



## Application for clearance of a business acquisition of shares under s66 of the Commerce Act 1986

Proposed acquisition by Voyage Digital (NZ)  
Limited of the shares in Two Degrees Group  
Limited

4 January 2022

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## Part A – Executive Summary

### Proposed Transaction

1. Pursuant to section 66(1) of the Commerce Act 1986, Voyage Digital (NZ) Limited (**Voyage**) gives notice seeking clearance from the Commerce Commission (**Commission**) for a proposed business acquisition under which Voyage will acquire 100% of the shares in Orcon Holdings Limited (**Vocus NZ**<sup>1</sup>) and Two Degrees Group Limited (**2degrees**).
2. Vocus NZ and 2degrees (together, the **Parties**) are both active in the telecommunications sector in New Zealand. Vocus NZ is owned by Vocus Group Limited (**Vocus Group**), which was previously listed on the ASX and acquired by Macquarie Asset Management (previously Macquarie Infrastructure and Real Assets), and its managed funds and clients (together, **MAM**) and Aware Super Pty Ltd as trustee of Aware Super (**Aware**) in July 2021.<sup>2</sup> Trilogy International Partners Inc (**Trilogy**) is the majority owner of 2degrees, along with minority shareholder Tesbrit B.V. (**Tesbrit**).
3. The proposed transaction involves a newly incorporated company Voyage, ultimately owned by MAM and Aware, acquiring all of the shares of Vocus NZ and then acquiring all of the shares in 2degrees from Tesbrit and Trilogy's subsidiary Trilogy International New Zealand LLC (**TINZ LLC**) (the **Proposed Transaction**).

### The Parties

4. Vocus NZ was founded in 1996 under the CallPlus brand which focused on business to business services. Over the last 20 years it has grown organically by launching new brands such as Slingshot and 2talk or by acquisition such as Orcon, FX Networks, Maxnet and Stuff Fibre. Today the Vocus NZ business in New Zealand includes the retail ISP brands Orcon, Slingshot, Flip and Stuff Fibre, a wholesale business, a power retailer, and a nationwide fibre backbone network.
5. 2degrees launched in New Zealand in 2009. 2degrees initially offered mobile services only, but following the acquisition of Snap in 2015 has expanded into fixed and broadband services to consumers, business and wholesale customers.

### Pro Competitive Rationale for the Proposed Transaction

6. Both Parties currently have separate but complementary focuses. Vocus NZ's strength is in its broadband offering to customers, with minimal presence in mobile. In contrast, 2degrees is stronger as a mobile provider, with less of a presence in broadband.
7. The Proposed Transaction would bring together Vocus NZ's and 2degrees' highly complementary assets / infrastructure across mobile, broadband and fixed-line services. With a shared challenger mindset, the merger of Vocus NZ and 2degrees would create an integrated fixed-mobile business of scale, with the ability to provide better service to customers for mobile and fixed services and enhanced customer choice by providing a complete solution for customers. The ability to offer more

1 We refer to Orcon Holdings Limited as Vocus NZ in this clearance application as the company was known as Vocus (New Zealand) Holdings Limited up until 25 August 2021.

2 Further information about MAM's and Aware's ownership of Vocus Group can be found at: <https://vocuscommunications.gcs-web.com/static-files/3ce83c55-278e-4126-b8c5-cba3acce7c0b> in the ASX Announcement dated 9 March 2021.

competitive bundles of the Parties' respective offerings, as well as to bundle new products and services to business customers in particular, will be a key synergy.

8. The Proposed Transaction will be pro-competitive and will enhance competition in the telecommunications sector by creating a more powerful number three player to compete with Spark New Zealand Limited (**Spark**) and Vodafone New Zealand Limited (**Vodafone**), which will remain the number one and two significantly larger players respectively as has been the case for many years. Given their origins as challenger brands in the mobile and fixed markets, the Proposed Transaction creates an opportunity to leverage 2degrees' and Vocus NZ's existing competitive positions to create a stronger market competitor.
9. Despite having a lower market share in mobile, 2degrees has built a mobile network of similar scale and reach to Spark and Vodafone. In order to support the rapidly increasing data demand across its network, 2degrees therefore has to support an increasing cost base to maintain network parity from a lower revenue base. The improved cashflows and balance sheet of the merged entity will better support the capital programme of the 5G network roll out compared with the counterfactual.

#### **Limited Overlap Between the Parties**

10. The relevant overlap between the Parties' businesses is limited to the following national markets:
  - 10.1 Retail supply of fixed-line voice and broadband services to consumers and small business customers<sup>3</sup> (the **Consumer & Small Business Broadband Market**); and
  - 10.2 Retail supply of mobile phone services (the **Mobile Market**).

