Submission in response to the Commerce Commission's mobile market study - preliminary findings

PUBLIC VERSION

Competition at a turning point

June 2019

Executive summary

The New Zealand mobile market is performing well. As 2degrees approaches its 10th anniversary, increased competition from 2degrees' national network rollout is enabling ongoing innovation that is leading to great consumer outcomes.

Since its last submission, 2degrees' LTE network rollout has continued, new unlimited data plans have been launched and a plan for everyday 'kiwi heroes' has been introduced. The company is reinvigorating its brand and returning to its roots. 2degrees' 'Fighting for Fair' campaign, supported by market announcements such as a 2019 broadband price freeze, underpin its intention to continue to disrupt the wider telecommunications market.

The Commerce Commission's observation that the mobile market is highly competitive is continuing to prove true, with the benefits of three competing, profitable national mobile network operators delivering consumers lower than average OECD pricing, coverage of more than 98% of the population, and an environment where consumers can easily compare plans and switch providers.

The beginnings of a dynamic wholesale market are evident with the announcement of two new MVNO operators, while all three MNOs are developing plans for 5G and preparing for further significant investment.

Given these developments, 2degrees supports the Commission's preliminary view that current Commission regulatory settings are fit for purpose.

Unlike other regulated industries, mobile is delivering consumers increasing value for less. The battle for customers is intensifying, with all operators focusing on an improved experience to retain customers. At the same time, operators are making significant digital investments that will help reduce operating costs to fund what will be significant investments in 5G. Operators also are increasingly competing for wholesale business to generate new revenues that assist in the funding of new infrastructure, and looking at options for commercially rational infrastructure sharing.

The intensity of competition and investment is accompanied by uncertainty over the future role of Huawei. 2degrees has publicly shared its concerns that limiting access to the high quality of Huawei equipment and the price competitiveness it brings to the market will have a flow on impact for the services mobile consumers experience.

Given these challenges, operators such as 2degrees will welcome the Commission's confirmation that further regulatory investigations are not required.

2degrees supports the Commission's preliminary views that:

- MVNO access regulation is not appropriate at this time.
- There is no case for regulatory intervention to facilitate a fourth national MNO to enter the market.
- There is no case to bring forward planned Schedule 3 service reviews (MTAS in September 2020, colocation in June 2021, number portability in June 2021 and national roaming in September 2023). Mobile roaming and colocation should remain as specified services under the Act, providing important backstops in the event of commercial negotiations failing, however, there are currently commercial arrangements in place, and multiple access providers available for new access seekers.

The Commission's preliminary views paper identified spectrum, MVNOs and consumer engagement as important factors likely to influence the further development of competition in the mobile market and our submission comments on those areas.

Spectrum

While the Crown allocates spectrum, the impact of spectrum decisions on mobile market competition means the Commission plays a critical role in monitoring and providing input to MBIE on these decisions.

2degrees agrees that future spectrum allocation processes should factor the significant asymmetries in spectrum holdings between current mobile players. 2degrees has substantially less spectrum than Vodafone and Spark, and while we have been able to compete and expand since our entry, our ability to continue to do so depends on acquiring sufficient new spectrum, particularly given the rapid increase in data demand. Lower spectrum holdings limit network capacity, our ability to maintain network quality, and product availability (including FWA), while raising the cost of supplying customers and creating uncertainty for potential MVNO customers.

2degrees currently holds 18.5% of key mobile spectrum, compared to 40% held by Spark and 30% by Vodafone. While not all spectrum is directly substitutable (with different coverage characteristics and global device availability across bands), we support the Commission's preliminary view that "…it may also be appropriate to have regard to existing holdings in other bands which represent a substitute for the spectrum being auctioned or allocated". There is currently a significant spectrum disparity in both the sub-1 GHz and '2 GHz' (1.8 GHz, 2.1 GHz, 2.3 GHz and 2.6 GHz) mobile spectrum ranges.

The Commission should ensure future spectrum allocations do not widen spectrum disparities between mobile network operators or extend them to key 5G bands. It should support, through direct input and Commerce Act clearance functions:

- **2degrees acquiring at least the same amount of spectrum as Vodafone and Spark in the forthcoming 3.5G Hz auction.**

  3.5 GHz is the primary 5G band, which all three mobile network operators will require. A disadvantage in this spectrum holding will have a long-term impact on retail and wholesale competition. An allocation of 100 MHz of 3.5 GHz spectrum to each of the mobile operators, enabled comfortably by 5G synchronisation across the band, would allow optimal, long term competitive delivery of quality wireless services for New Zealand mobile customers. It would also reduce the amount of unutilised spectrum, whilst ensuring 3.5 GHz frequency is also available for others.[1]

  Other mobile operators should not be allowed to acquire more of this important long-term spectrum than 2degrees. Competition cannot afford a repeat of the 700 MHz auction, which saw the large incumbents acquire greater holdings due to short-term capital constraints by the developing national player.

