



Mobile Markets Study – Preliminary Findings

Submission to Commerce Commission

**PUBLIC VERSION**

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## ABOUT VOCUS

1. Vocus New Zealand is the third largest fixed line operator employing over 600 staff in New Zealand. Our retail operation includes a number of challenger brands - Slingshot, Orcon, Flip, Vocus Communications and 2Talk. We are also an active wholesaler of services including access, voice and broadband over both fibre and copper.
2. Vocus has made significant investments in New Zealand. We are the largest copper unbundler with a presence in over 200 exchanges throughout New Zealand. In addition we operate 4,200km fibre optic network transits between virtually all major towns and cities, and connect directly into all major peering exchanges.
3. Our customers in New Zealand range from government agencies, integrators, large corporate, SME and residential households. We are committed to New Zealand's fibre future.
4. Vocus is committed to New Zealand and is one of the few large NZ telecommunications companies to base all its customer service call centres here in New Zealand rather than outsourcing its customer service operations overseas.
5. Vocus Group is one of the fastest growing telecommunications companies in Australasia and a major provider of voice, broadband, domestic and international connectivity and data centers throughout New Zealand and Australia.
6. Thank you for the opportunity to make this brief submission. If you would like any further information about the topics in this submission or have any queries about the submission, please contact:

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## NZ MOBILE MARKET STRUCTURE PRECARIOUS AT BEST...AND SHOULD ATTRACT REGULATORY ATTENTION

7. Vocus welcomes the opportunity to make this submission on the Commission's Mobile Markets Study - Preliminary Findings. As we have said publicly Vocus is disappointed by the preliminary findings which largely recommends a continuation of a 'watching brief' at this time.
8. New Zealand has three mobile network operators and an independent MVNO market that has been 'contained' to 1% of the market after more than a decade. In contrast to the independent MVNO's minimal progress, Spark's own brand Skinny has achieved a 4% share in a relatively short timeframe - demonstrating that it is not the market opportunity that is the issue.
9. Several submitters, including Vocus, have listed numerous overseas examples where regulators have been concerned by either:
  - (i) the presence of only three mobile network operators (MNO) in the market; or
  - (ii) the lack of an effective wholesale market for MVNOs.
10. The fact that New Zealand has **both conditions** and little prospect of a fourth 'new entrant' network operator should mean that the Commission errs on being pro-active, not re-active, and acts to ensure that a vibrant wholesale market emerges.
11. Vocus is pleased that the Commission acknowledges that commercial arrangements over the last decade have '*resulted in commercial MVNO agreements which have not been conducive to MVNO expansion*' [para 3.94 of Preliminary Findings Paper]. This was the prime focus of Vocus' submission on the Commission's 'Issues Paper'.
12. The Commission, however, sets the MNOs 'track record to date' aside in its preliminary view by suggesting that recently there is '*some evidence*' that 2degrees are stimulating the wholesale market and that the last decades experience won't be repeated. The Commission has aligned with 2degrees' suggestion that the mobile wholesale market is at a turning point as a result of recent 2degrees initiatives.
13. In Vocus' opinion it is an optimistic assessment and, as the Commission's wording suggests, somewhat speculative given historical experience over a decade and the a virtually non-existent MVNO share of the market at this time.

## VOCUS IS PREPARED TO GO TO THE MARKET AND BE PROVEN WRONG

14. The Commission's preliminary findings are that [para 4.53] '*until recently MNO's have shown little interest in hosting MVNOs*'. The Commission, however, goes on to suggest that there is '*some evidence*' that wholesale markets are improving because of 2degrees.
15. Vocus has a proven track record of being able to build a customer base in competitive markets however in the mobile market we have failed consistently over the last decade. As we submitted [Vocus submission on Issues Paper Oct 2018 para 29-32] "during the period in which Slingshot grew its broadband customer base by 41% its mobile customer base

reduced by 12%”. Vocus’ entry into the power market further emphasises the point where Vocus achieved as many power customers in two years as it had achieved in the mobile market in a decade. Additionally, it should be noted that a power subscriber is a household not an individual, making growth in customer numbers more challenging.

16. Trustpower submitted [Oct 26th submission on Mobile Market Issues Paper, para 2.1.2 – emphasis added] that ***‘the success of MVNOs in any market is to a large extent determined by their ability to gain access to wholesale inputs on reasonable terms.....Analysys Mason notes that: ‘The key factor for MVNO competitiveness is the nature of their wholesale agreement with the MNO’.***”
17. Vocus is, however, prepared to be proven wrong. In the light of the Commission’s preliminary findings that there is *‘some evidence’* that the wholesale market is becoming more competitive Vocus, as one of the largest MVNO’s in New Zealand, is proposing to go to market in July with an RFP for its MVNO business. As part of this process, Vocus is prepared to move its MVNO business to a new provider if a more sustainable and compelling commercial deal is available. This action is not taken lightly by Vocus as this has potential to damage our existing wholesale relationship and the investment in acquiring mobile customers, over almost a decade. All three mobile operators will be treated and assessed equally throughout this process.
18. Vocus is prepared to be transparent and share the RFP process with the Commission, on a confidential basis, to help inform the study and we will make this clear to respondents at the outset. Vocus requests that the Commission reconsiders the timeframes for cross-submissions and, potentially, the Commission’s findings report to allow time for the process to conclude. Vocus is happy to further discuss this process with the Commission.