#### **No Prospect of Substantial Lessening of Competition in any Relevant Market**

11. The Proposed Transaction will result in only limited horizontal aggregation in the Consumer & Small Business Broadband Market for residential and business customers, and minimal horizontal aggregation in the Mobile Market. In particular:
  - 11.1 Based on the Commission's own market share figures, the merged entity will only have 20% combined market share for fixed broadband retail post acquisition, comprised of 13% for Vocus NZ and 7% for 2degrees. This is at the level of the Commission's concentration indicator threshold for when an acquisition is unlikely to raise any competition issues;
  - 11.2 The position is even more stark in the Mobile Market. While 2degrees' share of the Mobile Market is 19%, the Commission's data shows that Vocus NZ's presence as an MVNO is less than 1%. Accordingly, the aggregation in the Mobile Market from the Proposed Transaction is absolutely minimal. The Commission has also not previously considered MVNOs to be a strong competitive constraint in any event.
12. A range of competitors will remain in the relevant markets following the Proposed Transaction, and operate as a constraint on the merged entity going forward. This includes the largest two participants in the Consumer & Small Business Broadband and Mobile Markets, Spark and Vodafone:

3 The reference to small business customers here excludes medium sized businesses, large businesses (100+ employees) and Government organisations on the Enterprise & Government side, where each of the Parties only has a minimal presence.

- 12.1 In the Consumer & Small Business Broadband Market, Spark and Vodafone have 40% and 21% market share respectively based on the Commission's analysis, and will therefore still both have larger market share than the merged entity post acquisition (noting in Spark's case it will have double the market share of the merged entity);
  - 12.2 Similarly, in the Mobile Market, both Spark and Vodafone have around 40% market share each, and will hold around twice the market share of the merged entity post acquisition;
  - 12.3 The Merged Entity will also be constrained by other smaller competitors in the Consumer & Small Business Broadband Market, such as Trustpower, Contact and Sky, which are all relatively new entrants yet have rapidly grown market share.
13. In addition to the constraint on the merged entity from existing competition, barriers to entry and expansion in the Consumer & Small Business Broadband Market are not significant, and customers have the ability to switch providers easily. These factors mean that potential competition and countervailing customer power will also operate as constraints on the merged entity going forward. For example, relatively new power company entrants Trustpower and Contact are already a material competitive constraint in the Consumer & Small Business Broadband Market.

**No Risk of Vertical, Conglomerate or Coordinated Effects**

14. As neither of the Parties has market power in respect of any of the markets in which they compete, the Proposed Transaction will not result in any input or customer foreclosure. In particular, the merged entity will not have the ability to foreclose its competitors in respect of wholesale services, given that there is a competitive market for the provision of wholesale services and post-merger other providers of these services would remain available.
15. Similarly, the Commission has previously found that New Zealand's broadband and mobile markets "*do not appear vulnerable to coordination*". This remains the case today.

## Part B – Parties' Details

16. Vocus NZ is owned by Vocus Group, which was previously listed on the ASX and acquired by MAM and Aware in July 2021, through their joint venture entity, Voyage Australia Pty Limited. Trilogy is the majority owner of 2degrees.
17. As set out in the next section, the Proposed Transaction involves Voyage acquiring the shares in Vocus NZ and 2degrees. Given that the outcome of these share acquisitions will be a merger of Vocus NZ and 2degrees, we set out those Parties' details in this section.

### Vocus NZ

18. Vocus NZ's contact details are:

Orcon Holdings Limited  
Level 5, 34 Sale Street  
Auckland 1010  
NEW ZEALAND

**Attention:** Simon Lewin, General Counsel & Company Secretary,  
Vocus Group  
Emily Acland, General Counsel and GM Regulatory,  
Vocus NZ

Mobile: +61412386086 / +64 21 049 3015  
Email: Simon.Lewin@vocus.com.au  
Emily.Acland@vocusgroup.co.nz

19. All correspondence and notices to Vocus NZ in respect of this application should be directed in the first instance to:

Simpson Grierson  
Lumley Centre  
88 Shortland Street  
Private Bag 92518  
Auckland 1010  
NEW ZEALAND

**Attention:** James Craig / Elsie Stone  
Telephone: (09) 977 5125  
Mobile: (021) 497 713  
Email: james.craig@simpsongrierson.com  
elsie.stone@simpsongrierson.com

### 2degrees

20. 2degrees' contact details are:

Two Degrees Group Limited  
Level 2, 136 Fanshawe Street  
Auckland 1010  
NEW ZEALAND

**Attention:** Paul Mathewson, Chief Commercial Officer & General  
Counsel  
Telephone: 0222333444

Email: Paul.mathewson@2dgrees.nz

- 21.** All correspondence and notices to 2degrees in respect of this application should be directed in the first instance to:

Matthews Law  
Level 33, Vero Centre  
48 Shortland Street, Auckland 1010  
NEW ZEALAND

**Attention:** Andrew Matthews / Danny Xie  
**Telephone:** (09) 972 3754 / (09) 972 3755  
**Mobile:** (022) 333 666  
**Email:** andrew.matthews@matthewslaw.co.nz  
danny.xie@matthewslaw.co.nz

## Part C – The Proposed Transaction

22. This section contains:
- 22.1 A description of the Proposed Transaction;
  - 22.2 An explanation of the rationale for the Proposed Transaction; and
  - 22.3 A summary of the remaining information included in the Appendices to this application.