- **2degrees acquiring the currently unused 2.1 GHz spectrum.**

  Telstra currently holds 2x5 MHz of 2.1 GHz spectrum, but this is not used, and it will not be offered for renewal from April 2021. 2degrees is the only mobile operator that does not have any 2.3 GHz or 2.6 GHz spectrum (in addition to a deficit in 850/900 MHz and 700 MHz spectrum). MBIE's recent decision to reduce all MNO holdings of 1.8 GHz spectrum while allowing Vodafone to keep its 2.1 GHz advantage disproportionately impacts 2degrees.[2]

  Acquisition of the unused 2.1 GHz spectrum would be a positive move to support competition in the key LTE 2 GHz bands. This can be achieved without any impact on property rights, or disadvantage to other operators, and would result in effective usage of this block of spectrum.

[1] Given the questionable sustainability of a fourth MNO or alternative business model and the performance benefits of having optimal spectrum holdings, the Commission should support 100 MHz allocations.

[2] Vodafone was allowed to keep an additional 20 MHz of 2100 MHz spectrum compared to both Spark and 2degrees, while all three MNOs did not have 2x5 MHz of 1.8 GHz spectrum renewed. Unlike Spark, 2degrees does not have any 2.3 GHz or 2.6 GHz spectrum (Spark has 70 MHz of 2.3 GHz and 40 MHz of 2.6 GHz spectrum). Having regard to other spectrum holdings, neither Spark nor Vodafone should be able to acquire this spectrum under the Commerce Act.

- **Appropriate reserve pricing and continued payment over time options.**

  Payment terms allow 2degrees to spread significant capital expenditure and are critical to allow 2degrees to secure required spectrum and support ongoing investment in network deployment for consumers.

- **Meaningful, but realistic implementation obligations.**

  These should protect against spectrum hoarding and locking up spectrum from operators that wish to deploy but bear in mind the capital constraints of smaller players such as 2degrees. There is a risk 'new business models' could lead to underuse of spectrum (by either geography or rollout) over the long term of the management right. Safeguards should be in place to prevent operators making 'windfall' gains by on-selling spectrum, as happened in the case of Cayman/BlueReach.

  Cayman/Blue Reach sold 2.6 GHz spectrum for a substantial profit without delivering on competition promises. This prevented others from utilising that spectrum to deliver LTE to end users, in addition to reducing potential crown revenue. While not hindering genuine entry, the Commission should ensure allocation rules prevent this situation arising again.

MVNO

2edgrees supports the Commission monitoring the development of MVNOs and agree "sufficient competitive conditions at the wholesale level exist and… MVNOs should emerge if they are commercially viable",[3] meaning MVNO access regulation is not justified at this time.

The positive competitive dynamic that we indicated 2degrees would drive with its MVNO entry is happening now, with Trustpower announcing it will launch an MVNO service following a competitive process won by Spark.

The Red Dawn Consulting Report, commissioned by the Commerce Commission, reinforced a number of 2degrees' experiences when negotiating with potential MVNOs. These relate to the cost, time and scale required for MVNO success in New Zealand.

2degrees remains focused on developing MVNOs. They are a significant future revenue stream that will help 2degrees increase network connections, generating revenues that support future investment.

Given New Zealand's small relative size, the scope for MVNO expansion is more limited than overseas, however we remain willing to invest in the development of this wholesale service and are in active discussion with several potential entrants.

We agree with the Commission's preliminary findings that now that there are three competing national mobile networks regulated MVNO access is not justified at this time.

The Commission's observation that future spectrum allocations must support rather than undermine the competition we enjoy today is true of 5G allocations, which will underpin 2degrees' ability to offer mobile and fixed wireless services to MVNOs.

Consumer Engagement

We support the Commission monitoring consumer engagement issues. However, the Commission has found there are low barriers to switching and most consumers can easily access their mobile usage data, and compare and switch plans. Any monitoring or action taken should be proportionate to the perceived issues.

2degrees is a strong supporter of competition and removal of switching barriers. We compete on customer service and differentiation. This is in line with the Commission's finding that 2degrees scored highly for overall customer satisfaction.

