



## Mobile Market Study – Preliminary Findings

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## Executive Summary

We support the Commission's preliminary findings that competition in the mobile market is delivering lower prices, increasing quality and greater choice of retail mobile telecommunications services for consumers. We see these benefits across a range of indicators: New Zealand retail prices remain below OECD averages; 4G speeds continue to be in the top tier of international comparisons; mobile network operators are investing in new 5G networks and service innovation is high.

Nonetheless, several submitters observe that MVNOs currently serve only a small proportion of the retail market and, on this basis, call for a range of regulatory interventions in wholesale markets. However, these submitters do so without providing any evidence of a competition problem in any retail market, or any evidence that the regulatory interventions they request would produce long term benefit for end-users. We don't support further regulation of wholesale arrangements.

By the time the Commission publishes its final views later this year, the mobile market study will have been ongoing for two years with no new information suggesting market failure. There is no reason why the Commission shouldn't now more quickly finalise its preliminary findings so that the mobile sector can move forward. Network operators are planning for investment in new 5G networks and need investment certainty to confidently progress this investment which is going to drive the next wave of innovation in our sector.

Accordingly, we further support the Commission's response to Vocus' request to delay finalising the report. There is no new information that would require the Commission to delay its final report. Further, agreeing to delay the market study to support a party's commercial negotiations will send wider signals to the market.

### Market outcomes

Interested parties have understandably focused on the specific measures that the Commission highlights in its preliminary findings paper.

We do not support drawing conclusions from a single comparison or measure because mobile services markets are by their very nature dynamic, which makes the risk of erroneous findings from snapshot comparisons very high.

Nonetheless, even if these measures were deterministic, they do not indicate a concern:

- **Mobile data prices relative to Australian:** as set out in our submission the price per GB prices for unlimited plans available to New Zealand consumers are not significantly different to those available in the Australian market. These plans are meeting consumer needs and are popular. While unlimited plans are relatively new in the market, already [ ]SPKCI of Spark's mass market pay-monthly customers are on these plans and growth in our unlimited customer base is [ ]SPKCI of our overall growth.
- **4G coverage:** some submitters point to the Opensignal connection measure as a measure of coverage. However, Opensignal reports the time a device is connected to a network rather than coverage. We are confident that we provide widespread 4G coverage and, further to the reports set out in our submission, we recently completed network testing that shows [ ]SPKCI

### Regulatory initiatives

Submitters who propose further regulation refer to low MVNO market share relative to some other countries and say that this suggests regulatory intervention is warranted.

However, NERA found no statistical relationship between either the number of MVNOs, or MVNO connection volumes and consumer outcomes. In contrast, NERA points out that there would be clear and obvious costs associated with regulation of MVNO arrangements, and these would likely be significant.

Vocus has said that it is going to request competitive tenders for its MVNO business, which is further evidence of the dynamic and competitive nature of our market.

While there is no evidence to support intervening, submitters ask the Commission to make targeted interventions in:

- **MVNO wholesale arrangements:** However, the market for MVNO services continues to evolve, with increasing interest from new and prospective MVNO customers despite the challenges identified by the Commission's experts with the traditional MVNO business model in a small market like New Zealand. As 5G thinking develops though we expect the range of MVNOs, and our understanding of what an MVNO looks like, will shift radically as industry-specific 5G use cases emerge.
- **5G spectrum allocations:** Submitters propose that arrangements should include obligations such as coverage commitments, and that authorities should consider holding back spectrum to preserve the option of future entry. We would be concerned if authorities were to hold back spectrum as spectrum has most value when used to provide new services to end users. We also doubt that this approach would be effective. Internationally, the trends are in the opposite direction: the number of network operators in overseas markets is typically consolidating rather than expanding at the same time authorities are planning the release of additional spectrum.

We support ensuring WISPs have access to spectrum as they provide important services to rural consumers. However, there are several other suitable bands supported by equipment providers that could be used for WISPs that do not compromise the provision of 5G services to other users.