### Proposed Transaction

23. Pursuant to section 66(1) of the Commerce Act, Voyage gives notice seeking clearance from the Commission for the Proposed Transaction under which Voyage will acquire 100% of the shares in Vocus NZ and 2degrees.
24. The Proposed Transaction will involve the following:
- 24.1 Incorporation of Voyage (representing MAM/Aware);
  - 24.2 Voyage will acquire all of the shares of Vocus NZ;
  - 24.3 Voyage will then acquire all of the shares in 2degrees held by TINZ LLC, and subsequently the shares in 2degrees held by Tesbrit.
25. Following the Proposed Transaction, Voyage will own 100% of the shares in Vocus NZ and 2degrees.
26. The merger parties signed binding documents regarding the Proposed Transaction on 31 December 2021.
27. The Proposed Transaction is conditional (amongst other matters) on obtaining clearance from the Commerce Commission, as well as approvals from the Government Communications Security Bureau (under the Telecommunications (Interception Capability and Security) Act 2013, and also the Overseas Investment Office.

### Rationale for the Proposed Transaction

28. Both Parties currently have separate but complementary focuses. Vocus NZ's strength is in its broadband offering to customers (including offering a broadband and energy bundle), with minimal presence in mobile. In contrast, 2degrees is stronger as a mobile provider, with less of a presence in broadband. 2degrees has traditionally been consumer-focused, with a smaller offering to business customers.
29. The Proposed Transaction would bring together 2degrees' and Vocus NZ's complementary assets across mobile, broadband, energy and fixed-line services. A combination of 2degrees and Vocus NZ has the opportunity to create a leading challenger telecommunications operator in the New Zealand market, ultimately enhancing consumer outcomes.
30. In particular, the combination has the potential to create a strong third player across the Mobile and Consumer & Small Business Broadband Markets in New Zealand. The scale of the merged entity, as well as cost synergies generated by the merger,

should enable the merged entity to operate as an effective challenger against the incumbents, Spark and Vodafone.

31. The complementary nature of Vocus NZ's and 2degrees' network infrastructure and product offerings should enhance customer choice by providing a complete solution for customers across broadband, mobile and energy products. The ability to bundle the Parties' respective offerings is a key benefit of the Proposed Transaction which will ultimately benefit consumers by introducing a new entity of scale that can compete in the "full service" offering. In particular, the merged entity will be able to enhance its offerings to business customers through a wider and broader product set (amongst other things), in a business segment that currently retains many of the characteristics of a duopoly.
32. 2degrees' 5G roll out remains on track to launch in late 2021, with a sustained period of elevated capex in the next 2-3 years required to complete the network roll out before capex intensity is expected to reduce to more moderate maintenance levels. Through a recapitalisation of the balance sheet, the Proposed Transaction should position the merged entity with sufficient capital to accelerate 5G investment and enable access to adequate spectrum, therefore ensuring competitiveness against the incumbents in these respects for the years to come. The improved cashflows and financial strength of the merged entity should de-risk the roll out, and better support the capital programme of the 5G network roll out compared with the counterfactual.
33. In addition, the increased scale will make it more viable for the merged entity to remain competitive for fixed broadband services, and enable further investment in network capacity for customers.
34. The combination of fixed and mobile infrastructure assets should also enable the merged entity to compete with Spark and Vodafone more effectively for the provision of fixed wireless broadband services. An increased customer base, through combining the migration opportunity of 2degrees' and Vocus NZ's customers from copper to a fixed wireless solution, will offer the merged entity economies of scale, allowing it to provide more competitive services to customers. Fixed wireless broadband increases the overall utilisation of the mobile network, improves return on investment and supports future capital investment. A larger customer base will also reduce the forecasting risk with fixed wireless broadband, which is important for network planning.
35. The Proposed Transaction should also create a stronger independent energy retailer that would be better able to compete with gentailers in the retail electricity market, including into 2degrees' significant mobile base together with its broadband base (noting that 2degrees does not provide an energy retail offering at present).
36. Some potential strategies the merged entity could implement to acquire and retain new customers include:

36.1 [

];

36.2 [

];

- 36.3 [ ];
- 36.4 [ ];
- 36.5 [ ];
- ]; and
- 36.6 [ ].

**Other Competition Agencies Being Notified**

37. No other overseas competition agencies are being notified in relation to the Proposed Transaction.

**Required Documents / Information**

38. We provide in the Appendices to this application the following further documents / information referred to in the Commission's clearance application form:
- 38.1 Transaction Documents;
  - 38.2 Corporate Structure Charts;
  - 38.3 Vocus NZ's Annual Report;
  - 38.4 2degrees' Financial Statements;
  - 38.5 Financial information for the Parties;
  - 38.6 Details of the Parties' Customers and Competitors; and
  - 38.7 Confidentiality Schedule.

## Part D – Counterfactual

39. If the proposed merger does not go ahead, Vocus NZ and 2degrees are both likely to proceed with separate Initial Public Offerings (**IPOs**) of shares in their respective New Zealand businesses.
40. Prior to the Proposed Transaction, the Parties had already commenced IPO processes. The Parties agreed to suspend these processes in favour of the Proposed Transaction, which will ultimately create a stronger integrated telecommunications provider with a well invested network and stronger balance sheet to continue to innovate.

