Submission by 2degrees in response to the Commerce Commission Statement of Preliminary Issues

VODAFONE EUROPE B.V. AND SKY NETWORK TELEVISION LIMITED

12 August 2016

PUBLIC VERSION

> **"Ignoring the effects of 'key content' across wider and traditionally unrelated markets, such as mobile or broadband only customers, will have an enduring and irreversible effect, as the focus moves to TV bundled competition... Vodafone ultimately remains concerned that if access to this content cannot be secured on Fair, Reasonable and Non Discriminatory terms, competition and consumer choice across a variety of telecommunications markets will be severely harmed."**
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> ***Vodafone Ltd, submission to Ofcom, October 2015***

1. **Introduction and Summary of Submission**

About 2degrees

1.1 2degrees is a full service telecommunications provider offering integrated mobile and fixed services to consumers, local and national businesses. It is the 3rd largest telecommunications provider in New Zealand.

1.2 2degrees launched in 2009 as New Zealand's third mobile operator and has invested in excess of $550 million in national mobile infrastructure. The 2degrees network of cell sites extends to 95% population coverage, with a further 2.5% population coverage (bringing total population coverage to 97.5%) achieved through commercial national roaming arrangements with Vodafone.

1.3 Prior to the entry of 2degrees, the New Zealand mobile market was characterised by some of the highest prices and lowest usage in the OECD. The mobile market was dominated by incumbent operators Vodafone and Telecom, who offered limited differentiation between their respective product offerings.

1.4 2degrees introduced 3 player competition to the market, championing consumer value through lower prices and product innovation, introducing new product offerings such as combo-packs, carryover minutes and data and inclusive calls to Australia into the New Zealand market.

1.5 In 2015 2degrees acquired fixed broadband and enterprise connectivity solutions provider, Snap Limited, to extend the 2degrees business into the total mobile-fixed telecommunications market.

Triple play and quad play bundles

1.6 As the Plum Consulting Report submitted with this submission shows, telecommunications markets internationally are evolving rapidly to a market of triple play (voice, broadband and video) and quad play (the addition of mobile services) bundled offerings. These bundles are rapidly growing in importance internationally; in Singapore more than 60% of subscribers take a bundled service.

1.7 While such bundled offers have not yet materialised in New Zealand (as a direct consequence of the lack of wholesale content available to telecommunications retail service providers), 2degrees has no doubt that New Zealand will follow the international pattern, and that the future will be a contest between triple play and quad play bundles.

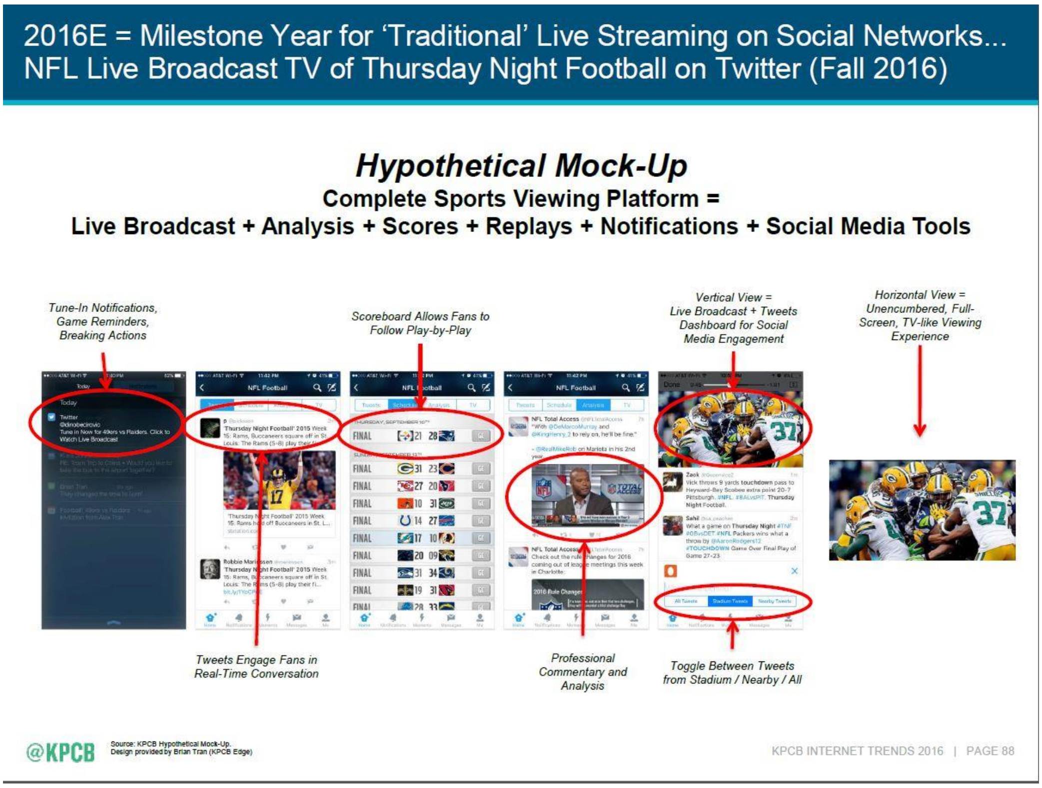
1.8 It was for this reason that 2degrees purchased Snap in 2015 as this enabled 2degrees to combine mobile and fixed broadband services together with other products, including differentiated content, to enable 2degrees to meet customer demand for bundled services.