## Introduction

1. Thank you for the opportunity to comment on submissions on the Commission's *Study of mobile telecommunications markets in New Zealand* preliminary findings paper (**the paper**).
2. The process the Commission undertook to obtain evidence on the New Zealand mobile market's performance has enabled the Commission to reach a meaningful preliminary view on key characteristics of the mobile market: that competition in the mobile market is delivering lower prices, increasing quality and greater choice of retail mobile telecommunications services for consumers.
3. We see the benefits of this competition across a range of indicators: New Zealand retail prices remain below OECD averages; 4G speeds continue to be in the top tier of international comparisons; mobile network operators are investing new 5G networks and service innovation is high. This is consistent with the Commission's ongoing mobile market monitoring results and with what we see in the market.
4. Several interested parties reiterated requests for MVNO access regulation and regulated spectrum constraints in their latest submissions. But these submissions did not provide any evidence to suggest the Commission's findings about the state of competition in retail markets and the consumer outcomes those markets are delivering. Nor did they provide any additional information that suggests a different approach to that set out in the preliminary views paper. If anything, additional information provided to the Commission supports the preliminary views.

## Developments in the mobile market

5. We agree with the preliminary findings paper. A range of indicators considered by the Commission point to a market delivering outcomes for end users. New Zealand prices are below OECD averages for every basket, the quality of our networks is above average, and returns are below average. When New Zealand outcomes are considered against a meaningful comparator set, it is clear that we are doing well.
6. Submitters proposing further regulation of mobile markets have - understandably - focused on the specific measures identified by the Commission as running contrary to the general trend. We do not support drawing conclusions based on a single comparison or snapshot of a dynamic market. As noted above, focusing on a single measure or comparator country provides little help in assessing the market and can be misleading.
7. If parties were to look hard enough for snapshot comparisons between New Zealand and a single or small group of comparator countries, we are sure it is possible to find concerns in any market and erroneous results. But snapshot comparisons against carefully-selected countries are not enough to base fundamental economic policy on.
8. For example, Sky suggests a finding that New Zealand has high prices for large mobile data packages relative to Australia and low MVNO penetration suggest structural impediments to competition that should be considered in future spectrum allocations. However, if Sky had compared New Zealand unlimited plans with those of US national operators, they would have found that our prices are on average 60% lower than US operators for similar plans. What can each of these snapshot comparisons really tell us about the state of competition in each market, or the appropriate competition policy for each market? On their own, they cannot tell us anything.
9. In any case, as we set out below, we do not agree that New Zealand has high prices for large mobile data packages relative to Australia.

