



GOVERNMENT  
COMMUNICATIONS  
SECURITY BUREAU  
TE TIRA TIAKI

## Briefing Paper

### TICSA Notification NCSC-TN-2018-451

**To** Rt Hon Jacinda Ardern, Minister for National Security and Intelligence  
 Rt Hon Winston Peters, Minister of Foreign Affairs  
 Hon David Parker, Minister for Trade and Export Growth  
 Hon Kris Faafoi, Minister of Broadcasting, Communications and Digital Media

**From** Andrew Hampton, Director-General GCSB

**For your** Information

**Date** 26 November 2018

#### Action sought

		Timeline
Note	I have identified a significant network security risk in regards to a notification made by Spark New Zealand Limited under s 48 of TICSA for its Phase 1 roll out of 5G services	As soon as practicable
Note	<span style="color: red;">s 6(c)</span> [Redacted]	As soon as practicable
Note	<span style="color: red;">s 9(2)(f)(iv)</span> [Redacted]	As soon as practicable
Note	Hon Andrew Little has been separately briefed on the notification, including on his role in the ongoing process as Minister Responsible for the GCSB	As soon as practicable

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Contacts for telephone discussion (if required)

Name	Position	Telephone	1 <sup>st</sup> Contact
Andrew Hampton	Director-General, GCSB	s 6(a) and s 9(2)(a)	X
s 6(a) and s 9(2)(a)	s 6(a) and s 9(2)(a)	s 6(a) and s 9(2)(a)	

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## TICSA Notification NCSC-TN-2018-451

### Purpose

1. The purpose of this briefing is to inform you of my decision under the Telecommunications (Interception Capability and Security) Act 2013 (TICSA), relating to Spark New Zealand Limited's notification of its fifth-generation (5G) Phase 1 plans.
2. This is the first notification GCSB has received under TICSA that sets out a network operator's path to 5G technology being deployed in New Zealand. Given that 5G investment issues have received a high profile in recent time, I am informing you of this decision under the no surprises convention.
3. This briefing also outlines the next steps in the TICSA process for this notification and attaches suggested talking points.

### Summary of decision

4. On 7 September 2018, Spark New Zealand Limited (Spark) notified the GCSB of its 5G Phase 1 plans under section 48 of the TICSA. Further supporting information was subsequently provided, with the notification being complete on 25 October.

5.

S 9(2)(b)(ii)

6. Part 3 of TICSA is intended to identify network security risks arising from the design, build, and operation of public telecommunications networks, and to prevent, sufficiently mitigate, or remove those risks. The Director-General of GCSB's first role is to identify whether the proposed changes would, if implemented, raise a network security risk other than a minimal network security risk, and notify the network operator.

In accordance with s 50 and 51 of TICSA, I have determined that the changes proposed in Spark's notification would, if implemented, raise a **significant** network security risk.

8.

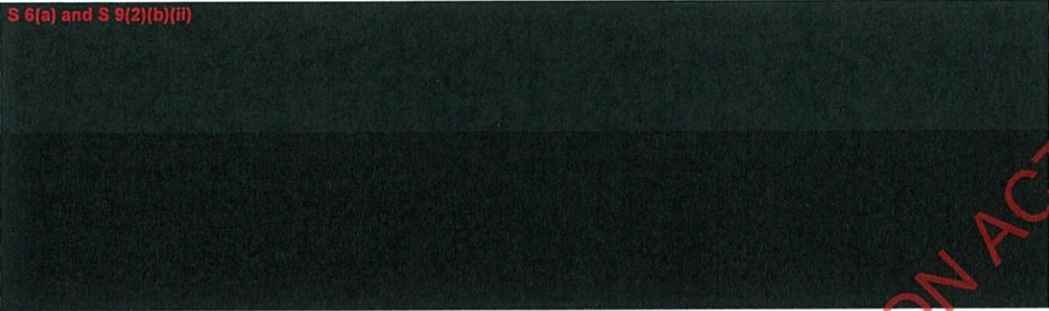
S 6(c)

9. Under section 50(1)(a) of TICSA, I have considered the likelihood that the proposed change will lead to the:
  - a. compromise or degradation of the public telecommunications network; and

- b. the impairment of the confidentiality, availability, or integrity of telecommunications across the network.

10.

S 6(a) and S 9(2)(b)(ii)



11. In addition, I have also considered the potential effect that the compromise or degradation of the public telecommunications network, and the impairment of the confidentiality, availability, or integrity of telecommunications across the network, will have on the provision of certain services prescribed in section 50(1)(b). Those services are:

- a. central or local government services;
- b. services within the finance sector;
- c. services within the energy sector;
- d. services within the food sector;
- e. communication services;
- f. transport services;
- g. health services; and
- h. education services.

12.

S 6(a)



13.

S 6(b)



### Next steps

14. This decision does not spell the end of the TICSAs process for Spark's proposal to deploy Huawei equipment in this way. Rather, a new phase of the process begins.

15.