1.9 It is also the reason 2degrees commenced the negotiations with SKY early in 2016 which are referred to in Confidential Annexure 3 of this submission, so that it could offer its customers a differentiated and innovative bundle of services.

1.10 Differentiation at the service level is essential, because, in the fixed-line environment, all service providers buy the same access product at the same price from a structurally separated open access wholesaler.

1.11 The investment 2degrees and the other mobile network operators have made in building high speed 4G mobile networks has introduced an added dimension to content viewing and in particular, premium sports. Customers now have the ability to watch live sports content, and leverage social media tools, in a way that is beyond the imagination of those who currently access sport via broadcast technologies.

1.12 The example below from a Mary Meeker Internet Trends presentation shows how the future of premium live sports content is likely to progress over fixed broadband and 4G mobile devices:[1]



1.13 This is the context in which 2degrees engaged in discussions with SKY early in 2016, prior to the announcement of the Vodafone transaction. The intent was to develop jointly a true wholesale offering, including unbundling of SKY's content and developing bespoke packages for use on mobile devices.

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[1] http://www.kpcb.com/internet-trends.

Impact of SKY/Vodafone transaction

1.14 The proposed SKY/Vodafone transaction will re-introduce vertical integration into the broadband value chain, combining New Zealand's only linear Pay TV provider, with circa 830,000 subscribers and long term exclusive rights to tier 1 premium sporting events, with New Zealand's largest provider of mobile telecommunications services and second largest provider of fixed-line services.

1.15 The merged entity will have both the incentive and the ability to leverage its substantial market power in content markets to lock-up premium content for exclusive delivery over its own platforms, foreclosing competition in the residential fixed-line and retail mobile markets.

1.16 If the proposed merger is permitted to proceed, 2degrees would be required to negotiate with its competitor in the retail market for a bespoke content arrangement with which to compete against it. That situation is clearly untenable.

1.17 As noted in the counterfactual section of this submission, 2degrees would expect the discussions it was having with SKY to restart if the Vodafone transaction does not proceed. 2degrees would also expect that SKY would engage with a range of broadband and mobile operators to develop differentiated products that meet their needs, intensifying competition for the benefit of end-users. Collectively, this would provide SKY with a significant opportunity to recover the costs of purchasing sports rights over a larger customer base.

1.18 2degrees, together with TVNZ has commissioned expert reports from Plum Consulting and Covec, which are filed to this submission.

Expert Reports

1.19 The Plum Consulting Report concludes that:

(a) telecommunications and content markets are converging due to technological shifts, on the supply side, and the increasing value which consumers place on bundles of TV and telecommunications services, on the demand side;

(b) premium content of both entertainment and, particularly, live sport, is highly valued by consumers and hence control of these rights is crucial to the success of bundled telecommunications offers;

(c) Vodafone's and SKY's behaviour in dealing with potential wholesale customers in telecommunications and pay TV markets respectively, illustrates that the merged entity would have the incentive and ability to leverage their exclusive content rights into mobile and broadband markets by raising rival's costs and/or refusing to supply exclusive content to rivals;

(d) the likely counterfactual is that SKY would continue to retail its premium content via its broadcast satellite TV platforms and also wholesale that content to a wide range of retail service providers offering VOD type services to end users of both fixed and mobile broadband networks;

(e) this counterfactual would generate the benefits claimed by the applicants – including more innovation and attractive bundles across the pay TV and telecommunications markets affected - without increasing Vodafone's market power in the mobile or broadband markets;

(f) the effect of the merger would be to substantially lessen competition in the markets for wholesale pay TV services, retail mobile services and retail fixed broadband services.

