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Commerce Commission
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TRUSTPOWER SUBMISSION - MOBILE MARKET STUDY PRELIMINARY FINDINGS

The Commerce Commission (**the Commission**) has recently released its *Mobile Market Study - Preliminary Findings (the report)*. The mobile market study has considered the current state of competition for mobile services, likely future developments and potential impacts on competition and consumers.

The report outlines the Commission's preliminary findings with respect to:

- The development of the mobile market (PF1-6);
- Spectrum (PF7-8);
- Mobile Virtual Network Operators (**MVNOs**) (PF9-12); and
- Consumer engagement (PF13-17).

Trustpower's views

Trustpower welcomes the opportunity to provide its views on the report and thanks the Commission for its ongoing engagement throughout the mobile market study.

The mobile market study provides an important avenue for ensuring that healthy competition is promoted both at the wholesale and retail level by the mobile market settings. This includes identifying any current constraints or impediments to competition evolving both now and in the future.

MVNOs have an important role to play in delivering better outcomes for consumers through enhancing the competitive dynamic of the mobile market and ensuring vibrant retail competition. MVNOs should not be viewed narrowly as "complements" to the service offerings of Mobile Network Operators (**MNOs**). Provided that MVNO access arrangements do not limit their ability to compete, we consider that there is no reason why MVNO's can't deliver the broader benefits to consumers of cheaper prices, increased product variety and consumer choice that are observed in overseas markets. For this to eventuate, the mobile market settings need to promote MVNO-based competition.

We continue to consider that commercially agreed solutions for MVNO access arrangements are the best outcome as they provide access seekers and providers with the opportunity to tailor the access

arrangements to suit their requirements. The success of commercial negotiations, however, relies on access providers having adequate incentives to genuinely negotiate with an access seeker.

We remain of the view that a regulatory backstop is the best way to support commercial negotiations between credible access seekers and access providers. A regulatory backstop would have helped ensure that reasonable terms and conditions could continue to be reached commercially within a reasonable period of time.

Ongoing monitoring of mobile market outcomes will be important for ensuring that competition continues to evolve. As a result, we support the Commission's preliminary findings to enhance annual reporting requirements and encourage the Commission to consider whether additional information disclosure by MNOs and MVNOs could also be beneficial.

As announced in our 20th November 2018 media release, we have secured an MVNO access agreement with Spark. Trustpower is looking forward to participating in both the mobile and fixed wireless markets.

We have no specific comments on PF1-6. Our answers to the questions PF8 onwards are provided in Appendix A.

For any questions relating to the material in this submission, please contact me on 07 572 9888.

Regards,

A handwritten signature in black ink that reads "Paul Bacon". The script is cursive and fluid, with the first letters of "Paul" and "Bacon" being capitalized and prominent.

Paul Bacon

Head of Retail Markets

Appendix A: Responses to the Commission’s preliminary findings

Preliminary Finding	Response
<p>PF7: Spectrum is a scarce and critical input into the supply of mobile services. Significant asymmetries in spectrum holdings (including in terms of the amount and type of spectrum held) can affect competition in the mobile market, and 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.</p>	<p>We agree. However, it is unclear what the Commission would regard as a substitute for the 3.5GHz band. For example, in 2018¹, the ACMA found that the existing 3.4GHz band was substitutable for the 3.6GHz band.</p>
<p>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.</p>	<p>We agree that the design of the upcoming 3.5GHz spectrum auction will be important in promoting competition.</p>
<p>PF9: MVNOs currently serve just over 1% of the retail mobile market. Until recently, wholesale competition between MNOs to host MVNOs has been limited.</p>	<p>We agree. Currently, what we observe is a relatively vibrant retail market for mobile services, but the evidence of wholesale competition is less obvious. In our opinion, this dynamic has not been adequately explained by the Commission in its preliminary findings.</p>

¹ 3.6GHz band auction; auction guide; August 2018

The Commission’s hypotheses appears to be that Two Degrees has been hampered in competing in the wholesale market. Because of this, Two Degrees has concentrated on the retail market, leading to the weak wholesale competition. We discuss this hypotheses further in our response to PF10 below.

We recognise that the Commission is interested in further exploring MVNO entry and their role in promoting a vibrant, competitive environment and has asked for input in this regard (paragraph 3.96):

“We are therefore interested in examining why MVNO entry into the mobile market in New Zealand has been limited to date. That is, if and why MVNO-based competition matters for the development of the mobile market and how this may evolve in the future “

Why MVNO entry has been limited to date

We believe there may be a structural issue in the wholesale market, which results in weak wholesale competition at the same time as quite vibrant retail competition.