## Part E – Overview of the Telecommunications Sector and Activities of the Parties

41. This section provides:
  - 41.1 A brief general overview of the telecommunications sector;
  - 41.2 An overview of broadband and mobile services; and
  - 41.3 A summary of the activities of each Party to the Proposed Transaction.

### General Overview of the Telecommunications Sector in New Zealand

42. The New Zealand telecommunications sector environment is competitive, with increasing bandwidth demand and data consumption due to digitisation and growing fibre uptake driving total growth in connections (mobile connections 2.0% CAGR from 2019 to 2020, and fixed line broadband connections/100 population 2.8% CAGR over same period). The sector generated total retail revenue in 2020 of \$5.12B and has grown by 0.2% CAGR since 2010.
43. There are two integrated telcos, being Spark and Vodafone, which offer full telecommunication product services across all market segments and own nationwide fibre-optic networks, fixed infrastructure and a mobile network. Vocus NZ and 2degrees each own parts of the network they participate in (Vocus NZ – fibre, and 2 degrees – mobile network). Key retail service providers (**RSPs**) in the market (including MyRepublic, Contact Energy and Trustpower) are a mix of product centric, adjacent service and smaller customer base providers. The telecommunications industry also comprises a number of fibre companies for wholesale last mile services (**LFCs**), such as Chorus, Enable fibre broadband and Northpower.
44. Recent M&A activity in the New Zealand telecommunications market includes the acquisition of Vodafone NZ by Infratil and Brookfield (July 2019). Nearby in Australia, TPG Telecom was merged with Vodafone Hutchison (June 2020).

### *Regulatory Oversight Focuses on Consumer Outcomes*

45. The regulatory framework for the telecommunications sector is built around the Telecommunications Act 2001 and a number of supporting regulations, administered primarily by the Ministry of Business Innovation and Employment (**MBIE**) and the Commerce Commission. The regulatory environment is configured to promote competition and competitive outcomes for customers.
46. The Commission itself has published a number of studies on market conditions in the telecommunications sector. These include:
  - 46.1 2020 Annual Telecommunications Monitoring Report – 16 March 2021 (**2020 Telecommunications Report**);
  - 46.2 Measuring Broadband New Zealand, Winter Report – August 2021;<sup>4</sup>

4 Accessible at: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0028/263665/MBNZ-Winter-Report-2021-26-August-2021.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0028/263665/MBNZ-Winter-Report-2021-26-August-2021.pdf)

- 46.3 2019 Annual Telecommunications Monitoring Report – 12 March 2020;<sup>5</sup>
- 46.4 Mobile Market Study – Findings Report – 26 September 2019 (**Mobile Market Study**);<sup>6</sup>
- 46.5 Review of Designated and Specified Services under Schedule 1 of the Telecommunications Act 2001 – 5 July 2016 (**2016 Review of Designated and Specified Services**).<sup>7</sup>

## Overview of Broadband Services

- 47. The Ultra-Fast Broadband (**UFB**) Initiative has been highly successful in driving New Zealanders to take up broadband on fibre networks – 84% coverage of the New Zealand population (1.8M households), and an uptake of 62% (1.0M households) (as at 30 September 2020).
- 48. Broadband services are data services that provide access to the internet. Fixed-line broadband services are supplied using various technologies, including fibre, copper or fixed-wireless. Fibre is now the dominant broadband technology in the market with a 64% market share.<sup>8</sup> The Commission has estimated that there are approximately 1.76M fixed broadband connections in New Zealand in 2019 / 2020.<sup>9</sup>
- 49. In addition to fibre, the number of fixed wireless connections is also steadily increasing. In 2020 there were 221K fixed wireless connections, a 16% increase from the previous year.<sup>10</sup> Spark and Vodafone are both currently growing their presence in fixed wireless connections. Fixed wireless technologies are less regulated than other broadband technologies and are provided over mobile networks. There is even more need for increased competition in this area to ensure price competitiveness and quality. One of the benefits of the Proposed Transaction will be the increased ability it provides for the Vocus NZ brands along with 2degrees to compete genuinely in the fixed wireless space.
- 50. Uptake in fibre and fixed wireless has seen a corresponding decline in copper connections.<sup>11</sup> There has also been a corresponding decline in use of landlines. Over half of household fixed line connections now have no voice services.<sup>12</sup> Two-thirds of the remaining residential landlines are now on technologies such as fibre and wireless, as opposed to traditional copper phone lines.<sup>13</sup>
- 51. Fixed-line voice services can be provided via connection to the public switched on telephone network (**PSTN**) or via voice over internet protocol (**VoIP**) data services.
- 52. New Zealand’s Consumer & Small Business Broadband Market is very competitive, with the largest RSPs, Spark and Vodafone, holding combined market shares of over 60% and a large number of smaller RSPs. Competition has strengthened since the structural separation of the retail market and the adoption of regulated open

5 Accessible at: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0021/212763/2019-Annual-Telecommunications-Monitoring-Report-Revised-version-12-March-2020.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0021/212763/2019-Annual-Telecommunications-Monitoring-Report-Revised-version-12-March-2020.pdf)

6 Accessible at: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0022/177331/Mobile-Market-Study-Findings-report-26-September-2019.PDF](https://comcom.govt.nz/_data/assets/pdf_file/0022/177331/Mobile-Market-Study-Findings-report-26-September-2019.PDF)

7 Accessible at: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0034/59749/2016-NZCC-13-Final-decision-Review-of-Designated-and-Specified-Services-under-Schedule-1-of-the-Telecommunications-Act-30-June-2016.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0034/59749/2016-NZCC-13-Final-decision-Review-of-Designated-and-Specified-Services-under-Schedule-1-of-the-Telecommunications-Act-30-June-2016.pdf)

8 2020 Telecommunications Report, page 7.

