



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Broadcasting, Communications and Digital Media
Title of Cabinet paper	Deregulation of the Resale Services	Date to be published	14 July 2020

List of documents that have been proactively released

Date	Title	Author
27 May 2020	Deregulation of the Resale Services	Office of the Minister of Broadcasting, Communications and Digital Media
27 May 2020	DEV Minute: Deregulation of the Resale Services	Cabinet Office

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Broadcasting, Communications and Digital Media
Chair, Cabinet Economic Development Committee

Deregulation of the Resale Services

Proposal

1. This paper proposes the deregulation of Resale Services currently specified under Schedule 1 of the Telecommunications Act 2001, as competition within the telecommunications fixed line voice market is now well established, making the current provision redundant.
2. This paper also seeks Cabinet agreement for me to issue instructions to the Parliamentary Counsel Office to draft the required legislative changes that would bring the proposed deregulation into effect.

Executive Summary

3. Spark NZ Limited (Spark) sells telecommunications voice services (Resale Services¹) to Retail Service Providers (RSPs). RSPs rebrand these services and sell them as their own to customers. This arrangement allows RSPs to compete effectively in the retail voice market without having to invest and deploy their own infrastructure.
4. The Resale Services were initially regulated because it was difficult for other competing telecommunications service providers to supply alternative voice services, due to the absence of competing infrastructure and the state of technology at the time of the initial regulation.
5. Since then, there have been rapid technological advancements within the telecommunications sector. Furthermore, Chorus Limited, the local fibre companies² (LFCs) and fixed wireless operators now have the infrastructure to offer alternative voice services to RSPs. The easy accessibility of these alternative voice services means that RSPs are no longer dependent on the Resale Services.
6. Due to the current provision now being redundant, I propose the deregulation of the Resale Services.

Background

¹ At times referenced as "Spark's Resale Services."

² The "local fibre companies" collectively references Enable Networks Limited, Ultra-Fast Fibre Ltd and Northpower Fibre Ltd.

The Commerce Commission's review of the Resale Services

7. The Commerce Commission (the Commission) occasionally reviews services regulated within Schedule 1 the Telecommunications Act 2001 (the Act). Following a review, the Commission can make recommendations to me, the Minister of Broadcasting, Communications and Digital Media, for certain services within Schedule 1 of the Act, to be deregulated.
8. The Commission first undertook a review of the Resale Services in July 2016 to gauge whether the continued regulation of the Resale Services was still necessary, given technological advancements in the fixed line voice market.
9. Feedback from the telecommunications industry at that time indicated that competition within the fixed line voice market was still not fully established. As such, the Commission recommended that the decision to deregulate be deferred for two years.
10. In early 2019, the Commission resumed its review of the Resale Services and consulted with the telecommunications industry. The Commission concluded its review of the services in July 2019 and made final recommendations to me to deregulate the Resale Services.

Evidence of sufficient market competition

11. In its final recommendations for deregulation, the Commission noted the following:
 - 12.1 Competition within the fixed line voice services market was now well established and the Resale Services are now no longer required to promote competition, and;
 - 12.2 RSPs are now able to utilise readily available alternative voice services without market constraints.
12. Additionally, Chorus, the LFCs and fixed wireless operators currently have the infrastructure to offer alternative voice services. This means that RSPs are able to utilise alternative voice services without any market constraints.
13. During consultation, the Commission received two formal submissions from Chorus and Spark, who both supported the proposal to deregulate. There were no dissenting views from the industry regarding the Commission's proposal for deregulation.
14. While only two formal submissions were received, the Commission noted that it had also received anecdotal evidence from RSPs who chose not to make formal submissions. These RSPs expressed that the Resale Services were no longer their focus, as they had migrated, or were in the process of migrating their end-users to alternative services, in particular, services made available through the Government's Ultra-Fast Broadband (UFB) programme.
15. The Commission also considered the overall demand for the Resale Services and compared the revenue collected by Spark from July 2016 to May 2018. The figures

showed a significant decline in revenue collected from the resold voice lines since 2016, for both residential and business lines. This clearly indicates that RSPs have robust alternatives available to them and are no longer dependent on the Resale Services.