### Comparisons to the Australian mobile data bundles

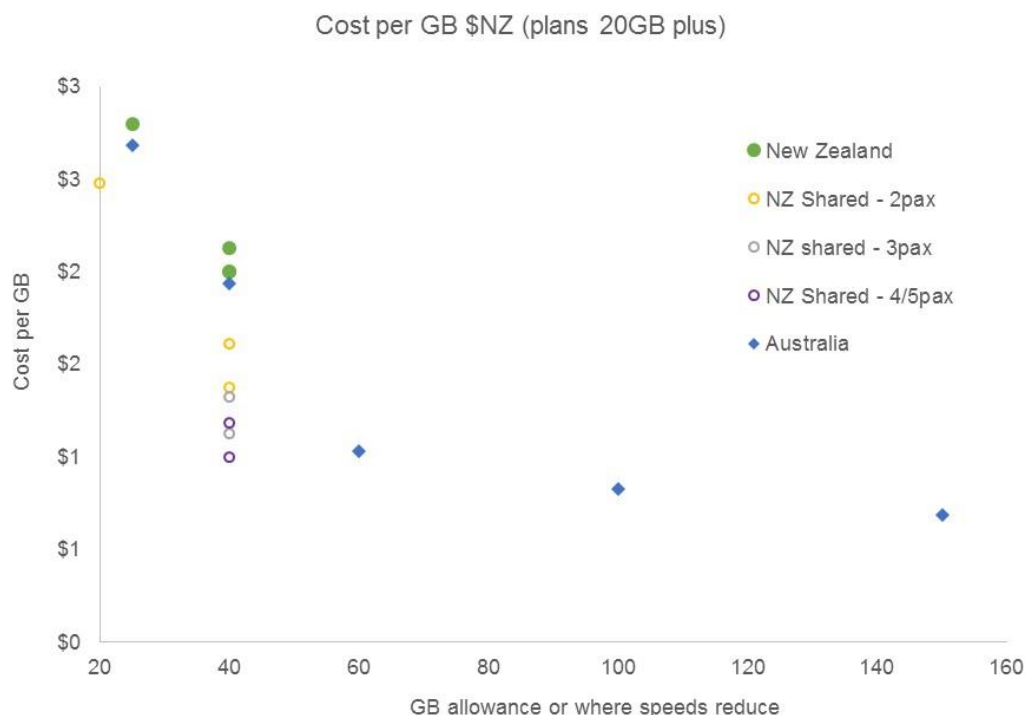
10. In New Zealand, the predominant trend in the retail market is the shift towards unlimited data plans. Growth in Spark's unlimited base [ ]SPKCI And [ ]SPKCI.
11. With unlimited prices for customers selecting our Unlimited Group plan as low as \$47.50 – or as low as \$40 on 2 degrees' unlimited group plan equivalent, the prices for these large data packages measure up well to Australian prices.
12. In the preliminary views paper, the Commission's pricing analysis focused on "high usage plans" and made a particular comparison against Australia and separately compared contract and open-term plans. The New Zealand market has shifted towards open term plans, given consumer preferences to have not term contracts ([ ]SPKCI. Therefore, we consider open term plans to be the most relevant comparison. Indeed, we note that since the preliminary views paper was published, Telstra has moved to introduce open term plans. A recent innovation in the NZ market that is not a feature of the Australian market is shared plans. The shared unlimited allowance plans offered by Spark and 2Degrees offer considerable value for customers.
13. A comparison of the markets show there are a range of high usage<sup>1</sup> open term plans, including shared plans, with per GB prices from \$2.80/GB through to \$0.69/GB<sup>2</sup>. A New Zealand customer on a 4 person unlimited plan would pay \$1-\$1.18/GB relative to Australian prices of \$1.93/GB for 40GB, \$1.03/GB for 60GB, \$0.82/GB 100GB and \$0.69/GB 150GB. This spread, and the greater value offered by shared plans in NZ, is demonstrated in Figure 1 below. Given different customer demands and preferences, it is difficult to draw inferences about whether Australian or New Zealand consumers are better or worse off overall. However, we know both have similar per GB price points in the market for different customer groups. Additionally, a shared plan NZ customer is considerably better off than a person in similar circumstances in Australia.

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<sup>1</sup> Based plans on operator websites on 19 July 2019. AUD to NZD conversion was done using the rates used in the Q1 2019 Teligen benchmarking report.

<sup>2</sup> Here we define high usage plans as those  $\geq 20$ GB, which we base on the new high usage Teligen bundle the Commission discusses in the preliminary view paper, rather than a Spark view on the way in which usage should be categorised.

Figure 1: Comparison of Australia and NZ plans



14. The New Zealand and Australian markets are different markets serving different consumers and different consumer preferences with different network cost bases, and we maintain that snapshot comparisons or price-points should be treated with caution.
15. In their submissions, 2Degrees and Vodafone questioned the proposed discrepancy with Australian mobile plans. 2Degrees noted that price differences are inconsistent with relative usage suggesting that there is something else at play here. Vodafone noted the differences may simply reflect a myriad of differences between the countries in terms of customer demand and network costs. As Vodafone noted, part of the difference could be attributable to higher NZ deployment costs. Further, measures of low usage may be due to the high number of mobile subscribers per person (which may include low use or inactive users) and high fixed network usage in the New Zealand market.
16. We expect market outcomes to reflect differences in consumer demand and supply side considerations such as network deployment costs. NZIER found<sup>3</sup> that network investment comes at a sizable cost premium to OECD peers such as the UK – on a per connection basis – for high levels of coverage. For example, rolling out new generation technology to 97% of the population costs 17% more on average per person in New Zealand than it does in the UK. These differences will ultimately be reflected in consumer offers and outcomes.