[3] Commerce Commission, Mobile Market Study – preliminary findings, 16 May 2019 (Preliminary Findings) at 12.

Our experience is that, as with most products, when consumers are happy, they are less likely to compare plans and switch providers. As such, switching numbers on their own are not a measure of a competitive market. However, if considering switching levels as an indicator of consumer engagement, the Commission should take account of not only switching between providers but also the switching within providers between plans.

The Commission has suggested consumer inertia may be an issue because some consumers don't compare plans often or switch providers. In the context of high customer satisfaction and ease of switching, we are not convinced regulatory action is required. In particular, we do not consider direct comparison of offerings by the Commission or sponsored by the Commission is appropriate. We would be concerned if:

- The outcomes of such an intervention hindered market innovation or competition.
- Any resulting actions were used in a misleading way. Simple comparisons between providers often fail to take account of differences between products as a result of 'added value services' such as 2degrees' uncapped Carryover Data.
- The costs and resource associated with such actions were above minimal levels. Any costs that are imposed on the industry need to be proportionate given the relative ease of comparing and switching plans and providers. The mobile industry is very different from, for example, the electricity sector. The 'what's my number' tool may be appropriate in a commodity-based industry where prices have continued to increase. However, mobile is far more complex, and unlike electricity, prices are decreasing.

Mobile infrastructure sharing

2degrees supports the Commission monitoring mobile infrastructure sharing developments. As per previous submissions, 2degrees supports infrastructure sharing across all technologies, whether 3G, 4G or 5G, where practical. Colocation and national roaming are occurring on a commercial basis, with specification of these services as a regulatory backstop.

Given the uncertainty over 5G business models and forms of 5G infrastructure sharing across different locations, as well as significant network complexities and risks, operators need firstly to address these issues commercially. We do not support further regulatory intervention at this stage as it would likely present significant implementation challenges and slow down the introduction of 5G. We agree infrastructure sharing proposals that raise potential competition concerns should go to the Commission for authorisation.

As set out in our earlier submission, aside from fibre backhaul, we consider the other key barriers to infrastructure sharing currently fall outside the Commission's mandate:

- The ability to co-locate or co-site on non-telecommunication infrastructure such as buildings, utilities, local Government infrastructure/facilities in densely built locations; and
- Required changes to the Resource Management Act, National Environmental Standards and Planning Processes to accommodate new 5G sites, which are not currently fit-for-purpose.

Addressing these issues could significantly reduce build costs and increase competition. We request the Commission encourage MBIE and relevant Government agencies to address these concerns.

Fixed line inputs

We reiterate our concerns that fibre monopoly services provided by Chorus/LFCs must be available at a reasonable rate and subject to regulatory oversight. Over time, the cost of fibre backhaul will have a significant impact on the cost and timeliness of 5G deployments.

We recognise this will be considered as part of the Commission's fibre regulatory work under the new Part 6 of the Telecommunications Act. As the Commission identifies, while fibre is fixed line, fibre services including DFAS and ICABS are critical inputs when providing consumers access to fixed wireless and mobile networks. With 4G and 5G network densification, the ability to access these services at a competitive rate will increasingly impact consumer pricing. Given Chorus' monopoly on a large proportion of these services, and existing concerns about Chorus pricing[4], the Commission's regulatory oversight of these services is critical.

Emerging issues with premium content

Since 2degrees' previous submission, New Zealand consumers have been confronted with the need to use an internet connection, rather than satellite service, if they want to watch all Rugby World Cup games live. Although this transition relates largely to fixed broadband connections, it is likely a significant number of consumers will view the games via a mobile connection.

2degrees has expressed concerns that one of the key reasons the Commission declined the Sky-Vodafone merger – the use of market power by a broadband operator to leverage premium must-have content – is now occurring. Spark's exclusive promotion of a free tournament pass for those that sign a term contact with the company means long-held concerns about Sky's sports monopoly are now an issue for the telecommunications division of the Commission.

While not part of the Commission's current mobile market study, we consider this issue requires closer attention by the Commission, especially given the features 5G technology will enable for streaming video users in future.

[4] 2degrees already has concerns over Chorus pricing and constructs, which can be very high compared to other LFCs. For example, the Chorus DFAS price of $355 per month, which is substantially more than equivalent LFC services.

1 Spectrum

The Commission has correctly identified radio spectrum as a critical input for future mobile market competition. Spectrum impacts network capacity for existing and new services, service performance, network rollout options and costs **[C-I-C]**.