1.20 The Covec Report concludes that:

(a) even on the applicants own analysis, wholesaling content to all (or most) telecommunications providers is a financially attractive alternative for SKY and therefore is the likely counterfactual; and

(b) the proposed transaction is highly likely to substantially lessen competition for fixed and mobile telecommunications services in New Zealand, compared with the counterfactual, and with the status quo.

1.21 2degrees agrees with these conclusions. In Confidential Annexures 1, 2 and 3, we outline 2degrees' experience as a wholesale customer of SKY and Vodafone, which is referred to in the expert reports.

2. The crucial role of content in the converged environment

2.1 Where government funding has been provided to accelerate the roll-out of fibre to replace legacy copper networks, many jurisdictions have, by legislation or as a condition of funding, taken the opportunity to replace the legacy copper model (where network access and retail services were typically delivered in a bundle by a vertically integrated service provider) with a structurally-separated open access model. In the open access model the network operator is not permitted to compete in downstream retail service markets, and is required to provide network access to retail service providers on a non-discriminatory and equivalent basis.

2.2 New Zealand's Ultrafast Broadband (UFB) Initiative is recognised internationally as a leading example of the implementation of this policy. The policy's intent was that open access at the network level would be the best way to facilitate vigorous and robust competition between retail service providers:[2]

> "*The government is also getting involved in order to encourage the provision of widespread open access dark fibre services, which will facilitate the best possible competition outcomes in emerging markets and encourage innovation in wholesale and retail competition*".

2.3 As the Commission has recognised, the move from a vertically integrated to a structurally separated model resolved long-standing competition concerns: [3]

> "*It is impossible to underestimate the impact of structural separation – it really is a game changer*. *The entire history of telecommunications has been predicated on finding ways to minimise the adverse effects on competition of vertical integration, where the network owner must supply input services to parties who are competitors of its downstream business; inputs which those parties cannot obtain from any other source. The practices which raise concerns are almost endless – the classic deny, delay, degrade strategy, the margin squeeze, price and non-price discrimination, loyalty discounts, and so on. Structural separation removes the incentive to engage in the type of discriminatory behaviour described above. There is no integrated downstream business to benefit*."

[2] Hon Steven Joyce, Minister of Communications and Information Technology, "Ultra-fast broadband investment proposal finalised" (16 September 2009) available at https://www.beehive.govt.nz/release/ultra-fast-broadband-investment-proposal-finalised.

[3] 'Regulation of Telecommunications - the lessons learned over the last 25 years and their application in a broadband world' (CLPINZ Workshop, 5 August 2011) available at http://www.comcom.govt.nz/the-commission/archive-10/speeches1/.

2.4 Policy makers and regulators have however been alert to the fact that structural separation at the network level may not of itself be sufficient to address the competition issues which may arise as a consequence of the increasing convergence[4] of telecommunications, information technology, media and entertainment (**TIME**) services driven by technological changes, and the increasingly widespread availability of high speed broadband.

2.5 In 2013, the OECD Global Forum on Competition discussed the new competition issues which convergence was raising, and concluded: [5]

> "*While the emergence of new products and services facilitated by convergence has lowered barriers to entry and rendered markets more competitive, participants at the forum provided many examples of restricted access to the market. The debate also revealed that competition authorities are increasingly aware of new competition challenges arising in the sector and have therefore become more active in launching policy interventions*."

