

Spark New Zealand Trading Limited
Level 7 Purple, Spark City
167 Victoria Street West
Private Bag 92028 Auckland 1142

T [REDACTED]
sparknz.co.nz



**Spark
New Zealand**

[REDACTED]

Chief Adviser

Competition

Commerce Commission

By email: [REDACTED]@comcom.govt.nz

22 May 2015

Dear [REDACTED]

SPARK NEW ZEALAND TRADING LIMITED ("SPARK") STANDARD FORM CONSUMER CONTRACTS

We refer to the Commerce Commission's ("Commission") letter of 5 May 2015 in relation to Spark's standard form consumer contracts. Thank you for giving Spark the opportunity to provide the Commission with our views on why we consider that our customer terms comply with the unfair contract terms provisions of the Fair Trading Act ("FTA").

We take our compliance with consumer laws seriously. As such prior to the new unfair contract terms provisions coming into force Spark undertook a review of our standard form consumer contracts, which included an external legal review of our key consumer terms and conditions. As a result of the review we made changes to our standard form contracts to ensure that they are fair and complied with the new provisions of the FTA. We consider that on a whole our customer contracts are fair and balanced. Customers are at the heart of our business, we believe in treating our customers fairly and this extends to ensuring that our customer terms are clear, balanced, and terms do not cause a detriment to consumers. The updated terms apply to customers who signed up to Spark from 17 March 2015. We will be moving existing customers who joined Spark prior to 17 March 2015 over to the updated terms by notifying them in accordance with our notification obligations under our customer contracts but in the meantime if a term in the updated terms is more favourable than the same term in the historic terms we will apply the more favourable term to all customers.

We have provided our responses to each of the terms the Commission has raised as being potentially an unfair contract term below.

Unilateral alternation of Services

1. Clause 3 of Spark's Residential Terms and Conditions does give Spark the ability to alter our services from to time. However, where the service alternation is within Spark's control and it is not a beneficial or neutral change we will provide customers with at least one month's notice of the change. If a customer considers that a change has a negative impact on them and they don't accept the change they can exercise their right under clause 21 of the Residential Terms and Conditions to terminate the service. [REDACTED]

[REDACTED]

[REDACTED]



Spark
New Zealand

2. [REDACTED]
3. We note that at point 12 of your letter it is noted that it is not clear whether clause 4 of the Broadband Terms and Conditions applies to customers who have a bundled home and broadband service. We wish to clarify that the Broadband Terms and Conditions apply to customers on bundled landline and broadband services along with the Residential terms and Conditions. However, if there are any inconsistencies between the two sets of terms the Broadband Terms and Conditions prevail.
4. For the reasons set out above and in consideration of the proposed amendment to clause 3 of the Residential Terms and Conditions we consider that the clause is not an unfair term in terms of the FTA.

Limitation of liability

5. We do not consider our limitation of liability clauses in our Residential Terms and Conditions, Mobile Postpaid Agreement and Mobile Prepaid Agreement cause a significant imbalance in the parties' rights and obligations under the various contracts.
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. For the reasons set out above we consider that our liability clauses in our Residential Terms and Conditions, Mobile Postpaid Agreement and Mobile Prepaid Agreement are not unfair terms in terms of the FTA.



**Spark
New Zealand**

Responsibility for charges

10. We consider that it is fair and balanced that customers are responsible for the charges incurred on their account. This is because customers have control over the use of their services, which we simply do not. Spark do has no ability to identify who is using the services we provide to customers.

11. [REDACTED]

12. [REDACTED]

13. [REDACTED]

14. For the reasons set out above we consider that the clause 8 of the Residential Terms and Conditions is not an unfair term in terms of the FTA.

Intellectual property rights

15. The section of clause 23 of the Residential Terms and Conditions highlighted by the Commission is intended to cover instances whereby customers choose to post or make available information to online message boards and the like). Currently Spark's use of online forums is limited to using a third party platform, Facebook. We do not currently provide a mechanism for customers to publish material directly to our website. Customers can choose to interact with Spark by posting messages and other content on our Facebook page.

16. Spark does not claim ownership of any content or material customers choose to post or make available to Spark, other customers and the general public through Facebook or any other online forum we may wish to provide in the future. However, if customers choose to upload material we ask that the customer provide Spark with a licence over that material. If a customer does not wish to provide Spark with a licence over their material then we recommend they should refrain from posting material.

17. We consider that it is reasonably necessary for Spark to ask customers to provide Spark with the licence.
[REDACTED]



Spark
New Zealand

[REDACTED]

we propose to add the following to the clause:

Provided that Spark may not derive any direct financial gain from the exploitation of any right under such licence, unless otherwise agreed with you.

18. For the reasons set out above and in consideration of the proposed amendment to clause 23 of the Residential Terms and Conditions we consider that the clause is not an unfair term in terms of the FTA.

Unused prepaid credit following termination

19. [REDACTED]

20. [REDACTED]

As you will appreciate, much of the information supplied in this letter is confidential, commercially sensitive and is of a nature that Spark considers may be protected from disclosure under the Official Information Act 1982. Spark would therefore appreciate the opportunity to discuss with you in advance any proposed disclosure of the information supplied.

Please do not hesitate to contact me if you have any further questions. In addition Spark would be happy to meet with the Commission to discuss further.

[REDACTED]

Yours sincerely

[REDACTED]