



Mobile Markets Study – Preliminary Findings

Cross 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 connects 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 cross-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. Reading the submissions from the 3 MNOs on the issue of MVNOs you can almost hear the collective 'sigh of relief' at the Commissions preliminary findings.
9. The attitude to MVNOs that pervades is best illustrated by Sparks comments: -

"As there are no known benefits from regulating for MVNOs, any regulatory invention is a cost." [Submission para 52]

Nera report for Spark 17. *"The RDC report does not define why a low MVNO market share is a problem worthy of a regulatory solution."* [Submission para 17]
10. In stark contrast ALL OTHER SUBMITTERS (non-MNOs) take issue with aspects of the Commissions preliminary findings with respect to MVNOs. This isn't just existing telecommunication operators (Trustpower & Vocus), this is a diverse range of companies; Internet NZ, Sky, Nova Energy, Chorus and BAINZ Consulting

SUBMITTERS REGARD COMMISSIONS VIEW AS OPTIMISTIC

11. Vocus submitted that: -

"The Commission..... 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 marketIn 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 submission on "Preliminary Findings para 12-13 emphasis added]
12. Many of the submitters echoed this view and question the Commission's conclusion.
 - (i) NOVA ENERGY

"We disagree with the Commission's preliminary findings that sufficient competitive conditions at the wholesale level exist (with three national MNOs), and that the current regulatory settings are fit for purpose." [Submission Para 7 emphasis added]

"New Zealand's wholesale MVNO market remains under-developed, sufficient competitive conditions at the wholesale level do not currently exist, and these are unlikely to arise under current regulatory settings." [Submission Para 7 (b) emphasis added]
 - (ii) TRUSTPOWER

“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”
[Submission response to PF12 emphasis added]

“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.

In this regard, we note the recent ACCC statement of issues (paragraph 144) regarding the proposed TPG-VHA merger, where the ACCC said:

“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”. [Submission response to PF10 emphasis added]

(iii) SKY

“We acknowledge PF20’s expectation that the wholesale market will develop “where market opportunities exist”. But we note that PF20 leaves one asking why these opportunities have not arisen already? And what makes New Zealand different to the rest of the world?” [Submission Para 20 emphasis added]

INSUFFICIENT EVIDENCE OF A COMPETITIVE WHOLESALE MARKET

13. Most submitters (non-MNO) took issue with the Commissions opinion that recently there is ‘some evidence’ that wholesale markets are improving.

(i) TRUSTPOWER

” 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.”

Trustpower goes on to comment that *“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.”* [Submission response to PF9 emphasis added]

In addition, when reviewing the market, Vocus agrees with Trustpower’s observation on the Kogan Mobile MVNO. *“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.”* [Submission response to PF11]

(ii) NOVA ENERGY

*“Nova considers that the ability of non-MNO retailers to access the mobile market, on fair and reasonable wholesale prices and terms, is crucial to ensuring a sufficient level of competition and consumer choice – both in the mobile market and fixed-line telecommunications markets. However, **we have concerns regarding the current state of New Zealand’s wholesale MVNO market, which we consider is underdeveloped and ineffective** (and which will remain so without some level of regulatory intervention)”. [Submission para 6 emphasis added]*

14. Spark somewhat miss the point when they say.....

“We agree that if MVNO models are efficient and economic, they will develop.”
[Submission para 53]

15. Vocus asserts that had Spark’s MVNOs been treated on ‘equivalent terms’ to Skinny, Skinny would not have achieved four times more subscribers than the entire MVNO market in a less than half the time. Skinny would have struggled in the same way that ALL MVNO’s in NZ (regardless of MNO network) have struggled.

16. **Vocus would like to understand any other explanation the Commission may have to explain the success of Skinny and failure of MVNOs, regardless of underlying MNO.**

EVEN IF ACCEPT ‘SOME EVIDENCE’ ITS LIKELY A FALSE POSITIVE

17. Vocus submitted that, whilst we disagree with the assessment of improvements, there is a strong likelihood that if there were any evidence of improvement it would be attributable to the Commission’s own study..... effectively producing a ‘false positive’.