2.6 The OECD Roundtable recognised that while convergence had had a major impact on distribution platforms, content remains a bottleneck: [6]

> *"Whereas technological convergence, and digitisation in particular, have gradually resolved the problem of spectrum and channel scarcity, convergence has not, as a matter of fact, had any direct impact on the provision of content. As there are only a few blockbusters and a limited number of premium sport events every year, content has consequently become scarcer, and has effectively become a new bottleneck in the broadcasting market. Within premium content one should distinguish in particular sport events and blockbuster Hollywood movies. While both types of content are traditionally considered to be a key element driving the demand for pay-TV subscription, they tend to display different features.* ***The problem of bottleneck is most acute for content that is time critical, and therefore for which broadcasting has no adequate substitutes, and also content demanded by a mass audience, for which traditional broadcasting technologies have a competitive advantage. Major professional sporting events fit all these criteria.***"

2.7 The competition danger was that convergence had removed the access bottleneck, but market participants had sought to replace it with a premium content bottleneck: *"Barriers to accessing content and regulated competition concerns can arise from various sources, such as for example the integration of content owners and transmission providers, or existing contractual arrangements.*"[7]

2.8 The importance of premium content to the development of competition has also been recognised in New Zealand.

2.9 The 2009 Joint Report to Ministers by the Ministry of Economic Development and Ministry of Culture and Heritage on competition in the television broadcasting market reported that access to premium content "*was the most contested competition issue [in the consultation] and is arguably the most important",* and observed that "*any broadcaster that can 'lock up' long-term rights to all or most premium content potentially has the capacity to dominate the retail market and exercise market power*".[8] The two

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[4] The Ministry of Business, Innovation and Employment (**MBIE**), in *Exploring Digital Convergence: Issues for Policy and Legislation*, describes the competitive effect of convergence as follows:

> *"Convergence is also changing competition dynamics within the TIME [telecommunications, information, media and entertainment] sectors. New Zealand based TIME companies now face enhanced competition from two directions: competition between firms in previously non-rival TIME sectors, and competition between traditional TIME firms and new internet-based TIME firms."*

[5] OECD, Policy Roundtables, *Competition Issues in Television and Broadcasting* (2013) at 1, available at http://www.oecd.org/daf/competition/TV-and-broadcasting2013.pdf..

[6] Above, n 5 at 22.

[7] Above, n 5 at 23.

[8] Ministry of Economic Development and Ministry of Culture and Heritage, *Report to the Minister of Broadcasting and the Minister for Communications and Information Technology, Television broadcasting: competition issues* (February 2009) at 79 and 82.

Ministries disagreed on whether it was necessary and desirable to strengthen the regulatory regime for broadcasting, and in particular, to extend the Telecommunications Act to cover broadcasting.

2.10 The Commission in its High Speed Broadband Services Demand Side Study Final Report concluded:[9]

> "*Video content is likely to be the primary driver behind consumers' uptake of high speed broadband over the next several years. The rate of this uptake may be affected by the diversity of video on demand services that are available and the content that they offer*".

2.11 The proposed SKY/Vodafone transaction will re-introduce vertical integration into the broadband value chain, combining New Zealand's only liner Pay TV provider, with circa 830,000 subscribers and long term exclusive rights to tier 1 premium sporting events, with New Zealand's largest provider of mobile telecommunications services and second largest provider of fixed-line services.

2.12 The merged entity will have both the incentive and the ability to leverage its substantial market power in content markets to lock-up premium content for exclusive delivery over its own platforms, foreclosing competition in the residential fixed-line and retail mobile markets.

2.13 As the report by Plum Consulting illustrates, telecommunications companies across the world are acquiring pay TV assets to enable them to create quad play bundles – a combination of fixed voice, fixed broadband, mobile voice and broadband and video content in a single package. Vodafone has been a leader in this strategy, including in 2013 acquiring a German cable company, Kabel Deutschland, and adopting what it called a "unified communications strategy" of fixed broadband, mobile, and pay TV bundles, and cross selling across both Vodafone and Kabel customer bases. Vodafone adopted a similar strategy in Spain, where it acquired pay TV operator Ono in 2014.

2.14 It is clear from the Plum Consulting Report that premium live sport content is the key differentiator of telecommunications bundled offerings, providing a differentiated retail offering leading to higher ARPU and greater customer loyalty. It is for this reason that competition for live sporting content rights has intensified and prices increased (Figures 3 -3 and 3-4 Plum Consulting Report) as telecommunications companies compete with traditional pay TV companies for these "must have" rights. The OECD has recognised the importance of live coverage of major professional sporting events in this context, and the creation of a new bottleneck in the supply chain (see the passage quoted at paragraph 2.6).