While the Crown allocates spectrum, given the importance of spectrum allocation decisions to mobile market competition, we support the Commission monitoring and providing advice to MBIE on these decisions. We agree with the Commission that "promotion of competition should be an important consideration in spectrum allocation for the long-term benefits of New Zealanders".[5]

2degrees also agrees with the Commission's statements that:

- "[s]ignificant disparities in spectrum holdings are likely to distort competition at both the retail and the wholesale level",[6] and that
- "the design of future allocation processes for spectrum should have regard to such asymmetries. In setting limits on the amount of spectrum that may be acquired, it may also be appropriate to have regard to existing holdings in other bands which represent a substitute for the spectrum being auctioned or allocated".

As the Commission has identified, 2degrees has substantially less spectrum than other mobile operators. At a high level, 2degrees currently holds 18.5% of key mobile spectrum, compared to 40% held by Spark and 30% by Vodafone.[7] While not all bands are created equal (for example due to coverage, global demand and device availability[8]), 2degrees' spectrum disadvantage is distributed across multiple bands including within the sub-1 GHz bands and the 2 GHz bands.[9]

While 2degrees been able to compete and expand since entry, our ability to continue to do so depends on acquiring new spectrum, particularly given the rapid increase in data demand. Having lower relative spectrum holdings limits network capacity, our ability to maintain network quality and product availability (including FWA), while raising the cost of serving customers. It also creates uncertainty for potential MVNO customers who need confidence their host MNO can deliver the network quality and support that their products require via mobile and fixed wireless access offerings.[10]

The Commission should ensure future spectrum allocations do not widen these disparities and extend them to key 5G bands. The Commission should support, through direct input and Commerce Act clearance functions:

- **2degrees acquiring at least the same amount of spectrum as Vodafone and Spark in the forthcoming 3.5 GHz spectrum allocation**:
  - This is the primary 5G band, which all mobile operators will require. An allocation of 100 MHz of 3.5 GHz spectrum to each of the mobile operators, with 5G synchronisation across the band, would allow optimal, long term competitive delivery of quality wireless services and reduce spectrum wastage. It would also ensure 3.5 GHz frequency for alternative smaller and regional providers is available in other portions of the band. Given that a fourth national network operator is not sustainable and the performance benefits of optimal spectrum holdings, the Commission should support 100 MHz allocations to existing MNOs.

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[5] Preliminary Findings, at 4.22.
[6] Preliminary Findings, at 4.22.
[7] Dense Air holds 11%. This excludes 3.5 GHz spectrum (which other operators hold until November 2022), mmWave and non-IMT spectrum. Including these bands further reduces 2degrees' relative holdings.
[8] For example, 3.5 GHz is the first key 5G band and is not a substitute with existing 4G bands in the short term. As a result, all mobile operators require access to this band. High frequency spectrum is not a full substitute for low frequency spectrum in all areas, due to lower coverage characteristics.
[9] This includes 1.8 GHz, 2.1 GHz, 2.3 GHz and 2.6 GHz mobile spectrum.
[10] The Commission has noted at [4.21] of the Preliminary Findings that 2degrees' inability to offer fixed wireless access offerings "may have been a factor in Trustpower's decision to sign an MVNO agreement with Spark".

- An auction design or clearance proposal that increases existing spectrum disparities over the medium and long term should not be supported. For example, an outcome where 2degrees acquires an 80 MHz holding and others 100 MHz, would perpetuate the cost disadvantages 2degrees faces and undermine long-term competition. This would worsen as other bands also become 5G capable.[11]
- 2degrees support the introduction of acquisition limits ('spectrum caps') proposed by MBIE "to prevent stronger players in the market from shutting out weaker incumbents or potential new entrants".[12] Critical to the effectiveness of the spectrum caps will be the price, payment terms and the amount of spectrum made available. Given the different characteristics of spectrum bands, spectrum caps could also be set for total (not band-specific) frequencies in a particular group (e.g. sub 1 GHz, 2 GHz, 3.5 GHz and mmWave spectrum). We appreciate a band-specific cap will be required for the 3.5 GHz range given it is the primary 5G band in the short term.