Infrastructure-based competition has been positive for retail mobile markets; however there appears to be limited evidence to suggest it has also resulted in a competitive wholesale mobile market.

The ability to gain access to wholesale inputs on reasonable terms is vital to the success of an MVNO. When there is weak wholesale competition, the result is likely to be prolonged access negotiations, challenging price terms and constrained non-price terms being offered to access seekers.

Whether MVNO-based competition matters

MVNO-based competition does matter in our view. MVNOs are important to achieving positive market outcomes and an increased presence of healthy MVNOs would assist in ensuring the benefits of competition are fully realised by mobile consumers in New Zealand.

The Commission may have an overly narrow view of MVNOs and the role they can play in promoting competitive outcomes. In paragraph 4.41, the Commission states that:

“MVNOs can offer some service innovation, product differentiation, and a more flexible set of tariff arrangements which may better meet the needs of specific customer niches” and that “...an MNO will risk cannibalising some of its retail market share to the MVNO...”.

	<p>In this way, the Commission appears to perceive MVNOs as being complementary to MNOs, rather than competitive.</p> <p>While serving specific customer niches in a complementary manner may be a valid strategy of some MVNOs, broader-based MVNOs (e.g., TPG, Amaysim, Giffgaff, Virgin Mobile, Drillisch) have prospered in other markets and delivered a number of benefits to consumers including cheaper prices, increased product variety and consumer choice². We see no reason why this cannot happen in NZ, provided that MVNO access arrangements do not limit the ability of an MVNO to compete, including by restricting the types of innovation a MVNO can bring to the mobile market.</p> <p>We do not accept that consumers will benefit in the long run from retail competition being effectively confined to three vertically integrated MNOs. The number of MNOs in the market is constrained by spectrum availability, which is a limited resource. We observe in other markets that attempts to reduce the number of MNOs to three are met with resistance by competition authorities, most recently in Australia, or on condition that reasonable wholesale access terms are made available to MVNO's.</p> <p>Whether NZ's conditions will support a fourth MNO is uncertain at this stage. However, if a fourth MNO is unlikely to arise, then this places an even greater reliance on wholesale MVNO access to deliver higher levels of competition in retail markets.</p> <p>We note that in other countries MVNO's are a key pathway to new MNO entry. In recent 5G auctions in several markets, MVNOs represent the main category of new MNO entrants. MVNOs, having built up a customer base as an MVNO, have been able to leverage that customer base into bidding for 5G spectrum.</p> <p><u>How MVNO-based competition may evolve</u></p> <p>We believe the key to a stronger retail market will be through the introduction of "thick" MVNOs, which offer greater possibilities for retail competition. To date, thick MVNOs have not been a feature of the NZ market.</p>
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² These were outlined in further detail in Analysys Mason (2018). *Final Report for Trustpower: MVNO aspects of the Commission's mobile market review.*

	<p>The Commission’s advisor, Red Dawn Consulting (RDC), believes that a full MVNO is unlikely to be justified in a market the size of NZ (paragraph 4.51). While a thick MVNO will probably be of most interest to larger service providers or Mobile Virtual Network Enablers, we disagree with RDC’s views that it would not be justified in NZ. Service providers of scale, particularly those with existing fixed infrastructure or with a sizeable customer base in other retail markets, are quite likely to be interested in thick MVNO arrangements.</p> <p>Our preference will always be for commercially negotiated outcomes, as these outcomes give access seekers and access providers the opportunity to tailor access arrangements to suit.</p> <p>However, it is important that access providers have adequate incentives to participate in genuine commercial negotiations with credible access seekers. To the extent this is not the case, then a regulatory backstop may be required to ensure adequate incentives exist for access providers to provide reasonable terms and conditions to credible access seekers.</p>
<p>PF10: With three national mobile networks, sufficient competitive conditions at the wholesale level exist and we expect MVNOs should emerge if they are commercially viable. However, spectrum allocation decisions will be critical to support this competition.</p>	<p>The Commission believes that, with access to sufficient spectrum, a national network and a new wholesale platform, Two Degrees will become a stronger competitor in the wholesale market and that this will lead to an effective wholesale market to mobile services.</p> <p>We are not as confident as the Commission that sufficient competitive conditions exist for an effective wholesale market for mobile services and that Two Degrees’ increasing focus on the wholesale market will lead to significant change.</p> <p>In this regard, we note the recent ACCC statement of issues (paragraph 144) regarding the proposed TPG-VHA merger, where the ACCC said:</p> <p style="padding-left: 40px;"><i>“Wholesale mobile services are currently unregulated and market feedback has indicated that MVNOs are in a weak position and are heavily reliant on MNOs to offer reasonable prices and access terms”.</i></p> <p>The Australian mobile wholesale market has three active MNO participants, but the ACCC quotes feedback that MVNOs are in a weak position. Will NZ be different?</p> <p>It remains to be seen whether MBIE will address the issues identified by the Commission in relation to spectrum. This is obviously a critical assumption on the part of the Commission.</p>