Implications of deregulation

16. The Resale Services proposed for deregulation are:
 - 16.1. Local access and calling services offered by means of a fixed telecommunications network e.g. local landline calling.
 - 16.2. Retail services offered by means of fixed telecommunications network (Retail Services) e.g. facsimile, voicemail, call transfer, call waiting services, and;
 - 16.3. Retail Services offered by means of a fixed telecommunications network as part of a bundle e.g. the retail services listed in the point above, bundled with a broadband service.
17. I consider that deregulation will have no adverse impact on both the RSPs and consumers, given the clear findings in the Commission's report that competition within the fixed line voice market was now established and RSPs have migrated their customers to readily available alternative voice services.
18. Deregulation will be viewed positively by the industry and will incentivise investment as the market will become more contestable, therefore attracting more innovative voice products.
19. Additionally, consumers will get to enjoy the benefits of increased access to a wider range of voice services at competitively lower prices. Further, deregulation will also mean Spark will no longer have to bear the ongoing costs of the obligations imposed on it by what is now a redundant provision in the Act.
20. Overall, I consider that the benefits of deregulation wholly outweigh the limitations of continued regulation for both consumers and voice service providers. Given the above reasons, I propose the deregulation of the Resale Services.

Consultation

21. The Commerce Commission has been consulted and their feedback has been incorporated into this paper. The Department of the Prime Minister and Cabinet and the Treasury have been informed.

Financial Implications

22. There are no financial implications resulting from this paper.

Legislative Implications

23. Deregulation of the Resale Services requires the removal of the services from Schedule 1 of the Act. This proposed legislative amendment will be passed through

Order in Council by the Governor General, as required under Section 66 (b) of the Act.

24. In order to fully deregulate the Resale Services, it is necessary to also remove other references to the services in the Act, specifically:
 - 24.1. Section 69XA which provides an interpretation of the local access and calling Resale Service, and;
 - 24.2. Section 69XB (i) which imposes an obligation on Chorus to supply one of its broadband services in a bundle with the local access and calling Resale Service.
25. Given that the repeal of Sections 69XA and 69XB (i) are both minor and non-controversial legislative changes, it has been proposed that both are included in the Ministry of Business, Innovation and Employment's Regulatory Systems Omnibus Bill (No.4), scheduled to be presented to Cabinet later on this year.

Impact Analysis

26. The Regulatory Quality team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment, as they have no or minor impacts on businesses, individuals or not for profits entities.

Human Rights

27. There are no human rights implications.

Gender Implications

28. There are no gender implications.

Disability Perspective

29. There are no disability implications.

Publicity

30. I wrote to the Telecommunications Commissioner on 13 September 2019, informing him of my decision to accept the Commission's final recommendations to deregulate the Resale Services. The Commission published this letter on its website on 4 October 2019.
31. Any further communications on this matter will be managed by my Office. I anticipate a low level of business and media attention.

Proactive Release

32. I intend to publicly release a copy of this paper and associated decisions in accordance with Cabinet's proactive release policy.

Recommendations

The Minister of Broadcasting, Communications and Digital Media recommends that the Committee:

1. **Note** that a review undertaken by the Commerce Commission has determined that competition within the telecommunications fixed line voice market is now well established and Retail Service Providers are no longer dependent on access to the Resale Services.
2. **Note** that the Commerce Commission's recommendation for deregulation of the Resale Services, have been publicly consulted on and submissions supported the proposal to deregulate the Resale Services.
3. **Agree** to remove the Resale Services from Part 2 of Schedule 1 of the Telecommunications Act 2001.
4. **Note** that other references to the Resale Services in Sections 69 XB (i) and 69 XA of the Telecommunications Act 2001 can be repealed through a separate legislative vehicle and because both a minor legislative changes, it is proposed that these are included in the Ministry of Business, Innovation and Employment's Regulatory Systems Omnibus Bill (No.4), scheduled to be presented to Cabinet later on this year.
5. **Authorise** the Minister of Broadcasting, Communications and Digital Media to issue instructions to the Parliamentary Counsel Office to draft the necessary legislative changes that would bring the proposal into effect, through Order in Council.

Authorised for lodgement

Hon Kris Faafoi

Minister for Broadcasting, Communications and Digital Media