- **2degrees acquiring the currently unused 2.1GHz spectrum (2x5MHz), held by Telstra (but not offered for renewal):**
  - 2degrees is the only mobile operator that does not have any 2.3 or 2.6 GHz spectrum (as well as less 850/900 MHz and 700 MHz spectrum). MBIE's recent decision to consider renewal of 1.8 GHz and 2.1 GHz holdings separately, rather than 2 GHz holdings, has resulted in increased spectrum disparities because Vodafone was able to maintain the additional 2x10 MHz of 2.1 GHz spectrum that it acquired as a result of its acquisition of TelstraClear. Given 2degrees' already lower spectrum holdings, this will have a disproportionate impact on 2degrees as future capacity demands are placed on mobile networks.[13]
  - We understand MBIE/the Crown is currently assessing the 1.8 GHz spectrum holdings for use by emergency services. We would welcome full renewal of our existing holdings if this does not proceed.
  - An MBIE/Crown decision on the unallocated 2x5 MHz of 2.1 GHz spectrum has not been made. 2degrees will seek to acquire this spectrum to mitigate the loss of 1.8 GHz spectrum and create a 2x20 MHz 2.1 GHz carrier that can be efficiently aggregated with our 2x20 MHz of 1.8 GHz spectrum. This will promote competition for the long-term benefit of end-users.
  - The Commission should support this acquisition so 2degrees can compete more effectively against operators that have significantly more spectrum in the 2 GHz range. Spark and Vodafone already hold sufficient 2 GHz spectrum to support LTE carrier aggregation, but 2degrees does not. Spark has 70 MHz of 2.3 GHz spectrum and 2x20 MHz of 2.6 GHz spectrum. Vodafone holds 2x15 MHz of 2.6 GHz spectrum, as well as an additional 2x10 MHz of 2.1 GHz spectrum.
- **Appropriate reserve pricing and continued payment over time options**
  - Appropriate reserve pricing and spectrum payment terms should be offered on all spectrum allocations.
  - An appropriate reserve price is critical to the effectiveness of the acquisition limit, as demonstrated by the 700 MHz auction, where as a result of short-term capital constraints, 2degrees could not purchase the full allocation at the reserve price.
  - Payment terms over time allow operators to spread capital expenditure and are critical to allow 2degrees to secure this required spectrum and support ongoing investment in network

[11] Such a situation occurred in relation to the 700 MHz auction, where one operator was allowed to acquire double the amount of this important spectrum in the long term due to short term capital constraints.
[12] Cabinet Paper "Allocation of Radio Spectrum for 5G Mobile" (27 February 2019) at [49].
[13] The MBIE decision 'treats MNOs equally' by:

- Reducing all MNO 1800 MHz spectrum holdings by 2x5 MHz, despite 2degrees' overall lower spectrum holdings;
- Fully renewing all MNO 2.1 GHz spectrum holdings until 2041, allowing Vodafone to renew 2 x 25 MHz of spectrum versus Spark and 2degrees (Hautaki) 2x15 MHz of spectrum, for the same price per MHz.

deployment for consumers. This will be especially important as operators move to 5G, with capital costs to acquire spectrum and invest in new network to deploy it. As an operator that is still recovering its investment in 3G and 4G networks, staggering the cost of moving to 5G will be critical in ensuring three-player competition on this new technology. Payment terms are also appropriate for spectrum assets that extend over 20-year periods.

- Following MBIE advice, the Crown provided a payment over time option for the 1.8/2.1 GHz spectrum renewals. 2degrees is strongly supportive of this decision. However, it is concerned the importance of this option was not fully supported by some parts of government. **[C-I-C]** The Commission should strongly support MBIE standardising spectrum payment terms for future allocations.

- **Meaningful, but realistic, implementation obligations:**
  - Implementation obligations are important to ensure operators cannot speculate on a valuable spectrum resource, deploy it inefficiently for non-5G technologies and/or lock up spectrum from operators that wish to deploy.
  - They should be meaningful, but realistic, keeping in mind the capital constraints of smaller players such as 2degrees and market uncertainty on deployment (including over 5G business models, rollout costs and vendor uncertainty).
  - There is a risk that 'new business models' could lead to underuse of spectrum (via limited geographic coverage or limited rollout) over the long term of the management right. We do not support windfall gains to speculators. Safeguards should be in place to prevent operators making windfall gains by on-selling the spectrum, as happened in the case of Cayman/BlueReach, which saw Cayman/Blue Reach sell this spectrum for a very substantial profit without delivering on competition promises made to MBIE. At the same time, this removed the opportunity for 2degrees to acquire the spectrum to deploy LTE and for the Crown to gain millions in spectrum revenue. While not stopping genuine entry, the Commission should ensure the allocation rules prevent this situation arising again.