9 2020 Telecommunications Report, page 4.

10 2020 Telecommunications Report, page 8.

11 2020 Telecommunications Report, page 7.

12 2020 Telecommunications Report, page 6.

13 2020 Telecommunications Report, page 8.

access wholesale markets. Barriers to entry into the retail supply of broadband services have decreased significantly as investment requirements have decreased.

53. However, the majority of both residential and business broadband customers are supplied by the two largest providers, being Spark and Vodafone.
54. Broadband services in recent years have seen exponential data consumption growth. In 2011, the average fixed monthly data usage per broadband connection in New Zealand was well below 50GB. This had jumped to over 250GB in 2019/2020.<sup>14</sup> Mobile phone users are now consuming an average of 3.29GB of data per connection monthly.<sup>15</sup> The onset of the COVID-19 pandemic contributed to this, and has also accelerated the move to hybrid networks and edge computing as businesses adapt to remote working models. There is also greater demand for security and risk management as cyber security becomes a growing concern.

#### *Residential customers*

55. Offerings to residential customers typically consist of broadband sold either alone (“naked broadband”) or bundled together with a PSTN voice service. Some broadband providers bundle a broadband service with a VoIP service allowing landline access over broadband.
56. The Commission’s most recent Telecommunications Industry Questionnaire shows that in 2020, there were 642K residential lines providing a broadband / voice bundle, and 804K residential lines providing naked broadband. In total, there were 1.5M residential lines.<sup>16</sup>
57. In terms of how parties compete for residential customers, the Commission noted in its 2016 Review of Designated and Specified Services that “*end-users are generally more interested in the price and functionalities of the plans than in the type of technology.*”<sup>17</sup>
58. The Commission also found that bundles are increasingly the preference of end-users, and that access to the main components of a bundle is needed for retail service providers to effectively compete.<sup>18</sup> Common bundles include TV streaming, music streaming or free offers. As more energy providers have entered the market, there has been an increase in bundling of energy and telecommunications services.
59. The Commission has previously found that customers that take up bundles are less likely to switch providers than customers which purchase services on a standalone basis.<sup>19</sup>

#### *Businesses*

60. The Commission’s most recent Telecommunications Industry Questionnaire shows that in 2020 there were 98K business lines providing naked broadband, 176K business lines providing data (non-broadband) services, and 70K business lines providing a broadband / voice bundle. In total, there were 426K business lines.<sup>20</sup>

14 2020 Telecommunications Report, page 4.

15 2020 Telecommunications Report, page 16.

16 This figure includes residential lines providing voice only. Accessible at: <https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/annual-telecommunications-market-monitoring-report>

17 2016 Review of Designated and Specified Services, page 55.

18 2016 Review of Designated and Specified Services at [35.2].

19 Commerce Commission, *Sky / Vodafone* (22 February 2017) at [182].

20 Commission Telecommunications Industry Questionnaire 2020.

## Overview of Mobile Services

61. Mobile services are communications services (voice, messaging, and data) which remain available to subscribers as they move around (i.e. they are not tied to a specific fixed location). Mobile services are delivered over a cellular mobile network to devices such as mobile handsets, or data devices such as tablets with in-built mobile connectivity, or 'dongle' devices using cellular modems.<sup>21</sup> The Commission has estimated that there are approximately 6.2M mobile connections in New Zealand in 2019 / 2020.<sup>22</sup>
62. Mobile consumers typically purchase bundles of mobile services which provide a monthly allowance of minutes, texts, and data. These services are usually offered to consumers through two types of retail plans, being prepay plans (where consumers pay for services in advance), and on account plans or post-pay plans (where consumers pay at the end of each month of service). Mobile service providers in New Zealand have moved more towards offering open term plans for residential customers.<sup>23</sup> The Commission has found that Mobile Network Operators (**MNOs**) sometimes bundle fixed broadband and mobile services.<sup>24</sup>
63. In its 2019 Mobile Market Study, the Commission stated that the most important factors to consumers when choosing mobile providers are pricing, data allowances, value, network coverage and data speeds.<sup>25</sup> Business customers of mobile services value reliable coverage, good customer service, competitive pricing, the ability to offer bundles of services, and having an established reputation when selecting a supplier.<sup>26</sup>
64. In the same study, the Commission found that a number of barriers to switching suppliers have been reduced in the mobile market, and that most consumers consider switching between mobile suppliers to be easy.<sup>27</sup> Factors influencing this include that mobile number portability is available, there are low numbers of locked handsets, and long-term contracts for residential consumers are not prominent.<sup>28</sup>
65. Mobile services are supplied in New Zealand by either:
  - 65.1 MNOs, which own key mobile network infrastructure (such as spectrum, cell towers, radio access and core network equipment) and supply mobile services to wholesale and retail customers; or
  - 65.2 Mobile Virtual Network Operators (**MVNOs**), which provide mobile services to consumers but generally do not own much of the infrastructure required to provide mobile services.
66. The three MNOs operating in New Zealand are Spark, Vodafone and 2degrees. Spark and Vodafone are the dominant players with a combined market share of over 80%. The MVNOs operating in New Zealand are Compass, Kogan Mobile, Trustpower, Vocus and Warehouse Mobile.