**Low number of MVNOs**

17. Submitters also suggest that higher MVNO penetration would improve consumer outcomes and therefore regulatory intervention is warranted. In other words, that increased MVNO penetration is a desirable outcome in and of itself, rather than a potential means to an end. Specifically, there is no evidence that consumer outcomes are poor in New Zealand and that

<sup>3</sup> NZIER *Mobile industry in New Zealand Performance and prospects* October 2014

this could be remedied by regulatory interventions to increase MVNO participation in the market.

18. NERA investigated in its reports<sup>4</sup> whether there was any evidence that consumers are poor in New Zealand or whether a higher share of MVNOs positively impacts consumer outcomes. In addition to the Commission's preliminary report findings that consumer outcomes in New Zealand have been improving, specifically with respect to lower prices, increased quality, and a greater choice of services, NERA found that:

- a. **The market is performing well.** The New Zealand mobile market has good outcomes compared to other countries and are improving across a range of measures: prices are generally lower than the OECD average and declining in both nominal and real terms, mobile ARPU does not appear to have been rising, mobile subscriptions, call minutes and particularly data traffic have increased over time, and coverage and quality of New Zealand's mobile networks compares favourably to other countries; and
- b. **There is no statistically significant relationship between increased MVNO market share and consumer outcomes.** NERA analysed the relationship between price, 4G uptake, mobile data speed and mobile data use and MVNO market share. It found no statistically significant relationship between MVNO market share and price, mobile data speed or use, while no conclusions could be drawn on the relationship with 4G uptake relationship was inconclusive due to likely omitted variable bias.

19. In other words, there is no evidence of a correlation between MVNO presence in a market and consumer outcomes in practice, let alone that MVNO regulation contributes to these outcomes.

20. Red Dawn further concluded that that low MVNO market penetration may simply reflect the size of the available mobile market in New Zealand; the small market size means there is no obvious business case for traditional MVNOs<sup>5</sup>. We should expect to see differences between markets, for example, we currently see energy providers responding to incentives and expanding into telecommunications markets to offer bundled energy services.

21. We don't know what commercial models will develop with 5G, nor whether the traditional MVNO model that applied in the past will feature going forward. But we do anticipate these to evolve more rapidly, iteratively and broadly across a wider ecosystem of providers. The breadth of 5G network functionality opens new market opportunities for vertical industry based MVNO models, amongst others. It's likely that the future MVNO business model and success measures will be different to the traditional MVNO described in the Red Dawn report.

#### **4G coverage**

22. Several submitters comment on 4G coverage measures set out in the preliminary findings paper. Chorus suggests that countries with similar or lower population density are outperforming New Zealand on 4G coverage and that, if coverage remains an issue, this should be addressed through coverage obligations in spectrum allocations.

23. We are not opposed to deployment requirements or "use it or lose it" commitments, which are already a feature of New Zealand spectrum auctions; they can create incentives to ensure spectrum is used efficiently if properly specified.

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<sup>4</sup> NERA 28 October 2018 and subsequent 28 June 2018 reports.

<sup>5</sup> Red Dawn *MVNO landscape: Global perspectives and New Zealand Applications* 14 May 2019, page 5.