#### **REGULATORY FOCUS A CATCH-22?**

19. Vocus is also wary that any *‘recent changes’* that the Commission sees *‘some evidence’* of are more attributable to the regulatory oversight of the Commission’s own study in recent times rather than any competitive pressure from an MNO.
20. This presents something of a ‘catch-22’ in the short term. For that reason Vocus would be concerned if the Commission simply adopted a ‘wait and see approach’ and relied solely on longer term spectrum initiatives, rebalancing spectrum to assist an MNO and placing MVNO conditions on its use.
21. As we outline below Vocus is suggesting the Commission is proactive in the short term and considers providing at a minimum some MVNO benchmarks, reference material (as suggested by Red Dawn Consulting’s report to the Commission) and a regulatory backstop.

#### **IF THE COMMISSION’S PRELIMINARY OPINION TURNS OUT TO BE INCORRECT THERE IS NO QUICK FIX**

22. As we have said (para 8-10), a combination of only three MNOs, with no prospect of a fourth, and a wholesale market that is barely a rounding error should be conditions that, as is the case overseas regulators, cause a concern for the Commission.
23. If the Commission's preliminary view that we are about to 'turn a corner' does not eventuate (which is Vocus' view) then we could have a situation where 5G becomes established and New Zealand is largely reliant on 3 retailers (the MNO's). Vocus have expressed concerns that a 5G world will require an established wholesale market with fair pricing and open access to services to encourage innovation and to be able to cater for the customised needs of a diverse range of industries and applications that will be enabled.
24. A healthy, diverse MVNO market needs to exist ahead of 5G but that doesn't happen quickly. MVNOs need to get established to build scale and leverage. Red Dawn [page 12 MVNO landscape paper] suggest that 50,000 subscribers should be a target for a healthy light MVNO. No MVNO in New Zealand comes close!
25. If the Commission stimulates the MVNO market **NOW** then that may be achievable – Skinny achieved this in only a few years due to getting a fair deal with a more open MNO (with Spark as its owner); it is therefore possible others can do the same.
26. Vocus urges the Commission not to wait for medium to longer term initiatives (which we support). To reiterate the point made by Analysys Mason [Trustpower submission Appendix 2 on Issues Paper - Oct 18 page 4] *'In an environment where there is little prospect of a fourth successful MNO and it will be a few years before 5G is launched the possibility for increased mobile retail competition in the New Zealand market comes from MVNOs'*.

#### **DON'T TAKE A 'WAIT AND SEE' APPROACH - PUT SOME STAKES IN THE GROUND!**

27. One of the Commissions 'Proposed Actions on the state of competition' (PA2) proposes:

*"We will amend the Annual Monitoring Report to capture the information on the development of the MVNO market share and business sustainability"*.
28. Vocus urges the Commission not just to monitor but to establish now a roadmap of:
  - (i) target metrics in terms of MVNO market share which would demonstrate we have 'turned a corner'. These metrics should be six monthly and if not achieved should trigger a review and possible regulatory intervention.
  - (ii) Reference material as suggested by the Red Dawn Consulting covering areas such as exclusivity, access to new technology & variants, retail-minus margins [as detailed in next sections]
29. Without some proactivity and leadership from the Commission Vocus does not believe that there will be any significant change in the MVNO situation. Vocus is happy to be proven wrong but the Commission should put a 'stake in the ground' around its expectations and, as suggested by Trustpower [Oct 26th Submission – Para 4.3], the Commission should consider a regulatory backstop.

## WHAT IS THE TARGET FOR MVNO MARKET SHARE AND THE TIMEFRAME?

30. Red Dawn estimated a *“predicted MVNO market share (excluding sub-brands) of 10% in 5 years in New Zealand”* [page 29 Red Dawn MVNO Landscape paper]. Whilst this still lags many jurisdictions, including Australia, it is a quantum leap from where we are today.
31. As Trustpower observed (October submission - response to Q14) *“there appears no reason why a vibrant MVNO market in New Zealand could not achieve a market share of 10-15% consistent with Analysys Masons observations in other countries.....The presence of Skinny Mobile, which rapidly gained over 4% market share, demonstrates that the retail market can support additional brands.”*.
32. Waiting 5-10 years should not be an option, realistically if anything approaching those levels is to be achieved in New Zealand there should be significant improvements over the next 12 months and a quantum shift by 2021. In a market of three MNOs, the Commission taking a ‘wait & see’ approach and banking on a ‘hockey stick’ of MVNO subscribers after 5G comes along risks New Zealand being slow, compared to other countries, to realise the diverse and far-reaching benefits of a technology innovations such as 5G.