2.15 SKY's marketing material confirms the importance of premium live sport for a successful pay TV offering. A significant portion of the content on its website is related to premium live sport, including the All Blacks, and it regularly uses premium live sport to promote its services. SKY is currently offering:

> "*JOIN SKY AND GET SKY SPORT FREE* UNTIL 31 OCTOBER 2016 WITH NO JOINING FEE ON A 6 MONTH BASIC CONTRACT*"[10]

2.16 In the light of the OECD's findings and SKY's own marketing practices, it is surprising that Vodafone and SKY, in their applications, maintain that the proposed acquisition by Vodafone of SKY, with 100% of the subscriber pay TV market (a market with 53% penetration) and long term exclusive rights to premium live sports events, does not raise any competition issues.

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[9] Commerce Commission, *High Speed Broadband Services Demand Side Study Final Report* (June 2012) at 34.
[10] https://www.sky.co.nz/?art_id=44267 (Accessed 12 August 2016.)

2.17 The applicants' claim can be contrasted with Vodafone Spain's opposition to its competitor Telefonica's acquisition of the pay TV operator Canal+, which had a 70% share of the Spanish pay TV market (a market with only 20% penetration). As noted above, Vodafone Spain had previously acquired pay TV Ono, which has a 15% share of the Spanish pay TV market.

Vodafone's opposition to Telefonica's acquisition of Canal+

In April 2015, the Spanish competition regulator, CNMC, approved Telefonica's takeover of pay TV operator Canal+, on condition that it offer at least half its premium content to competitors at a wholesale price which would allow them to set competitive retail prices compared to Telefonica's prices. The content, which included sporting events such as the Olympics, FIFA World Cup, Primera Liga and Formula 1, and exclusive content from major US channels had to be offered on an unbundled basis – Telefonica could not restrict the content mix chosen by its competitors.

Vodafone had argued that access to 50% of Canal+'s content was not sufficient, and they should be allowed access to 75%. Director of legal and regulatory affairs, Pedro Pena, said "*there was no point in having an extensive network if there was nothing to distribute on that network, and that it was not only necessary to have a powerful infrastructure to distribute data but also to distribute television*".[11]

Subsequently, Vodafone accused Telefonica of violating the conditions of the merger by refusing to allow it access to the Moto GP and Formula 1:[12]

> *"Mr Pena described the situation as one with a "hyperdominant pay TV operator who has joined a "dominant" telecommunications company, creating an enterprise which "in most EU countries would have been banned fair and square". The restrictions placed on Telefonica were described by Mr Pena as "not only weak, lax and benevolent" but also "unenforced". As proof, he cited a similar situation with first division football, considering this to be a dark spot for the pay TV industry."*

2.18 Vodafone made the point again in its 2015 submission to Ofcom's Digital Communications Review:

> *"sport stands apart due to its very specific characteristics: propensity to lose value after live broadcast; its degree of exclusivity to individual pay TV services and the sums invested to secure those relevant exclusive broadcast rights. In particular, SKY [UK] and BT's willingness to spend so much on sports broadcast rights ….indicates the value they believe they can recover from utilising this content. Given the combination of these factors, sport appears to be uniquely placed to drive consumer choice in Pay TV services and beyond."13 (emphasis added)*

2.19 2degrees is in complete agreement with Vodafone's views expressed above, and those quoted at the beginning of this submission, all of which reinforce the critical importance of premium content (and particularly live sports) being made available on an equivalent basis to Vodafone's competitors in retail telecommunications markets.

3. The relevant markets

3.1 2degrees agrees with the suggestion in the Statement of Preliminary Issues that, in addition to the retail markets for residential fixed-line broadband services and Pay TV services, the retail market for mobile broadband will be affected by the transaction.

3.2 More detailed analysis of market definition is contained in the Plum Consulting and Covec Reports filed with this submission.

[11] "Vodafone Spain slams Telefónica Canal+ acquisition" Digital TV Europe (16 January 2015) available at http://www.digitaltveurope.net/305612/vodafone-spain-slams-telefonica-canal-acquisition/.
[12] "Spain: Vodafone accuses Telefónica of refusing access to motor sports feed" *Competition Policy International* (online ed, 22 March 2016) available at https://www.competitionpolicyinternational.com/spain-vodafone-accuses-telefonica-of-refusing-access-to-motor-sports-feed/.
[13] Vodafone (October 2015), *"Vodafone response to Ofcom consultation: Strategic Review of Digital communications discussion document"* , para 3.1 http://stakeholders.ofcom.org.uk/binaries/consultations/dcr_discussion/responses/Vodafone.pdf.