21 Mobile Market Study 2019, page 22.

22 2020 Telecommunications Report, page 4.

23 2019 Mobile Market Study, at [2.24]-[2.26].

24 2019 Mobile Market Study at [3.27].

25 2019 Mobile Market Study at [3.30].

26 2019 Mobile Market Study at [3.16].

27 2019 Mobile Market Study at [4.136].

28 2019 Mobile Market Study at page 99.

67. New Zealand's mobile market is seeing marginally increased participation by MVNOs, which rely on wholesale MVNO access (supplied by MNOs) in order to compete in the retail market. However, the MVNOs currently hold a combined market share of less than 1%.
68. As described by the Commission in the 2019 Mobile Market Study, competition in the supply of mobile services has strengthened since the entry of 2degrees,<sup>29</sup> including a significant impact in terms of improving customer choice and competitive offerings.<sup>30</sup>

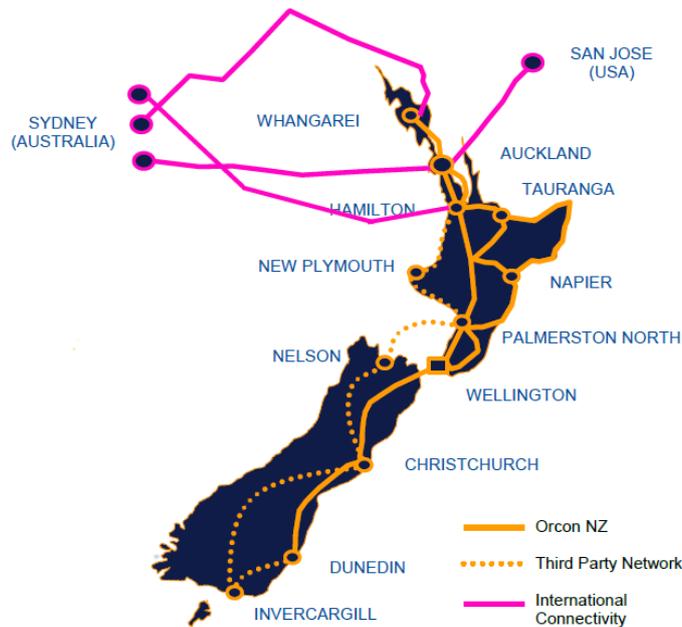
## VOCUS

### Vocus

69. Vocus NZ was founded in 1996 under the Callplus brand which focused on the business market segment. Over the last 20 years it has grown organically by launching new brands such as Slingshot and 2talk or by acquisition such as Orcon, FX Networks, Maxnet and Stuff Fibre.
70. Vocus Group is a provider of integrated telecommunications focusing on internet, fibre, ethernet and data centre services. It specialises in building high performance data networks throughout Australia and New Zealand and into Asia and America.
71. Vocus Group has direct links into more than 120 data centres, including 22 of its own, and peers directly with more than 500 content providers. Vocus Group also owns the Australian Singapore Cable (**ASC**), and has an interest as a capacity reseller in the Southern Cross Cable between Australia, New Zealand and the US, the Australian Japan Cable, and the Asia America Gateway.
72. In July 2021, a Consortium comprising MAM and Aware completed the acquisition of Vocus Group (previously listed on the ASX) by way of Scheme of Arrangement. MAM is an operating division of Macquarie Group (ASX: MQG) and is one of the world's largest alternative asset managers.
73. In New Zealand Vocus NZ owns and operates a national fibre network, with 4,600km of fibre in the ground throughout the country. It has three data centres in New Zealand, and is in the process of building a fourth. Vocus NZ's network in New Zealand is set out in the diagram below:

29 2019 Mobile Market Study at [3.14].

30 2019 Mobile Market Study at [5.3].