## PROVIDE SOME GUIDANCE TO MVNOS AND PROSPECTIVE MVNOS WHO CURRENTLY DO NOT HAVE THE SCALE OR LEVERAGE TO NEGOTIATE WITH MNOS

33. In its report to the Commission Red Dawn Consulting suggested some measure to stimulate the MVNO market which the Commission could consider taking ahead of regulatory intervention. [MVNO Landscape Paper - Page 51].
34. **Establish a fair wholesale price:** Red Dawn suggest the Commission pro-actively sets a benchmark. Red Dawn propose that *“This can be done by understanding the margin requirements under each of the proposed business models, conducting retail benchmarks and considering costs by well understood methods such as LRIC (long run incremental costs). IoT will require a different set of principles based 52 on varying SLAs such as for throttling. Once a model for calculating costs has been established, this can be used as a regulatory tool or as guidance to make it easier for new entrants to come to an agreement with the network host”*.
35. Vocus’ submission on the Issues Paper highlighted the endless cycle of slender or negative margins experienced as a result of retail-minus models not keeping pace with current retail pricing. Given the asymmetry of information and leverage between MVNOs and MNOs guidance on a fair margin and reference contract terms would assist negotiations.
36. Similarly, volumetric prices are difficult to negotiate with an asymmetry of information between parties. A Commission assessment would again assist new and exist MVNOs.
37. **Develop a reference contract:** Red Dawn suggested the Commission  
*“Create a framework agreement which acts as a checklist to ensure a healthy relationship is set between an MNO and an MVNO. This will include margin protection provisions, exit conditions, support management, SLAs, competition clauses, exclusivity etc.”*

- (a) Vocus' submission on the Issue Paper [Oct 18] gave practical examples of how agreements can be used by a reluctant MNO to constrain MVNOs who don't have the subscribers to leverage a 'fair deal'. Key areas used to ensure MVNOs are 'kept in their place', need to be addressed including: -
- Timely Access to services - Making services available at the same time they are available to MNO's retail and sub-brands. Prevent the use of 'proof of concepts', 'trials' or 'limitations on the number of services' by MNOs to delay or diminish MVNOs competitiveness whilst their own retail arm launches a service.
  - Exclusivity – Exclusivity provides a barrier to switching forcing SIM swaps and messy migrations. In addition, significant early termination fees (ETF's) triggered by a breach of exclusivity are used to further lock in MVNOs. The presence of these will inhibit any anticipated 2degrees impact by locking in existing MVNOs.
  - Ease of switching – what should an MVNO expect by way of commitment from MNO with respect to e-Sims for example.
  - Availability of Handsets – latest releases of handsets are often exclusive to the MNO or priced at a point that make it difficult for an MVNO to compete.
  - Robust, pro-active retail-minus model – MVNOs are inhibited by the lack of a proactive robust retail minus construct that automatically adjusts to current pricing concurrent with an MNO's retail arm introducing the price point to the market.

## **SPECTRUM SHOULD BE REBALANCED AND CONTAIN MVNO OBLIGATIONS**

38. Given that Vocus disagrees with the Commission's preliminary finding that the market is at a turning point it follows that Vocus supports measures to rebalance spectrum holdings as a means to bolster 2degrees' ability to compete in both retail and wholesale. However, as previously commented this is not a quick fix and Vocus would regard it as a missed opportunity, 'too little, too late', if these were the only measures that were taken.
39. Vocus also supports the inclusion of MVNO conditions in the allocation of spectrum. Red Dawn Consulting suggests that a *"potential regulatory solution to increase MVNO market share in NZ is releasing spectrum with condition to offer network slice to MVNOs"*. [MVNO Landscape Report – page 33]. Vocus supports this suggestion which parallels our position in Australia. Vocus submitted to ACMA that:

*"At Vocus, we want to partner with industry to enable this innovation so that a wide range of services can be provided. Vocus is prepared to pay a fair price for wholesale access to 5G spectrum. However, we are concerned that the MNOs could delay access to 5G technology to MVNOs, without inclusion of conditions in spectrum licences requiring they provide immediate wholesale access. Vocus submits that a condition to the ACMA's allocation of the wider 26 GHz*

*band spectrum should be that successful bidders are required to make the spectrum available for MVNOs immediately.*

*Vocus submits that the ACMA should impose conditions on the spectrum licence that require successful applicants to provide wholesale MVNO access based on network slicing, along with other appropriate terms and conditions. Such conditions would promote competition and innovation, with network slicing across 5G and fixed networks opening up new use cases for enterprises.”*  
*[Vocus response to ACMA consultation on draft spectrum reallocation June 2019]*