3.3 As we set out in this submission, the transaction will have material anti-competitive effects in key markets including:

(a) the wholesale markets for the provision of premium live sports and entertainment content;

(b) the retail market for residential fixed-line broadband services; and

(c) the retail market for mobile broadband services.

4. Counterfactual

4.1 The case is overwhelming that, in the absence of the Vodafone transaction, SKY is likely to become a genuine wholesale supplier of content to RSPs, resulting in an effective wholesale content market, and robust competition in telecommunications retail markets.

4.2 The Plum Consulting and Covec Reports outline, from an international comparator and economic perspective respectively, why that outcome is likely absent the Vodafone transaction.

4.3 These analytical assessments are consistent with 2degrees' own expectations, based on its experience outlined in Confidential Annexure 3 of this submission.

5. The wholesale Pay TV market

5.1 In its application for clearance, SKY asserts that "*despite **wholesale** access to SKY services being available to third parties, of the 80+ broadband suppliers in New Zealand, only Vodafone has opted to include the full suite of SKY services (i.e. including premium sports) in its bundled offer*".[14] (emphasis added)

5.2 It further states that it *"is willing to provide wholesale access to other third parties on commercial terms*",[15] and that the merged SKY/Vodafone entity *"will be strongly incentivised **to continue to offer wholesale access** to SKY services, which third parties will take up if they consider there is value in doing so*".[16] (emphasis added).

5.3 2degrees was unaware that SKY was providing wholesale access to its pay TV content to third parties. The only service which 2degrees understands is currently offered by SKY is the resale of the existing SKY bundle of services. This type of service offers wholesale customers like 2degrees no opportunity to differentiate their services from that of SKY or other competitors. Accordingly, they cannot properly be considered true wholesale services.

5.4 2degrees has, since reading the clearance application, been endeavouring to seek clarification from SKY on the details of the wholesale access which it has told the Commission it is willing to provide. To date that clarification has not been received.

Difference between wholesale and resale services

5.5 The difference between resale and wholesale provision of services is well understood in telecommunications markets, and forms the basis of the ladder of investment (LOI) policy which underpinned the 2006 and 2011 amendments to the Telecommunications Act.

5.6 The Commission's October 2010 submission to MED on the "Regulatory Implications of Structural Separation" observed that "*the LOI approach has successfully promoted*

[14] SKY/Vodafone Clearance Application (29 June 2016), Executive Summary at 3.
[15] Above, n 14 at 10.4.
[16] Above, n 14 at 10.11(b).

competition in telecommunications markets",[17] and "*will remain as important post Structural Separation as it is now*". It noted that "*only the lowest rung of the ladder, resale services, will be in [Spark]. The critically important higher rungs will remain in the vertically integrated Chorus, the area where LOI is most important*."[18]

5.7 Resale services sit on the lowest rung of the LOI, with wholesale services on the next rung. At the resale level, a service provider markets services designed by the access provider, whereas at the wholesale level, the service provider uses the wholesale inputs as building blocks to design its own differentiated suite of services.

5.8 Resale services contribute little to effective competition; as Martin Cave the creator of the LOI principle, has observed: [19]

> "*Almost everyone believes that 'competition is the best regulator'. It promotes consumer welfare by offering choice, variety, keen prices and innovation....So–called service or supply competition, in which competitors do little more than resell the incumbent's services fails to provide two of the above-mentioned benefits of competition, service variety and innovation*."

5.9 Indeed, this lack of competition between a service provider and its resellers is explicitly acknowledged by both applicants when they assert: [20]

> "*The creation of the Combined Group does not give rise to horizontal competition issues, including because...Vodafone's offering in the retail market for the provision of pay-TV is largely confined to reselling SKY's pay-TV services as part of Vodafone's wider offering"*

5.10 SKY's resale offering allows RSPs to offer the existing SKY branded service in a bundle with its telecommunications services. The service is identical to the service provided by SKY, and by any other RSP who takes the resale service. The RSP is not permitted to differentiate the service in any way, or add its own branding. For this reason the resale offer has no attraction to RSPs, as it provides no competitive benefit to outweigh the costs of becoming a reseller.

