

Spark Submission

2019 Draft report on whether Spark's Resale Services should be omitted from Schedule 1 of the Act

1. Thank you for the opportunity to comment on the Commission's draft report on whether Spark's resale voice services ("**Resale Services**") should be omitted from Schedule 1 of the Telecommunications Act 2001 ("**Act**") (**draft report**).
2. We support the Commission's proposal to recommend to the Minister of Broadcasting, Communications and Digital Media that the three Resale Services be removed from the Act.

Comment

3. We agree with the Commission's finding that the market has further developed since the Commission's last review in 2016 with an ever-increasing number of services readily available to consumers and retail service providers. As the Commission observes, fixed line voice services now use a wide range of inputs. Competitive mobile voice services also provide increasingly strong competitive alternative – the Commission reports that over 40% of household fixed line connections are not associated with a voice service¹ - and Spark's wholesale customers are actively migrating customers to alternative technologies.

RSPs are now able to move quickly to alternatives

4. The Commission found in its 2016 investigation that Spark was facing increasingly effective competition for its Resale Services. However, the Commission considered that the ability of RSPs to switch quickly to alternatives was constrained and this may allow Spark to exercise market power should Resale Services be removed from Schedule 1 of the Act. This constraint was expected to diminish "in the near future".
5. Evidence shows that RSPs have now developed the capability to move to alternatives at scale. The draft report details the significant decline in Spark's wholesale voice volumes, for example wholesaled lines volumes have fallen from 341,000 to 179,000 lines since 2016 (a decrease of 48%). A significant proportion of this decline can be attributed to proactive bulk line migrations by Spark's wholesale customers. Overall, Spark's landline revenues declined by almost 20% during H2 FY18. These declines highlight that alternative voice inputs and services provide an effective constraint on Spark's resale services.

Regulation should be promptly removed when no longer necessary

6. We agree with the Commission's view that regulation should be removed and that doing so is consistent with the purpose of Part 2 of the Act.
7. We consider that there are both direct and indirect costs of maintaining unnecessary regulation and support the Commission's view that in this case the indirect costs alone justify removal of regulatory powers that are no longer required. The Commission rightly recognises that removing regulation and lifting regulatory powers is likely to give best effect to section 18 and to send efficient signals and incentives to market participants and investors.

¹ Commerce Commission Annual Telecommunications market monitoring report December 2018

8. These signals are particularly important in a dynamic and innovative telecommunications sector. We anticipate the pace of change to increase, with industry rightly focused on demand for services using more efficient and competitive new technologies. RSPs are active in the market migrating customers to lower cost fixed and wireless networks and onto inputs using their own infrastructure.²
9. Continued backstop regulation would not be a proportionate remedy under these circumstances as it could distort service and investment decisions, delay the availability of additional choices for end-users, and provide ongoing displacement of efficient investment.
10. Accordingly, we support the Commission confirming its recommendation to remove resale services from schedule 1 with immediate effect, providing a clear signal that:
 - a. It supports regulation that promotes competition for the long-term interests of end users - recognising the section 18 considerations; and
 - b. Where this is no longer the case (over other available options including no regulation), it will swiftly move to lift regulation.

END

² For example, Infratil reports Vodafone's objective is to increase on-net revenues and reduce third party charges by migrating customers to HFC and wireless networks.