24. The Commission should be cautious drawing conclusions from the Opensignal report. Opensignal measures the time a device is connected to a network rather than coverage, and this can reflect network configuration and end user device capabilities rather than underlying coverage. Opensignal cautions not to use the measure for coverage estimates. As set out in our submission, while we are always looking to improve our coverage, our reporting does not suggest the same level of 4G coverage concerns.
25. Our network reporting suggests that 4G coverage is high, handsets are predominantly connected to the 4G network over time, and that the bulk of mobile data demand is carried by our 4G network. We recently completed network testing that confirms [ ]SPKCI

## Regulatory interventions

26. Submitters who propose further regulation point to low MVNO New Zealand market share relative to some other countries, and this supports further monitoring and a range of regulatory interventions. Chorus, TUANZ, InternetNZ, Nova and Trustpower all point to low MVNO market share as a reason for concern.
27. However, there is no evidence of a market problem that justifies intervention. The Commission considered several market and end user outcome measures in the preliminary findings paper, and these point to a competitive market delivering great outcomes for end users. As noted above, NERA outlines in its reports that there is no statistically significant relationship between MVNO market share and beneficial market outcomes that would support wholesale regulation.

## Regulation of MVNO wholesale arrangements

28. Nonetheless, submitters have proposed a range of “targeted” interventions, ranging from the disclosure of confidential wholesale terms and conditions to making spectrum acquisition conditional on wholesale arrangements.
29. We can’t be certain why MVNOs have a smaller proportion of the market than in some other countries (noting of course that the New Zealand MVNO figures are higher than a number of other countries). All mobile operators compete hard for wholesale MVNO customers and the market for MVNO services continues to evolve. There is increasing interest from new and prospective MVNO customers. For example, Nova, a wholly owned subsidiary of major energy provider The Todd Corporation, has very recently acquired an MVNO operator that was operating on the Spark network. Vocus has indicated that it is putting its MVNO business to RFP. This level of activity suggests that entry is possible, and that a competitive market for MVNO services exists - even despite the challenges identified by the Commission’s experts with the traditional MVNO business model in a small market like New Zealand.
30. We also know that low MVNO market share has not held back retail services and investment, and the market continues to be dynamic with continued investment and innovation. Unlike fibre deployment which required central massive Government funding to prompt investment in the next generation of technology, mobile market participants have not held back investment and have been at the forefront globally of deployments of each successive new generation of mobile technology. Mobile operators have all indicated they plan to deploy new 5G networks when 5G spectrum becomes available.
31. Improved network parity and recent entry indicate that the foundations are in place for more competitive wholesale services to mobile virtual network operators (MVNOs). The economics for MVNO may understandably be different in the NZ market compared to other markets overseas but that does not evidence a structural problem in a market warranting intervention.

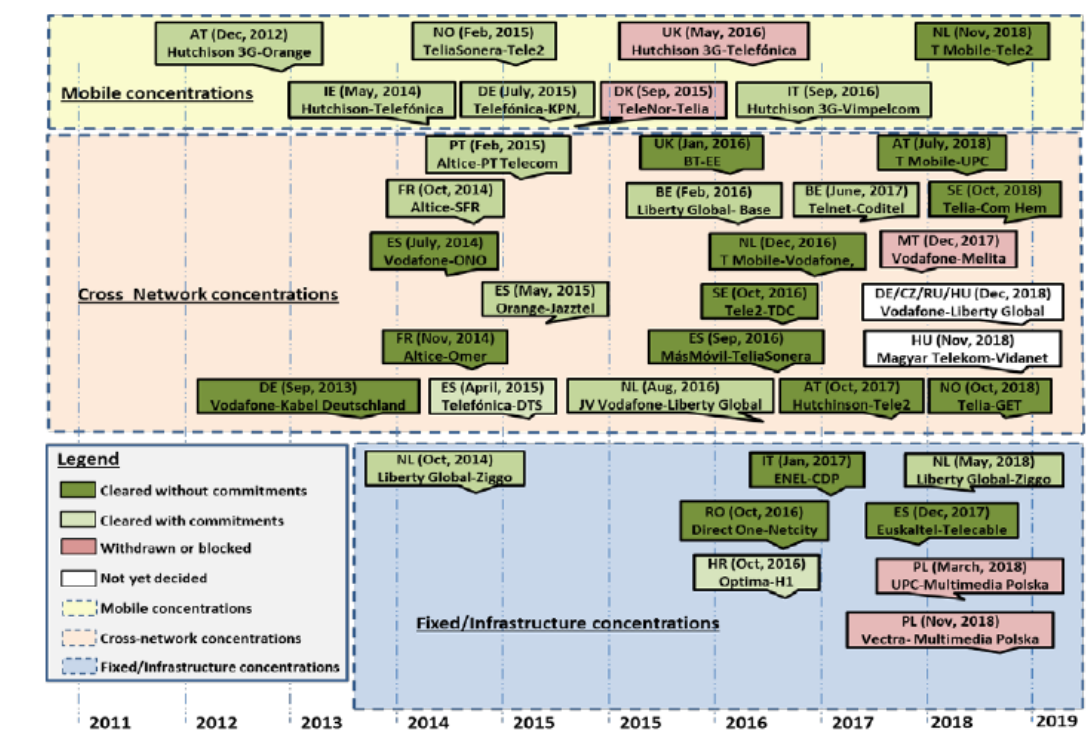
32. There can be no benefits to regulation under these circumstances. Conversely, no regulatory intervention is costless and even “targeted” interventions can have significant costs. There is a clear trade-off between wholesale regulation, and investment in the network. In a dynamic market where participants are planning large investments, such as the mobile sector, the costs can be significant. New Zealand operators are further preparing to make significant investment in 5G networks. The Government has made decisions that will soon see the necessary 5G spectrum made available for deployment from 2020. The costs of ongoing intervention in a dynamic market where operators are making a number of architecture and investments are high.

