INTERNET SERVICE PROVIDERS ASSOCIATION OF NEW ZEALAND

Submission to The Commerce Commission
from

The Internet Service Providers Association of New Zealand (ISPANZ)

On

The Proposed Radio Access Joint Venture

14th October 2026

Introduction

The Internet Service Providers Association of New Zealand (ISPANZ) is a not-for-profit association that represents the interests of its members; internet service providers (ISPs).

Many of our members are mobile virtual network operators (MVNOs). ISPANZ therefore represents a number of interested parties.

Your Statement of Preliminary Issues (SoPI) notes that One NZ and 2degrees (the Applicants) state, in part (para 15.2), that:

> "This market would comprise the supply of wholesale services over a mobile network to mobile virtual network operators (MVNOs) and resellers who on-supply mobile services in the retail market, as well as wholesale wireless broadband services to other wholesale customers".

Your SoPI also notes that the Applicants state:

> "the Proposed RANCo JV would not be likely to substantially lessen competition due to unilateral effects primarily because . . . (para 25.1.5) the Parties would be constrained by Spark, alongside an increasing number of MVNOs . . . (para 25.2.2) there has been material new MVNO entry in New Zealand in recent years, noting the combined share rising from 2.5% to 3.2% over 2025; and . . . (para 25.2.3) the Proposed RANCo JV would not impede MVNOs' access to the services required to compete in any way."

Further, your SoPI notes (para 29.2.4) that:

> "The Parties submit that the Proposed RANCo JV would not be likely to substantially lessen competition in any relevant market(s) due to coordinated effects because . . . Spark as a third competitor, and firms with different business models (ie, MVNOs) provide a powerful destabilising force to any attempted coordination."

This submission will take issue with the above statements. It will be shown that the MVNO market is unregulated, that there are no regulatory controls over what (if any) services must be provided to MVNOs, and that therefore relying in any way on the MVNO market to provide competition is fatuous. Indeed, the lack of regulation today means that MVNOs are unable to compete effectively with MNOs. If this proposed joint venture were to go ahead without being accompanied by adequate regulation, competition would be depressed and end users would have reduced choice.

Our 8th April 2026 Submission – "Anti-Competitive Practice in the Mobile Virtual Network Operator (MVNO) Market

On 8th April this year we wrote to you stating, in part:

> "This has created an uneven playing field where MVNO providers are unable to offer the same core services as the host network, even when those services are being actively promoted as critical infrastructure. The result is that MVNOs are losing customers to One NZ and to Spark. Previously these customers had consciously chosen not to use One NZ or Spark, preferring the service provided by those ISPs that act as MVNOs.
>
> ISPANZ submits that refusing to make satellite texting available to MVNOs is anti-competitive behaviour because it is:
>
> - a restrictive trade practice,
> - misuse of market power,
> - withholding the supply of essential safety services, and
> - not in the long-term benefit of consumers within New Zealand."

We requested that the Commerce Commission investigate the withholding of satellite texting from MVNOs and:

- if current practice by One NZ and Spark is in breach of the Commerce Act, direct them to comply with the Act and make satellite texting available to MVNOs, or
- if current practice is not currently contrary to the Commerce Act, arrange for MBIE to draft an appropriate Bill to ensure that it is.

In an email dated 15th July 2026 you replied to our submission. You elected not to investigate and not to act on our recommendations.

Our 8th July 2026 Open Letter to the Telecommunications Commissioner, Tristan Gilbertson

On 8th July this year we wrote an open letter to the Telecommunications Commissioner. In that letter we included this statement:

> "The mobile companies in NZ aren't actually regulated to provide MVNO access - they do it voluntarily and with restrictions, such as limiting satellite texting. The

> upshot is that MVNOs here are not a significant part of the market; they only make up around 3% of total mobile connections. Compare that to Australia and the rest of the OECD, where MVNOs are closer to 20% of the market. MVNO access should be regulated, including providing equitable access to satellite text services. This would open the door to more small players and promote innovation and competition."

The Commissioner took no action, noting in a letter dated 10th August that:

> "Many of the outcomes advocated in your letter are, in substance, questions of public policy that rest with the Government. The Commission's role is not to advocate for particular policy outcomes but to provide independent evidence that informs both our own regulatory decisions and wider policy discussions."

What Does This Mean?

This has left New Zealand in the position where a clear market failure, and lack of regulation, in the MVNO market exists. The Applicants are asserting that "there has been material new MVNO entry in New Zealand in recent years" when we have highlighted "that MVNOs are losing customers to One NZ and to Spark" and we have noted that in New Zealand MVNOs "only make up around 3% of total mobile connections. Compare that to Australia and the rest of the OECD, where MVNOs are closer to 20% of the market."

The Applicants place substantial emphasis on the role of MVNOs to guarantee competition. They state that "the Parties would be constrained by Spark, alongside an increasing number of MVNOs". If the Applicants (Parties) felt constrained by MVNOs, today they could just refuse to allow MVNOs access to any services. The ability for MVNOs to constrain the Applicants, and thus maintain a (currently illusory) competitive market, does not yet exist.

For the Applicants to state that MVNOs "provide a powerful destabilising force" is a clear departure from reality and is substantially misleading. In the current regulatory environment MVNOs do not have the power to destabilise anything.

The RANCo JV relies on there being a vibrant and competitive MVNO ecosphere to support the assertion that it will not lessen competition. Due to the absence of adequate regulation, such a vibrant and competitive MVNO ecosphere does not exist today. The arguments put forward by the Applicants are fatally flawed. Unless there is adequate regulation of the MVNO market the proposed RANCo JV would substantially lessen competition.

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Recommendation

As the proposed RANCo JV would substantially lessen competition, and as the Application is misleading and contains errors of fact, it is recommended most strongly that you decline the Application. Once adequate regulation of the MVNO market is in place, ISPANZ would have no objection to the Application being approved.

[redacted]

David Haynes

Chief Executive

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14th October 2026