We agree with the Commission's conclusion that "[w]e do not believe there is a case for regulatory intervention to facilitate a fourth national MNO to enter the market".[14] As set out in our previous submission, the "Commission and Government should avoid an unfortunate experiment by setting aside spectrum for a fourth entrant when mobile operators are consolidating in countries with larger economies….a keu question for Government when allocating spectrum is whether to…[d]ilute existing providers' access to future spectrum so a new provider can attempt to deliver better consumer outcomes in a price-competitive market where margins are falling, network build is costly and significant ongoing investment will be required".[15]

While we understand the Commission wouldn't want to exclude a new operator, a fourth national network operator is not sustainable. New competition is already emerging via wholesale competition between the three national MNOs and we believe the focus of the Commission should be:

- Ensuring that the existing spectrum disparities between existing operators are not continued into 5G bands and are addressed over time; and

- Ensuring operators have efficient blocks of spectrum (100 MHz in the 3.5 GHz).

The current proposal (supported by all MNOs) for synchronisation of the 3.5 GHz band 'frees up' more 3.5 GHz spectrum than previously (due to there being no need for a guard band), mitigates extensive interference concerns, and would allow three national 100 MHz allocations as well as smaller national

[14] Preliminary Findings, at [67].
[15] 2degrees Submission in response to the Commerce Commissions' Mobile Market Study, October 2018, at 5.

or regional lots that might be appropriate for 'new business models' and regional players. These proposals are being discussed by industry as part of MBIE's 3.5 GHz consultation processes.

2degrees would be concerned if mobile operators received sub-optimal national spectrum allocations (that impact performance over wide geographies) to enable a new operator to roll out spectrum in only limited areas over the course of the management right. For example, we are unclear that a small-cell network requires a full national spectrum allocation.

We welcome the Commission's statement that it "will continue to monitor the design of the spectrum auction, and the timing and amount of spectrum that is able to be released".[16]

[16] Preliminary Findings at [4.91].

2 MVNO Access

We agree with the Commission that MVNO access regulation is not required. 2degrees has only recently become a competitive provider of MVNO services,[17] yet is already seeing competitive conditions emerge. MVNO access regulation would undermine our efforts and it would be very unusual to regulate a market that now has three competing national infrastructure providers and no strong evidence of a problem.

MVNOs are an important source of future revenue for 2degrees and represent an opportunity to grow market share, gain economies of scale and recover our investment by attracting new partners that draw new customers to the 2degrees network. The positive competitive dynamic that we indicated 2degrees would drive with its wholesale activity is occurring, with Trustpower announcing it will launch an MVNO following a competitive selection process.

Since our initial submission we have continued to engage with operators that express an interest in launching a mobile service in New Zealand. **[C-I-C]**.

The Red Dawn Report commissioned by the Commerce Commission referred to the 'light MVNO' model as one that provided MVNOs with the balance between cost control, product differentiation and investment. 2degrees has already invested in an MVNE platform to enable this form of MVNO.

The Red Dawn report reference to a $1m-$2m investment that takes 6-12 months to become operational matches our experience of the investment required by an operator that understands it is effectively creating a new mobile business. This investment is not just about network connectivity, input prices and customer management systems, but also requires the MVNO to develop, promote and maintain its own set of unique mobile services in a rapidly changing retail market.

To date, **[C-I-C]** few aspiring MVNOs have demonstrated a deep comprehension of the need to 'build a mobile business' when launching an MVNO. All too often, discussions focus on the transactional aspects of connecting to a mobile network and input pricing. There has at times been a lack of appreciation for the fact that operating an MVNO is very different to buying Chorus inputs for a broadband service, that there are a new set of complexities involved in serving customers with multiple different devices, and that the host MNO also needs to invest in enabling a new operator on its network.

The Red Dawn report also notes that the light MVNO model "is generally sustainable if there are at least 50,000 subscribers".[18] This is a substantial customer base given the size of the New Zealand market and is consistent with the feedback we received from **[C-I-C]**.

In discussions to date, a number of parties seeking MVNOs have considered these challenges and elected to pursue a resale agreement, which would allow them to offer a mobile service more quickly, acquire a customer base and, over time, move to the 'light MVNO' model.

2degrees expects new MVNOs to offer additional choice to consumers and has strong incentives to develop the New Zealand MVNO market to help it achieve scale. However, as per our previous submission, there is already strong price competition between MNOs and MVNOs may face challenges achieving the scale to warrant investment in fuller MVNOs.

2degrees agrees with the Commission's preliminary findings that, with three competing national mobile networks, commercially viable MVNOs can emerge.

The focus should be on ensuring 2degrees continues to compete for and stimulate effective wholesale supply to MVNOs. As the Commission has identified, a key aspect of ensuring sustained competition is ensuring future spectrum allocations support future competition from 2degrees. A key concern for aspiring MVNOs is the current and future capacity of their host MNO's network.