74. In addition to its operations in the telecommunications sector (expanded on below), Vocus NZ also operates in the New Zealand electricity sector. Most of New Zealand's electricity generation and retailing is undertaken by five large, vertically integrated generators and retailers of energy: Contact Energy, Genesis Energy, Mercury Energy, Meridian Energy and (until recently) Trustpower. Trustpower recently announced the conditional sale of its electricity retail and telecommunications business to Mercury Energy and, following completion of this transaction, will be primarily a generator. The smaller players in the market have been growing market share, primarily driven by offering price competitive products versus the current four 'gentailers'.
75. The FY21 Annual Report for Vocus NZ is set out at **Appendix 3**. At a high-level:
- 75.1 Total broadband revenue in FY21 was \$[ ];
  - 75.2 Total consumer and business revenue in FY21 was NZ\$[ ].
  - 75.3 Total consumer and business telecommunications revenue in FY21 was NZ\$[ ];
  - 75.4 Total enterprise, government and wholesale revenue in FY21 was NZ\$[ ].
76. Further information about Vocus NZ generally can be found on its website at [www.vocus.co.nz](http://www.vocus.co.nz). Further information about specific services provided by Vocus NZ that are relevant to the present application are set out below.

*Consumer & Small Business Fixed Line Voice & Broadband Services*

77. Vocus NZ delivers telecommunications and energy solutions to New Zealand households through three brands, Orcon, Slingshot and Flip, which specifically target the premium, value and budget customer segments respectively. (We refer also to Vocus NZ's Stuff Fibre and 2 talk brands further below.)

	<p>Orcon is a premium brand focusing on high end residential and small businesses, and targeting customers focused on high performance. The target market is ~200k households bundling broadband and energy. Orcon delivers download speeds of [ ] – [ ] for a price point starting at \$[ ] per month. Fixed line voice connections are offered to fibre customers for a further \$[ ] per month.</p>
	<p>Slingshot is a value brand focusing on the residential market which targets family households and other value focused customers and offers triple play energy, broadband and mobile bundles. Slingshot delivers download speeds of [ ] – [ ] for a price point starting at \$[ ] per month. Fixed line voice connections are offered to fibre customers for a further \$[ ] per month.</p>
	<p>Flip is a budget brand which targets cost focused customers with a simple one-product offering, being a low cost fibre connection with unlimited data and weekly or fortnightly billing. Flip delivers download speeds of [ ] – [ ] for a price point starting at around \$[ ] per week.</p>

78. Stuff Fibre also offers a no contract Unlimited Fibre 100Mbps plan for \$[ ] per month, and fixed term plans from \$[ ] per month.
79. Vocus NZ's Consumer & Business (**C&B**) division provides fixed line voice and broadband services to consumers and small business customers (meaning generally enterprises with 10-19 employees). Vocus NZ's C&B division has approximately 208,000 broadband connections in total, representing approximately [ ] of the company's overall revenue.<sup>31</sup>
80. Products and services to small businesses are generally provided by Vocus NZ's Orcon brand. Vocus NZ does not differentiate Orcon's products between consumer and small business customers – all products are interchangeable.

#### *Telecommunications Services to Enterprise & Government Customers*

81. For Enterprise, Government & Wholesale, Vocus NZ is focused on being a data networks and broadband provider and is enhancing partnering to grow into adjacent offerings (such as enterprise security, video conferencing, internet of things). Vocus NZ is focused on strong customer service and innovative products as a broadband challenger.
82. Under its Enterprise & Government division, Vocus NZ delivers telecommunications solutions to small-medium customers (20-99 employees), large customers (100+ employees) and Government organisations.
83. Vocus NZ offers a full suite of data and voice solutions through its Vocus brand, and Collaboration solutions through its 2talk brand. 2talk provides differentiated voice and video calling solutions to its Enterprise and Wholesale customers in New

31 As at June 2021.

Zealand and Australia. Data and voice services represent [ ] of its Enterprise & Government revenue.

- 84.** The services Vocus NZ provides to Enterprise & Government customers include:
- 84.1** Connectivity solutions, such as IP WAN, SD WAN, Ethernet, Internet Express, Wireless Internet, Business Broadband and IP Transit;
  - 84.2** Cloud solutions, such as Cloud Connect, Co-Location, BaaS and IaaS;
  - 84.3** Security solutions, such as DDoS Protection, Managed Firewall Services and DNS Protect; and
  - 84.4** Collaboration solutions, such as IP Tel, Toll Free, Cloud PBX, SIP Trunks, Secure SIP and Vocus Voice for Microsoft Teams.
- 85.** Vocus NZ provides services to Government customers as a member of the TaaS Panel for Connectivity, including:<sup>32</sup>
- 85.1** Gnet Site Connectivity (LAN, WAN, Wifi, datacentre connect);
  - 85.2** Sector Variant;
  - 85.3** Personal Connectivity (mobile);
  - 85.4** PSTN Access and Calling (including Toll Free);
  - 85.5** Service Connect; and
  - 85.6** Legacy Connectivity.
- 86.** Some Managed Security services are also offered to Government customers.
- 87.** Vocus NZ currently has approximately 1,600 Enterprise & Government customers, comprised of:
- 87.1** 378 Government customers (including 328 schools) - key customers include [ ];
  - 87.2** 406 Large enterprises - key customers include [ ];
  - 87.3** 702 Medium enterprises; and
  - 87.4** 104 Resellers - key customers include [ ].<sup>33</sup>
- 88.** Under its 2talk brand, Vocus NZ has approximately 4K broadband connections with Enterprise & Government customers.<sup>34</sup>

#### *Mobile Services to Residential and Enterprise / Government Customers*

- 89.** Vocus NZ also operates in the mobile services market as an MVNO.