S 6(c)





s 6(c)

16. Once notified, Spark must, as soon as practicable, respond in writing with a proposal to prevent or sufficiently mitigate the network security risk (as outlined in section 51(3) of TICSA).
17. Alternatively, Spark may choose to withdraw its notification.
18. If Spark withdraws the notification, no further action is required under TICSA. Section 48 of TICSA requires that Spark submit a new notification outlining its proposed path to 5G, which will be assessed in accordance with the Act.
19. If Spark submits a mitigation proposal, I will assess the mitigation proposal in accordance with s 52 of the Act. Under that section, I must assess whether the proposal will, if implemented, prevent or sufficiently mitigate the network security risk.
20. If I am satisfied that all or part of the proposal will, if implemented, prevent or sufficiently mitigate the network security risk, I *must* accept the proposal (or part of the proposal). Spark must then implement those parts of the proposal I have accepted, pursuant to s 53 of TICSA.
21. If I am not satisfied that the mitigation proposal prevents or sufficiently mitigates the risk, I may refer the matter to the Minister Responsible for GCSB for a direction in accordance with processes set out in the Act.
22. Prior to referral to the Minister, my determination must be reviewed by the Chief Commissioner of Intelligence Warrants in accordance with the Act.<sup>1</sup> The Chief Commissioner must be provided with all of the material (including any classified information) that informed my opinion on the network security risk. When conducting a review, the Chief Commissioner must not seek or accept any further communications from Spark. The Chief Commissioner must prepare a report and give a copy of the report to me as Director-General GCSB, as well as to Spark (subject to any redactions of those parts of the report that would reveal any classified information). I must provide the Minister with a copy of that report if I refer the matter to the Minister.<sup>2</sup>
23. In addition, I must notify Spark of my decision to refer a matter to the Minister for a direction, and advise Spark that it may make submissions on the matter directly to the Minister. I must specify a time, which must be reasonable in the circumstances, by which those submissions must be made.<sup>3</sup>
24. If I decide not to refer the matter to the Minister, Spark may proceed with implementing the changes outlined in its notification. If I do decide to refer the matter to the Minister, the Minister may issue a direction in accordance with s 56 of TICSA. That process includes consultation with the Minister of Trade and

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<sup>1</sup> Refer s 56 of TICSA.

<sup>2</sup> Refer s 56(7).

<sup>3</sup> Refer s 54(b).

Export Growth and the Minister of Broadcasting, Communications and Digital Media. The matters the Minister must have regard to are different to the matters I am required to consider in determining the network security risk. They include, but are not limited to, the potential consequences the direction may have on competition and innovation in telecommunications markets, the potential impact on trade, and the impact on the network operators of meeting costs associated with the direction.

- 25. As this is a regulatory decision-making process, there is the possibility of a judicial review at any step in the process.

**Comment**

- 26. This is the first notification the GCSB has received under TICSA that sets out a network operator's proposed path to 5G.
- 27. As you will be aware, there has been substantial public and international interest in 5G, particularly around the role Huawei might play in 5G networks. Huawei, based in China, has become the world's largest vendor of telecommunications network equipment and services, and has been at the forefront of 5G developments.<sup>4</sup> S 6(a)

[Redacted]

- 28. S 9(2)(g)(i)

[Redacted]

- 29. S 9(2)(g)(i)

[Redacted]

- 30. S 9(2)(g)(i)

[Redacted]

- 31. GCSB has not made any public comments in relation to this notification. GCSB treats notifications under TICSA as commercial in confidence, as they often relate to design proposals which are highly commercially sensitive. GCSB refrains from

<sup>4</sup> Huawei's primary competitors are Ericsson, based in Sweden, and Alcatel-Lucent, based in France. There are a number of other major suppliers of telecommunications equipment, including Cisco, based in the United States, and ZTE, based in China.

S 6(a)

[Redacted]

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releasing the fact of, as well as contents of, any notification. This supports open and frank disclosure.

32.

S 6(a) and S 9(2)(b)(ii)



33. There have been various media reports that the New Zealand Government has been subject to pressure from its US and Australian counterparts regarding Huawei's involvement in 5G deployments here. While GCSB receives relevant intelligence from its US and Australian partners agencies, there has been no pressure to adopt a particular position. It is well recognised that New Zealand will make an independent decision in accordance with its legislative framework.

### Talking points

34. Suggested talking points are attached to this briefing, along with a copy for you of the briefing that will be supplied to your relevant Ministerial colleagues.

A handwritten signature in black ink, appearing to read 'A Hampton', written over a horizontal line.

Andrew Hampton

Director-General, GCSB

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## Recommendations

It is recommended that you:

1	Note	I have identified a significant network security risk in regards to a notification made by Spark New Zealand Limited under s 48 of TICSA for its Phase 1 roll out of 5G services	Yes/No
2	Note	<b>S 6(c)</b>	Yes/No
3	Note	<b>S 9(2)(f)(iv)</b>	Yes/No
4	Note	Hon Andrew Little has been separately briefed on the notification, including on his role in the ongoing process as Minister Responsible for the GCSB	Yes/No

\_\_\_\_\_  
Rt Hon Jacinda Ardern  
Minister for National Security and  
Intelligence  
Date:

\_\_\_\_\_  
Rt Hon Winston Peters  
Minister of Foreign Affairs  
Date:

\_\_\_\_\_  
Hon David Parker  
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