[17] As noted by the Commission, our previous more limited coverage has limited our ability to offer competitive MVNO services due to national roaming cost considerations.
[18] Red Dawn, MVNO landscape: Global Perspectives and New Zealand Applications, 14 May 2019 at 13.

[C-I-C]

Spectrum holdings will be especially important as the market moves to target other segments through low-latency and mass machine connection services via 5G networks.

3 Consumer Engagement

The Commission has an important role in monitoring relevant markets under the Telecommunications Act under its section 9A monitoring powers and its new mandate on retail service quality under Part 7.

Consistent with our own experience, in conducting this review the Commission has found good consumer results, including:

- Most key indicators like pricing, quality of service, coverage and consumer choice are trending in a positive direction.[19]
- Mobile consumers find it easy to access their usage information[20] and to compare[21] and switch plans. This is despite the higher complexity of mobile services when compared with other industries, and the wide variety of consumer needs and preferences (for example, pay monthly or pre-pay plans, data requirements, the differing levels of flexibility and engagement that consumers want, requirements for international mobile usage).
- Most consumers are satisfied with the level of service they are receiving from their current provider.[22]

While the Commission has found these positive results, and concluded that submissions on the issues paper "did not reveal significant issues for consumer engagement in the mobile market"[23] it has noted that because not all consumers compare plans often or switch providers, "[t]his suggests that there is a degree of consumer inertia".[24] The Commission appears to be considering whether further action needs to be taken to encourage customers to research alternative plans and providers.

2degrees is a strong supporter of competition, lowering consumer switching barriers and promoting consumer engagement. We supported mobile number portability, promoted free handset unlocking and removed long-term contracts. In 2010 we led the introduction of open term plans and in 2014 Mobile Repayment Options (MROs) that separate the choice of a plan from handset selection. This has enabled customers to acquire high-end devices without being locked into usage plans that do not meet their needs. Freedom plans are now a core part of our brand and an important part of enabling consumer choice.

Given the overall service New Zealand consumers enjoy, we do not consider action by the Commission action is needed:

- The Commission has found no evidence to suggest that there is a problem that needs to be addressed by regulation. The Consumer NZ survey of mobile consumers 2018[25] ("Consumer NZ Survey 2018") reports that 68% of mobile consumers rarely or never compare plans[26], but also that 70% of mobile consumers are satisfied with the service of their current provider[27]. It is not surprising a large proportion of customers have not switched or searched alternative plans when they are satisfied with their current provider. As with other products, when customers are happy, they tend not to invest time and effort into reviewing other providers. The Consumer NZ Survey 2018 results also indicate that dissatisfied customers can easily compare and switch providers.

[19] Preliminary Findings, 16 May 2019 at [X6].
[20] Preliminary Findings, Figure 11 at 77 shows that 60% of consumers find it very easy to access mobile usage information, 18% find it somewhat easy, 10% are neutral and 12% find it difficult.
[21] Preliminary Findings, Figure 13 at 78 shows that 29% of consumers find it very easy to compare providers and plans, 27% find it somewhat easy, 22% are neutral and 22% find it difficult.
[22] Preliminary Findings, Figure 16 at 83 shows that 70% of surveyed mobile consumers said that satisfaction with service is their main reason for staying with their current provider.
[23] Preliminary Findings, at [3.98].
[24] Preliminary Findings, at 13.
[25] Consumer NZ Survey of mobile consumers 2018 (Consumer NZ Survey 2018) as referenced in Preliminary Findings at [3.23].
[26] Preliminary Findings, Figure 12 at 78 shows that 3% of consumers regularly compare plans, 28% occasionally compare, 41 % rarely compare and 27% never compare.
[27] Preliminary Findings, Figure 16 at 83.

- There is active competition for customers. 2degrees competes strongly on price, retail service quality and brand to attract new customers and retain our existing base. Our recent Fighting for Fair campaign and our early adoption of Freedom Plans and Carryover Data are examples of this competitive activity. These are key competitive service differentiators for 2degrees, and they are reflected in our high satisfaction scores (NPS) and multiple customer services awards. We do not consider this requires regulatory intervention.
- We agree with the Commission's statement that "there is no fixed proportion of the market that should be expected to switch. Consumers not switching is not necessarily a concern if those consumers do not face significant barriers to switching."[28]
- Levels of switching are high. As set out in our previous submission, since 2007 porting statistics show more than 3.4 million fixed and mobile consumers have switched providers.[29] The Commission noted that approximately five percent of New Zealand mobile subscribers port their number each year and that 301,762 mobile numbers were ported in the year to June 2018,[30] indicating that switching is not difficult.[31] The actual switching number will be higher, because not all customers port their number.
- Internal switching is commonplace. Consumers switch not only between providers but between plans.
- Regulatory changes and the level of competition that has now emerged in the market mean that anti-competitive switching barriers have largely been addressed.

