova Energy Limited (**Nova**) welcomes the opportunity to provide a submission to the Commerce Commission in relation to its Mobile Market Study – Preliminary Findings.
2. By way of background, Nova is a wholly owned subsidiary of The Todd Corporation, which has been one of New Zealand's leading energy explorers and producers for around 60 years. Todd Generation Limited, also a wholly owned subsidiary of The Todd Corporation, holds an interest in approximately 170 megawatts of installed power generation capacity. Nova is a supplier of electricity and natural gas to wholesale, retail and industrial markets. In 2018 Nova entered the telecommunications market and currently supplies fixed-line broadband and voice services to residential customers.
3. Nova has recently purchased Total Consumer Services Limited and its corporate group (trading as **MegaTEL**). The MegaTEL business continues to operate as a standalone division of Nova, meaning that Nova is now an MVNO. This has prompted us to become engaged in the Commission's Mobile Market Study and submit at this stage of the Study.
4. We have kept our submission brief and have focussed primarily on the Commission's preliminary findings on MVNOs and general development of the mobile market (i.e. we have not focussed on the Commission's other preliminary findings regarding consumer engagement).
5. Nova would be happy to meet with the Commission to further discuss our submission and the position of fringe MVNOs in New Zealand, as well as the regulatory options (as recommended below) that would better ensure an *effective* wholesale MVNO market can develop in New Zealand.

State of the New Zealand Mobile Market

6. Nova considers that the ability of non-MNO retailers to access the mobile market, on fair and reasonable wholesale prices and terms, is crucial to ensuring a sufficient level of competition and consumer choice – both in the mobile market and fixed-line telecommunications markets. However, we have concerns regarding the current state of New Zealand's wholesale MVNO market, which we consider is under-developed and ineffective (and which will remain so without some level of regulatory intervention).
7. We disagree with the Commission's preliminary findings that sufficient competitive conditions at the wholesale level exist (with three national MNOs), and that the current regulatory settings are fit for purpose. In particular:

- (a) The current MVNO market is extremely under-developed and weighted towards the MNOs. As recognised by several overseas regulators,¹ the presence of only three MNOs (which together provide 99% of all mobile services in New Zealand) suggests that regulation supporting MVNO access and expansion is justified.
- (b) We acknowledge that 2degrees' recent development of an MVNE platform will likely see 2degrees compete for MVNO opportunities. However, we disagree with the Commission's finding that 2degrees will be able to "offer comparable levels of coverage as the other MNOs"² (particularly due to 2degrees' comparative lack of spectrum holdings and inability to provide wholesale FWA services), and we do not consider there is any *actual* evidence that 2degrees has prompted a response from Spark and Vodafone in offering improved MVNO access, or that competitive conditions at the wholesale level have recently been improving.³ The recent entry by Trustpower and Kogan as MVNOs does not change the fact that the three MNOs still currently service 99% of the entire mobile market. Any improvement in "competitive conditions at the wholesale level" can only be demonstrated by MVNO growth (i.e. new MVNOs successfully being able to gain subscribers, which historically has not been the case – as demonstrated in Vocus' submission on the Commission's initial Issues Paper).⁴ With or without 2degrees' MVNE platform investment, New Zealand's wholesale MVNO market remains under-developed, sufficient competitive conditions at the wholesale level do **not** currently exist, and these are unlikely to arise under current regulatory settings.
- (c) We agree with Chorus, Vocus and Trustpower's respective submissions (on the Commission's initial Issues Paper) that the ability of non-MNOs to compete in retail markets is constrained unless they are able to obtain wholesale access to mobile services on *reasonable* terms (both price and non-price).

In particular, we agree with Trustpower's submission that the ability to bundle mobile with other services – energy as well as broadband – is essential for non-MNOs to be competitive. We consider there is more than a "potential" for the MNOs to foreclose on more valuable consumer segments than fixed-line only providers, as this is currently the status quo (evidenced by the MNO's 99% market share and by the growing proportion of MNO fixed-broadband customers being attracted by discounted broadband/mobile bundles, acknowledged by the Commission).⁵

- 8. Without a more easily accessible wholesale MVNO market (as is the case for electricity and fixed-line services), in which non-MNO service providers can offer fixed-service/mobile bundles at competitive prices, the development of New Zealand's mobile and wider telecommunications markets is put at risk – especially as we near 5G. In this regard, we agree that making the upcoming 3.5GHz spectrum allocations conditional on the MNOs offering a "network slice" to MVNOs (consistent with Red Dawn's previous submission on the Commission's initial Issues Paper) would be beneficial to developing a well-functioning telecommunications market. However, in order to properly address the current market imbalance, we also recommend that additional regulatory input by the Commission is necessary, as set out below.

¹ See for instance section 8.2 of the Analysys Mason report at Appendix 2 of Trustpower's submission to the Commerce Commission dated 26 October 2018.

² Paragraph 4.57.2 of the Commission's Mobile Market Study – Preliminary Findings.

³ Finding number PF11 and paragraph 4.56 of the Commission's Mobile Market Study – Preliminary Findings

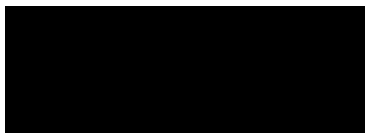
⁴ Paragraphs 29-35 of Vocus New Zealand's submission to the Commerce Commission dated 26 October 2018.

⁵ Paragraph 3.22 of the Commission's Mobile Market Study – Preliminary Findings.

Recommendations

9. Nova urges the Commission to be (and remain) vigilant in the MVNO space. This is especially important due to the fact that mobile competition in New Zealand is limited to three MNOs (that have very limited incentives to offer commercially viable MVNO access arrangements), and due to the proven historic (and ongoing) one-sidedness in wholesale MVNO contracts and bargaining positions.
10. If the Commission remains of the view that the current MVNO regulatory settings are “fit for purpose” and that no MVNO access regulation is required at this time, Nova recommends that the Commission should at least perform *some* form of monitoring and should ensure it has the tools, and sets appropriate targets, for future MVNO market intervention. At a minimum, we recommend:
- (a) That a “regulatory backstop” be prepared and introduced for MVNO services (consistent with Trustpower’s previous submission on the Commission’s initial Issues Paper). In Nova’s opinion, this would require the Commission to:
 - (i) ensure the current legislative framework is sufficient to enable, and determine specific targets/milestones⁶ which if met (or not met) would trigger, the speedy establishment of MVNO services as a “Specified Service” under the Telecommunications Act;
 - (ii) set a **short-term** review period and timeframes in respect of the MVNO targets/milestones; and
 - (iii) develop a clear pathway and regulatory plan (including potential MVNO wholesale price points) for MVNO services to become a “Designated Service” via Schedule 3 the Telecommunications Act.
 - (b) That the Commission develop and publish reference material – e.g. general guidance, contractual terms and constructs the Commission considers unfair/undesirable, a template MVNO contract etc. – consistent with Red Dawn’s previous submission on the Commission’s initial Issues Paper.
11. Again, once you have had an opportunity to review this submission, Nova would be happy to meet with the Commission to discuss our concerns and recommendations in more detail, and to answer any questions that you may have.

Yours sincerely



Babu Bahirathan
Chief Executive Officer
Nova Energy Limited

⁶ For instance, targets regarding new MVNO market entry, MVNO expansion and market share, the growth of capacity/volume based MVNO offerings by MNOs, etc.