18. Vocus is not alone in this suggestion, this sentiment is echoed by other submitters: -

(i) CHORUS

*“We are not convinced the recent rise in MVNO presence is clear evidence that workable competition exists at the wholesale access level.....We suggest the Commission further investigates whether access to wholesale arrangements is reasonable and will provide for competitive offers, or **whether these arrangements were a risk mitigation strategy given the Commission’s study**” [Submission para 5.3 emphasis added]*

(ii) TRUSTPOWER

*“**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**” [Submission response to PF11]*

THE COMMISSION SHOULD DO MORE THAN MONITOR

19. Vocus submitted that “*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*” [Submission para 29]
20. Vocus urged 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*” [Vocus Submission on Preliminary Findings para 28]
21. Again other submitters (excluding MNOs) had similar concerns and suggested that the Commission should be more pro-active: -
- (i) INTERNET NZ

“*The best piece of evidence of market failure that would justify consideration of MVNO access regulation that MVNO market shares remain under 1%. This is not a new issue – MVNO offers have been available in the New Zealand market since 2009; despite three MNOs.*

Internet NZ wishes to understand just how much more failure the Commission would need to see in order to consider intervening in this market.” [Submission para 17-18 emphasis added]
 - (ii) BAINZ CONSULTING

“***We would urge the Commission to define such guidelines and/or regulations for MNOs that would allow interested MVNO parties fairer opportunities in being established as MVNO operators.....Failure to address this issue will certainly result in New Zealand’s mobile communication sector in emerging in becoming an oligopoly, which will hinder fair pricing, competition and innovation.***” [Submission page 2 emphasis added]
 - (iii) TRUSTPOWER

Trustpower had concerns that the Commission does more than passively monitor numbers submitting that “*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.***” [Trustpower Submission response to PF12 emphasis added]

Trustpower also submitted that *“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.**”* [Submission response to PF9 emphasis added]

(iv) NOVA ENERGY

*“If the Commission remains of the view that the current MVNO regulatory settings are “fit for purpose” and that no MVNO access regulation is required at this time, Nova recommends that the Commission should at least perform some form of monitoring and should **ensure it has the tools, and sets appropriate targets, for future MVNO market intervention.** At a minimum, we recommend:*

(a) That a “regulatory backstop” be prepared and introduced for MVNO services (consistent with Trustpower’s previous submission on the Commission’s initial Issues Paper). In Nova’s opinion, this would require the Commission to:

*(i) ensure the current legislative framework is sufficient to enable, **and determine specific targets/milestones** which if met (or not met) would trigger, the speedy establishment of MVNO services as a “Specified Service” under the Telecommunications Act;*

*(ii) **set a short-term review period and timeframes in respect of the MVNO targets/milestones;** and*

*(iii) **develop a clear pathway and regulatory plan (including potential MVNO wholesale price points) for MVNO services to become a “Designated Service via Schedule 3 the Telecommunications Act.***

(b) That the Commission develop and publish reference material – e.g. general guidance, contractual terms and constructs the Commission considers unfair/undesirable, a template MVNO contract etc. – consistent with Red Dawn’s previous submission on the Commission’s initial Issues Paper.” [Nova Submission para 10 emphasis added]

NOT ALL MVNOs ARE CREATED EQUAL

22. Vocus agrees with Trustpowers suggestion that the Commission needs to consider not just the number of MVNO subscribers but also the nature of the MVNO. The Commission recognises that the advent of 5G networks, with the ability to provide network slices across virtualised network infrastructure, has the ability to dramatically change the MVNO model.
23. This will only happen, however, if MNOs sees 5G as a catalyst for more MVNO wholesale business, rather than a competitive threat; as has been the experience in NZ to date. The Commissions view is at odds with the submission of non-MNOs in this respect.

24. As Vocus submitted (para 25, Vocus submission on Preliminary Findings) it is important that the wholesale market becomes established ahead of 5G: -

"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."