While we appreciate that the Commission is seeking to further understand the market and we support it monitoring relevant markets, we are keen to ensure that Commission responses are proportionate to any problem or potential problems identified. We do not believe further costly intervention is necessary or helpful to promote competition in mobile markets and consider other issues are of greater priority.

We would be concerned if an outcome of the review was an expensive and complex consumer engagement mechanism. We have previously outlined our concerns regarding mobile consumer comparison sites and the like. The mobile industry is very different from, for example, the electricity sector. The 'what's my number' tool may be appropriate in a commodity-based industry where prices have continued to increase. However, mobile is far more complex, and unlike electricity, prices are decreasing. We are concerned that simple comparisons between mobile offerings are likely to be misleading and inaccurate and will have the effect of hindering competition and innovation.

A one size fits all approach would distort differentiation, an important aspect of competition that is valued by consumers. This is especially so given the significant value-add and service innovation features in New Zealand mobile plans. Following extensive consumer research, 2degrees has invested in features and innovations that do not neatly compare to other providers' offerings, but which are highly valued by customers. For example, 2degrees' customers love our 'free data hour', Carryover Data, Data Clock, WiFi Calling, Share Packs and our award-winning 'Your 2degrees'app'.[32] We are against the Commission encouraging a consumer focus on certain limited aspects of our offerings, particularly where those aspects may not be of most relevance to the consumer experience.

While it is true that "[t]he presence of complex choices and/or non-transparent add-on costs may make plan comparisons more difficult",[33] the Commission has found that most consumers find it easy to

[28] Preliminary Findings, at [4.98].
[29] Letter from Geoff Thorn (TCF) to Hon Kris Faafoi MP regarding briefing to the incoming Minister of Broadcasting, Communications and Digital Media (October 2018).
[30] Preliminary findings at [3.16].
[31] Of course, porting data on its own should not be used as a proxy from which to measure switching. Increased consumer service quality should be expected to reduce churn, whilst benefiting consumers.
[32] In September 2018, 2degrees was awarded the Gold Pin for Best Interactive Application at the 2018 Best Awards for its 'Your 2degrees' app, which allows customers to easily manage their accounts by checking their balances, viewing their calls, texting and data usage, manage their add-ons and much more. See further: https://bestawards.co.nz/interactive/applications/alphero/2degrees-mobile/.
[33] Preliminary Findings, at [4.78].

compare and change plans. Given that consumers value having different choices, we do not see reducing innovation in a competitive market as the answer. We consider such an outcome would drive significant resource and cost for little benefit while harming competition and innovation.

4 A note on mobile data pricing

The Commission has made several references to high New Zealand data prices and low data usage. For example, it comments that "[a]verage mobile data usage in New Zealand remains low by international standards, and this may reflect relatively high prices for larger bundles".[34]

It is important that the Commission make these comments in context (as it does in some parts of the report):

- New Zealand data prices are well below the OECD average. Despite this, data usage is low.
- While the Commission finds 'larger data' bundles are more expensive than in Australia, Australia's data usage (although higher than New Zealand), is also low (25th of the OECD countries presented); and
- The comparison is not like-for-like. While the Commission notes various differences in the text, for example, the fact that New Zealand packs include more data than the OECD basket, the headline figures can be misleading.[35]

This is consistent with our view that the relatively low data usage is reflective of other factors. For example, data usage (and pricing) needs to take into account the prevalence of fixed wireless services, the impact of New Zealand's UFB network and WiFi offloading.

The Commission will have also seen that since our last submission, 2degrees has launched additional data unlimited plans,[36] including our uncapped free data hour, (which customers can use for high data use) and our unlimited pool plan earlier this year, which are also not taken into account.

[34] Preliminary Findings at 14.
[35] Significant differences include the amount of data offered per month, the availability of Carryover Data, the length of contract (fixed or open term), the size of early termination fees and additional inclusions such as 2degrees' daily free data hour, share data, international and content inclusions as well as temporary promotions. Notably, once these differences are taken into account, some 2degrees plans are significantly cheaper than the Australian plans. In addition, it is not clear that all New Zealand plans were taken into account.
[36] The amount of data is uncapped but speed is throttled at 40GB consistent with 2degrees' terms and conditions.