



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Broadcasting, Communications and Digital Media
Title of Cabinet paper	Telecommunications (Spark's Resale Services) Order 2020	Date to be published	14 September 2020

List of documents that have been proactively released

Date	Title	Author
28 July 2020	Telecommunications (Spark's Resale Services) Order 2020	Office of the Minister of Broadcasting, Communications and Digital Media
28 July 2020	LEG Minute: Telecommunications (Spark's Resale Services) Order 2020	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 Legislation Committee

Telecommunications (Spark's Resale Services) Order 2020

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Telecommunications (Spark's Resale Services) Order 2020.

Policy

- 2 Under Schedule 3 of the Telecommunications Act 2001, the Commerce Commission (the Commission) undertook a review of Spark's Resale Services (Resale Services), currently regulated under Part 2 of Schedule 1 of the Telecommunications Act 2001 (the Act).
- 3 Following the review, the Commission made recommendations to me, as Minister of Broadcasting, Communications and Digital Media, that these services be deregulated with immediate effect as:
 - 3.1 competition within the fixed line voice market was now well established and the Resale Services were now no longer required to promote competition; and
 - 3.2 Retail Service Providers, who have regulated access to these services, were now able to utilise readily available alternative voice services without market constraints.
- 4 In August 2019, I accepted the Commission's final recommendations to deregulate and omit the Resale Services from the Act, as this will remove backstop regulation that is no longer required to promote competition in the telecommunications voice market. I have since written to the Commission to inform them of my decision.
- 5 On 27 May 2020, I sought approval from the Cabinet Economic Development Committee [DEV-20-MIN-0085 refers, attached as **Annex One**] to:
 - 5.1 omit the Resale Services from Part 2 of Schedule 1 of the Act; and
 - 5.2 issue drafting instructions to the Parliamentary Counsel Office (PCO) to draft the necessary legislative changes that would bring the above proposal into effect, through an Order in Council.

- 6 The three Resale Services proposed to be omitted from Part 2 of Schedule 1 of the Act are:
- 6.1 Local access and calling services offered by means of a fixed telecommunications network, e.g. local landline calling;
 - 6.2 Retail services offered by means of fixed telecommunications network (Retail Services), e.g. facsimile, voicemail, call transfer, call waiting services; and
 - 6.3 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.
- 7 Removing the three services from Schedule 1 of the Act will no longer subject the services to regulation by the Commission. I am satisfied that the relevant requirements in Part 2 of the Act have been complied with. Therefore, I am seeking Cabinet authorisation to submit to the Executive Council an Order that will formally omit and deregulate the Resale Services from Part 2 of Schedule 1 of the Act.
- 8 The Telecommunications (Spark's Resale Services) Order 2020 is included in **Annex Two**.

Timing and 28-day rule

- 9 The Order will come into effect on 3 September 2020. A waiver of the 28-day rule is not required.

Compliance

- 10 The Order complies with the following:
- 10.1 the principles of the Treaty of Waitangi;
 - 10.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 10.3 the principles and guidelines set out in the Privacy Act 1993;
 - 10.4 relevant international standards and obligations;
 - 10.5 the Legislation Guidelines (2018 edition).

Regulations Review Committee

- 11 There are no grounds for the Regulations Review Committee to draw the disallowable instrument or regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

12 This Order was certified by PCO as being in order for submission to Cabinet.

Impact Analysis

13 A Regulatory Impact Assessment is not required because an exemption was granted by the Regulatory Quality team at the Treasury. The exemption was applied on the basis that the regulatory decisions sought in the Cabinet Economic Development Committee paper (DEV-20-MIN-0085) were 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.

Publicity

14 The Order proposed in this paper will be gazetted, and a copy will be uploaded to the Ministry of Business, Innovation and Employment's webpage.

Proactive release

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

Consultation

16 The Treasury and the Commerce Commission have been consulted. The Department of the Prime Minister and Cabinet has been informed.

Recommendations

I recommend that the Cabinet Legislation committee:

- 1 **note** that on 27 May 2020 the Cabinet Economic Development Committee agreed to omit specified Resale Services from Part 2 of Schedule 1 of the Telecommunications Act 2001 [DEV-20-MIN-0085 refers];
- 2 **note** that Telecommunications (Spark Resale Services) Order 2020, will give effect to the decision referred to in paragraph 1 above;
- 3 **note** that a copy of this paper and its associated decisions will be proactively released in accordance with Cabinet's proactive release policy;
- 4 **authorise** the submission to the Executive Council of the Telecommunications (Spark Resale Services) Order 2020;
- 5 **note** that Telecommunications (Spark's Resale Services) Order 2020, will come into force on 3 September 2020.

Authorised for lodgement

Hon Kris Faafoi

Minister of Broadcasting, Communications and Digital Media

IN CONFIDENCE

Telecommunications (Spark's Resale Services) Order 2020

Governor-General

Order in Council

At Wellington this day of 2020

Present:
in Council

This order is made under section 66(b) of the Telecommunications Act 2001—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Broadcasting, Communications and Digital Media made after accepting (in accordance with section 68 of that Act) the Commerce Commission's recommendation made in accordance with that section.

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Order

1 Title

This order is the Telecommunications (Spark's Resale Services) Order 2020.

2 Commencement

This order comes into force on 3 September 2020.

3 Subpart 1 of Part 2 of Schedule 1 of Telecommunications Act 2001 amended

In the Telecommunications Act 2001, Schedule 1, Part 2, subpart 1, repeal the following headings and the items under each of those headings:

- (a) “**Retail services offered by means of a fixed telecommunications network**”:
- (b) “**Local access and calling service offered by means of fixed telecommunications network**”:
- (c) “**Retail services offered by means of a fixed telecommunications network as part of bundle of retail services**”.

Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 3 September 2020, repeals 3 items relating to telecommunications services from subpart 1 of Part 2 of Schedule 1 of the Telecommunications Act 2001, which contains designated services that are regulated under that Act.

This order is made following acceptance by the Minister of Broadcasting, Communications and Digital Media of the Commerce Commission's recommendations set out in its *Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001* dated 18 July 2019.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This order is administered by the Ministry of Business, Innovation, and Employment.