5.11 The clearance application suggests that because Vodafone is the only one of 80+ broadband suppliers in New Zealand which has opted to include the full suite of SKY services including premium sport in its bundled offer, it follows that premium sport is not a "must have" input.[21]

5.12 The reality is very different – RSPs seek to compete with each other by differentiating their offers from their competitors, and the resale of a service identical to that provided by their competitors, with no ability to differentiate by content, branding or pricing construct, is not a viable competitive strategy.

5.13 Triple play offers are also used by RSPs for strategic and defensive reasons; to attract customers from other networks that do not offer equivalent quality packages, and to reduce churn in their own subscriber base. All the evidence shows that churn rates reduce as more components are added to the bundle.

5.14 As the Plum Consulting Report discusses at 3.1, the proportion of UK customers on a triple play bundle has risen from 17% in 2010 to 27% in 2014 and is continuing to rise. In Singapore, 61% of households take a triple play or quad play bundle.

[17] Commerce Commission, *Response to MED Discussion Document 'Regulatory Implications of Structural Separation'* (October 2010) at 11.
[18] Above, n 17 at 19.
[19] Martin Cave "Encouraging infrastructure competition via the ladder of investment" (2006) 30 Telecommunications Policy, 223-237 at 223.
[20] SKY/Vodafone Clearance Application (29 June 2016) at 3.
[21] SKY/Vodafone Clearance Application (29 June 2016) at 16.

5.15 SKY's conduct in preventing the development of a competitive wholesale content market explains why triple play bundles are practically non-existent in New Zealand. 2degrees' experience demonstrates that if RSPs could secure content, triple and quad bundled offers would be launched immediately.

6. Substantial lessening of competition – the factual compared to the counterfactual

6.1 2degrees' resale/wholesale experience with the merger parties, as outlined in Confidential Annexures 1-3, shows that Vodafone has not been a genuine wholesaler, having opted to sacrifice wholesale revenue in the interests of its retail businesses, and that SKY has until very recently, adopted a similar approach. Only for a brief period early in 2016, before the proposed transaction was announced, did SKY engage constructively in wholesale negotiations.

6.2 The merged entity will have both the ability and the incentive to engage in foreclosing behaviour, and its constituent parts both have a history of doing so. SKY under Vodafone control is not likely to offer Vodafone's retail competitors any differentiated wholesale packages to enable them to compete vigorously with Vodafone in the fixed and mobile broadband telecommunications markets.

6.3 The counterfactual would result in vigorous retail competition with differentiated offers at the service level, of the sort described in Confidential Annexure 3.

6.4 Under those circumstances, the Commission cannot be satisfied that the proposed transaction will not be likely to substantially lessen competition in the retail markets for mobile and fixed broadband services when compared to the counterfactual, and must decline clearance.

7. Request for Conference under section 69B(1) of the Commerce Act 1986

7.1 It is clear from these submissions from 2degrees and the analysis in the expert reports provided to the Commission by Plum Consulting and Covec, that the issues raised by the proposed transaction are complex, multi-faceted, and vigorously contested.

7.2 It is equally clear that if the transaction were to proceed, it would have significant ramifications for television and telecommunications markets and would in effect determine the structure of those markets for the next decade or longer – according to Vodafone UK the effects will be "*enduring and irreversible*"[22].

7.3 As the Commission has stated, there is great benefit to the decision-maker and the parties in having opposing points of view tested and challenged through the interactive and transparent conference process:[23]

> "*The conferences are an important part of the Commission's information gathering process. The Commission is currently working on a wide range of new issues in telecommunications regulation, including standard terms determinations and whether to accept an undertaking in lieu of further regulation. The conferences are a chance for the Commission to question the submitters and hear different perspectives that will inform final decisions."*

[22] Vodafone Ltd , response to Ofcom Consultation: Strategic Review of Digital Communications, October 2015, 3.1.

[23] 'Commission To Hold Series Of Conferences', Commerce Commission press release, 19 September 2007.

7.4 For these reasons, 2degrees requests that the Commission, before making a determination under section 66(3) of the Commerce Act in relation to the proposed acquisition, determine to hold a conference in accordance with section 69B(1) of the Act.

CONFIDENTIAL ANNEXURE 1

8. **[ ]**

CONFIDENTIAL ANNEXURE 2

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CONFIDENTIAL ANNEXURE 3

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