25. However not all MVNOs are created equal. Light MVNOs such as Trustpower and Vocus along with new MVNO (looking to clearly differentiate services for certain verticals) are likely to want ever better control and deeper access to MNOs networks.
26. A reluctant MVNO wholesaler is more likely to prefer MVNO deals with organisation that are essentially resellers and less likely to disrupt the mobile retail market. Both the Warehouse and Kogan are essentially resellers, neither are likely to develop to full MVNOs or innovate in a 5G environment.
27. The Warehouse appears to have a revenue share model with customers owned by 2 Degrees: -

"we", "our", "us" means Two Degrees Mobile Limited, as provider of the Warehouse Mobile services, and The Warehouse Limited.' [Privacy Policy <https://www.warehousemobile.co.nz/terms/privacy/#who---s-who>]

28. Kogan appears to have pricing set by Vodafone Retail.

"We have a unique structure with Vodafone, where we are the branding, marketing, and customer acquisition arm. So Vodafone runs the service, Vodafone runs the network, the call centres, absolutely everything, and it's branded as Kogan mobile," Kogan CEO Ruslan Kogan said at CES 2018 in Las Vegas in January.

*"The way that we've structured it makes a lot of sense, because for our business, we are doing what we are good at: Being the brand Kogan Mobile, the online trust, the customer acquisition, the digital marketing, and we can offer a Kogan-branded end-to-end experience for our customers whilst not -- **we don't know how to run a telco.**" [Article: <https://www.zdnet.com/article/kogan-mobile-launches-off-vodafone-in-new-zealand/>]*

29. As Trustpower have suggested, and Vocus supports, the Commission needs to "not just the raw number of MVNOs". The Commission also needs to factor the nature of the MVNO relationship and ensure that, if any significant improvements occur in the MVNO market, that they are not just straight reseller deals which will provide very little competitive pressure or be a catalyst for innovation.

LACK OF FUNCTIONING WHOLESALE MARKET RISKS DISTORTION BETWEEN FIXED AND MOBILE MARKETS

30. Vocus has submitted in the past concerns with the ability of NZ's 3 mobile-fixed operators to leverage the lack of a functioning mobile wholesale market to their advantage in the fixed market.

31. Vocus submitted on mobile origination and termination rates in its response to the Commissions Issues paper [para 98-103] noting that: -

"Mobile origination rates of between 8 to 9 cents per minute are excessively high as a result of avoiding regulation. There has been no reduction in these rates for years."

"Mobile termination rates have been held at 3.56c per minute following the conclusion of the 2011 regulated glide path. In contrast in 2015 the ACCC more than halved Australian mobile termination rates to 1.7 cents from 3.6 cents noting that the cost of switching 3G calls was lower than 2G and that they expected further reductions."
[Submission para 98-99]

32. Vocus supports Chorus' submission that-

*"The current regulated mobile termination rate ended in 2014 and has not been reset. We are concerned the Commission appears to be comfortable with prolonging the potential for above cost termination rates for consumers, and **the real risk of wealth transfer from fixed-line only RSPs to mobile network RSPs.**"* [Submission para 5.7 emphasis added]

33. Vocus also supports Trustpower's submission with respect to bundling and the criticality of an effective mobile wholesale market.

*"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.**"* [Submission response to PF15 emphasis added]

SUMMARY

34. The Commission's Preliminary Findings give MNO's the '*benefit of the doubt*' based on 'some evidence'. Other than the MNO's there is a clear view from a diverse range of submitters that:

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- (i) The Commissions assessment of the current state of the wholesale market is at best overly optimistic and there has been little improvement
- (ii) Even if there were improvements (which most non-MNOs disagree with) they are likely caused by the Commissions own study not any impact from increased competition between MNOs for MVNO business. There is a real risk of a 'false positive' which should cause the Commission to give more credence to the last decades experience.
- (iii) Monitoring alone is insufficient. The Commission needs to put some 'stakes in the ground' around MVNO uptake, price expectations and key contract areas.

- (iv) Longer term initiatives around spectrum are all well and good but likely 'too little, too late' given the time it takes for a 'real' wholesale market to evolve.
35. With only 3 MNOs and virtually non-existent wholesale market NZ is in a position that is precarious and would be a cause of concern in most jurisdictions around the world. If, despite the concerns of a diverse set of non-MNO submitters, the Commission is minded to continue with a *'wait and see'* position it needs to set some clear expectations, provide guidelines and be ready to act with a regulatory backstop.