<p>PF11: There is some evidence that recent increased wholesale activity by 2degrees has prompted a response from Spark and Vodafone in offering MVNO access. Spark has recently signed an MVNO agreement with Trustpower, and Vodafone with Kogan Mobile.</p>	<p>We believe it is at least as likely that the reason for greater wholesale activity recently is the mobile market review itself, as opposed to increased activity from Two Degrees.</p> <p>The Commission may wish to confirm whether the Kogan Mobile MVNO is an extension to an agreement in Australia with VHA. If that is the case, then the deal could be seen as evidence of greater wholesale competition in the Australian market, rather than the NZ market.</p>
<p>PF12: 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.</p>	<p>We believe that the Commission’s assumptions, in terms of the development of an effective wholesale market, leading to more substantial MVNO entry, are optimistic.</p> <p>We agree with the Commission’s proposal to amend the Annual Monitoring Report to capture information on the development of MVNO market share and business sustainability (PA2). This should include granular wholesale market information on the price and non-price terms that are offered by the MNOs, not just the raw number of MVNOs and their market share. The Commission needs to continue to monitor the nuances of the wholesale market and this requires an understanding of the terms that are available in the market.</p> <p>We propose this monitoring should be continued over at least the next 5 years to test whether the Commission’s assumptions prove to be valid.</p> <p>This increased scrutiny may itself lead to an improvement in competitive activity in the wholesale market.</p>
<p>PF13: Most consumers can easily access their mobile usage information, but information on mobile performance (speeds, actual quality of coverage etc) is harder to access.</p> <p>PF14: Most consumers find it easy to compare available plans, but report that they only do so infrequently.</p>	<p>We have no comments on PF13 and PF14.</p>

<p>PF15: Our evidence shows that the process for residential consumers to switch between mobile suppliers is relatively easy, given that:</p> <ul style="list-style-type: none"> a) mobile number portability is available; b) there are low numbers of locked handsets; and c) long-term contracts for residential consumers are not prominent. <p>Bundling of mobile and fixed line services, which can increase customer stickiness, does not appear to be widespread in the residential market.</p>	<p>We note the Commission’s findings.</p> <p>Bundling mobile and fixed-line services for high value customers remains a focus for network operators globally. We anticipate that bundling of fixed-line and mobile services will continue to grow over time, particularly within high-value customer segments. Access to mobile wholesale inputs will be important for fixed-line only providers in order to avoid MNO’s foreclosing on more valuable consumer segments.</p>
<p>PF16: While residential consumers report being able to easily access usage information and compare plans, and that the process of switching appears to be relatively easy, a significant proportion of consumers have not compared plans in the last 12 months and have remained with their current supplier for more than five years. This suggests that there is a degree of consumer inertia</p>	<p>We note the Commission’s finding and support the Commission in continuing to improve its understanding around the extent of customer engagement and confidence in the mobile market.</p> <p>It is worth noting that customers who stay with their mobile provider can do so as a result of a number of different factors at play, including customers who:</p> <ul style="list-style-type: none"> (a) choose not to engage; and (b) are unsure how to assess whether there could be a better deal for their circumstances. <p>Customers who consciously choose not to engage do not necessarily represent an issue as there may be a variety of reasons why they choose to stay with a particular mobile provider including good service or brand affinity. Likewise they may have made an assessment that the search costs associated with comparing alternative service offers is too high compared to the potential benefits.</p>

<p>PF17: Switching in the business market appears to be more complex and more infrequent than residential mobile services. Businesses typically purchase mobile and fixed services as a package, often through fixed-term contracts, with brand reputation being an important driver. Larger business customers are more sophisticated buyers, and generally have more access to specialist advice and support and are more likely to have dedicated procurement resources.</p>	<p>We currently have no views around PF17.</p>
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