



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

Cross submission | Commerce Commission

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## Introduction

1. Thank you for the opportunity to respond to submissions on the Commission's draft report on whether Spark's resale voice services should be omitted from Schedule 1 of the Telecommunications Act 2001 (**draft report**).
2. The submissions highlight that there is significant support for the Commission's proposed approach. Vodafone agrees with the draft report noting that there are competitive alternatives providing a range of options for access seekers and the right incentives for Spark to continue to offer a competitive commerce wholesale offer. Vodafone expects that, over time, the market will only become more competitive with the roll-out of next-generation fibre and wireless. Chorus also submits that it broadly supports the approach the Commission has taken to assessing whether there are grounds to deregulate Spark's resale services, highlighting that RSPs have the option to purchase its Baseband IP service.
3. The remaining submitters agree, on the face of it, that alternatives are becoming more real, but query whether the alternatives are sufficiently developed at this stage to permit regulation to be lifted. Vocus acknowledge that the Commission has identified the correct competitive trends, noting that there may be practical migration difficulties. Trustpower also agrees that there are emerging technologies and alternative services are becoming available, but argue that the strength of these alternative services is not yet sufficient to constrain market power.
4. We don't believe these reservations change the conclusions of the draft report. The Commission has already addressed a number of these practical matters in the draft report and, to the degree to which these practical concerns are real, the draft report's competition analysis suggests they are unlikely to have a material effect on the market. The Commission correctly considers wider market indicators in the draft report – i.e. the number of alternatives, shifting demand and reducing prices – and these all point to there being a competitive market. While we do not disagree that there are practical matters associated with any customer migration, the wider indicators considered by the Commission highlight that these are not material for the competitive process. In other words, the practical matters are simply an aspect of the competitive market, rather than defining it.
5. The draft report concludes that all the evidence is consistent with RSPs having the ability to enter, compete and expand in the provision of voice services. The Commission should confirm its preliminary view that it recommend to the Minister that that the three resale services be removed from Schedule 1 of the Act.

## Comment

### Wholesale providers (Chorus, LFCs and RBI providers) are actively seeking customers

6. The draft report surveys the wide range of access options available to RSPs. The submissions highlight that the alternative wholesale providers identified by the Commission are actively seeking wholesale customers:
  - a. Vocus highlights in its submission that it is an active wholesaler of services including access, voice and broadband over both fibre and copper. Vocus is a credible and substantial provider with established services, and has the backing and resources of a major international operator; and
  - b. Chorus notes that, if RSPs are not happy with the service provided by Spark, they have the option to migrate to its Baseband IP service. If this were to occur, it would want any

transition to be smooth, and it has a number of initiatives in place to support any transition.

7. Vocus and Chorus are actively seeking wholesale customers in competition to our resale service. For example, Chorus has indicated that it would support any migration by pre-provisioning of Baseband IP cards, and deploying new systems to streamline the ordering process from a manual to an automated process for those on correct cards (available from September 2017). Chorus already offers free transfers on to Baseband IP for multi-site transfers that form part of an agreed migration plan.
8. Vocus has outlined its practical concern that Chorus may not extend Baseband IP coverage to new ISAM locations, and material migration volumes may not be achievable. However, Chorus' submission highlights that it is a willing wholesaler provider and can be expected to make Baseband IP available where there is demand, and to facilitate any migration on to its services.

#### **Practical experience shows that there are not material impediments to migrating customers**

9. Vocus further estimate that up to 20% of customers may, in practice, opt out of migrations for a number of reasons. While Chorus has tested its Baseband IP service in lab conditions, actual customer deployments may raise different challenges.
10. We have now migrated a number of customers to Baseband IP accesses and this has not been our experience. [ ]SPKCI  
[ ]SPKCI
11. [ ]SPKCI Accordingly, we do not believe there are material impediments to migrating customers to alternative technologies.

#### **Transition period**

12. Finally, submitters have differing views relating to a transition period. Vocus recommends that the transition period be conditional on deployed Baseband IP coverage. However, the proposal is unlikely to make any material difference to the constraint provided by potential Baseband IP coverage, and risks unnecessarily maintaining backstop regulation. As noted in the draft report, Chorus has deployed ethernet based DSLAMs to around 97% of copper lines, and can potentially offer Baseband IP in respect of these lines with minimal additional investment. Chorus has an incentive to make these lines Baseband IP capable where there is demand and it remains an effective constraint.
13. Vodafone and Trustpower also propose a longer transition period. We disagree. The draft report highlights that regulation is no longer necessary, and these are significant providers with the resources and capability to expand their voice capability.
14. Further, as set out in our earlier submission, a transition period is unlikely to add certainty, bargaining power, or stability in the industry. This is because resale local access services aren't subject to a regulatory determination (and haven't been for close to ten years), and regulatory determination is unlikely to be justified and implemented within any reasonable transition period. In other words, with the Order in Council to remove regulation in place, there would be no real prospect of regulation within the 1 year window and no real benefit to imposing such a lengthy notice period. In any event, we believe the Commission has sent a strong signal in the draft report, and there will be a reasonable period of time between the draft report and the final Order in Council being made RSPs to make decisions.

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