## Spectrum

33. Submitters also propose that the Commission intervene or seek to influence planned allocations of 3.5GHz band that will be used by operators for 5G services. For example, Chorus and Sky propose that the auction design should include spectrum caps, coverage obligations and holding back of spectrum for possible future or special use.
34. We agree that spectrum is important and new entrants should be given the opportunity to participate in the allocation. Accordingly, we support the Commission’s preliminary view that the design of the upcoming 3.5GHz spectrum auction, or indeed of any future spectrum auction, should not foreclose possible entry from new operators. However, we would be very concerned if the Commission were to adopt – out of this review - a principle that an aggregate spectrum cap should apply to that auction. We are using all of our current management rights to meet customer demand and for new services and our existing spectrum bands are also not well suited to act as substitutes for the 3.5GHz band.
35. We can’t predict the optimal market structure and no party should be looking to try – this will come through the economics and efficiencies - and so we support spectrum auctions that permit any party to bid for the available spectrum. Nonetheless, when you look to overseas markets, the trends we see are for network operator consolidation across Europe and in the US, at the same time considerably more spectrum is being made available to the market. These trends support a conclusion that the New Zealand market structure is consistent with underlying efficiencies.

Figure 2: BEREC summary of European operator mergers<sup>6</sup>

Figure 7: Mergers and acquisitions in Europe 2012-2018



36. Further, as set out in our submission, we believe that the acquisition and holding of spectrum, and the options these holdings create, is another aspect of competition between operators. Spark would not have been able to lead the market on fixed wireless broadband services – delivering innovation and competition to fixed line broadband networks - without strategic spectrum investments made over the last 7 years. Ill-advised spectrum caps create a real risk of suppressing or distorting competition.

37. TUANZ and InternetNZ submit that the allocation process should ensure WISPs have spectrum. We support making spectrum available for WISPs as they provide an important service to rural consumers. However, there are several other suitable bands supported by equipment providers that could be used for WISPs that do not compromise the provision of 5G services to other users. We have proposed that MBIE also consider allocating spectrum to WISPs from these ranges.

END

<sup>6</sup> BEREC annual reports 2017/2018, page 15.  
[https://bereg.europa.eu/eng/document\\_register/subject\\_matter/bereg/annual\\_reports/8598-bereg-annual-reports-for-2018](https://bereg.europa.eu/eng/document_register/subject_matter/bereg/annual_reports/8598-bereg-annual-reports-for-2018)