<sup>32</sup> <https://www.digital.govt.nz/products-and-services/products-and-services-a-z/taas/taas-supplier-directory/>

<sup>33</sup> Re-sellers are customers that "re-sell" Vocus NZ products to end-customers, however Vocus NZ still bills the end customer directly and pays re-sellers a commission.

<sup>34</sup> As at June 2021.

90. As noted above, there are three mobile network operators in New Zealand: Spark, Vodafone and 2degrees, who all own significant spectrum rights. In addition to the network operators, there are currently five MVNOs, including Vocus NZ, which purchases wholesale mobile services from the mobile network operators for the purposes of offering these to customers.
91. Vocus NZ currently has approximately 34K mobile connections.

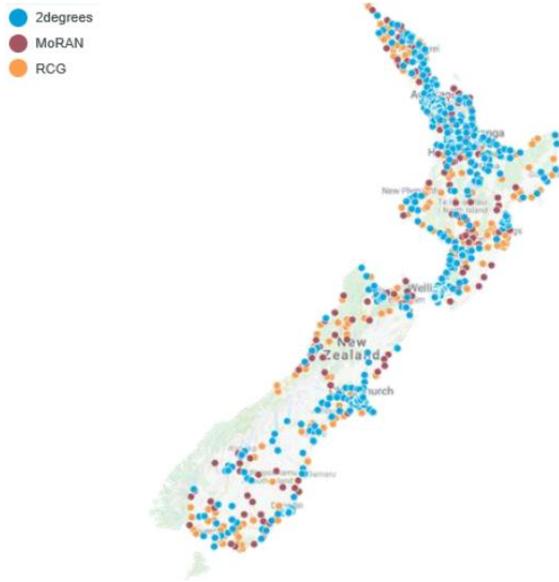
#### *Wholesale Services*

92. Vocus NZ provides access to its network and telecommunication services to wholesale customers including:
- 92.1 Other RSPs, to which Vocus NZ provides white-label broadband and voice solutions, including the end user billing system, to virtual retail service providers. If an RSP has invested in network capacity, Vocus NZ can provide the RSP with network access (commonly referred to as Layer 2 services) to extend the reach or capacity of the RSP. As part of its voice solution, Vocus NZ can provide nationwide call termination and local numbering;
  - 92.2 Service integrators and managed service providers, to which Vocus NZ provides access to its network to enable service integrators and managed service providers to deliver telecommunications and IT services to their customers.
  - 92.3 Domestic and international carriers, to which Vocus NZ provides access to capacity on its network for domestic and international carriers to increase their network capacity and diversity. Vocus NZ also provides data centre access, voice interconnect services and international termination to other carriers.
93. Vocus NZ currently provides services to 242 wholesale customers.



#### **2degrees**

94. 2degrees launched in New Zealand in 2009. 2degrees initially offered mobile services only, but following the acquisition of Snap in 2015 expanded into broadband services to consumers, business and wholesale customers.
95. 2degrees operates a nationwide network structure, encompassing 2degrees owned sites (73.2%), as well as RCG joint venture sites (13.5%) and MoRAN (infra-share) sites (13.2%). This network covers 98.5% of New Zealand's population. It has spent greater than \$1B on its network to date. 2degrees' network is set out in the diagram below:



96. 2degrees owns and operates two data and switching centres, located in Auckland and Hamilton. It has also recently secured a new Auckland location that is expected to begin operating in 2022. These data centres are primarily for servicing 2degrees' own network requirements. 2degrees does not currently provide data centre services to retail and business customers.
97. 2degrees also has a branded retail store network of 59 stores in 23 cities across New Zealand.<sup>35</sup> This network is complemented by 275+ multi-brand electronics retailers selling handsets and sim-cards, and a further 2,000+ supermarkets, service stations, and convenience stores stocking 2degrees sim-cards.
98. Further financial information for 2degrees is set out at **Appendix 4** of this application. Further information generally about 2degrees can be found on its website at [www.2degrees.nz](http://www.2degrees.nz).

*Fixed Line Voice and Broadband Services to Residential Customers*

99. 2degrees currently has approximately [ ] residential broadband customers.<sup>36</sup> 2degrees commenced providing these broadband services in 2015 through the acquisition of Snap.
100. 2degrees' residential broadband offering includes a full range of fixed broadband products, including fibre broadband over UFB networks as well as ADSL and VDSL broadband over Chorus' copper network. 2degrees incurs a local network access charge (usually \$[ ] per month depending on the plan speed) for each broadband connection provided over these networks. In FY20, [ ] of 2degrees' residential broadband customers were on fibre broadband plans.

*Telecommunications Services to Business Customers*

101. 2degrees offers a suite of telecommunications services to businesses ranging from SMEs (<50 employees) to large enterprises and corporates, as well as government organisations.

35 Noting that some of these stores are owned by franchise dealers, and not 2degrees itself.  
 36 As at 30 June 2021.

- 102.** Telecommunications services provided to business customers range from standalone broadband products for SMEs, through to complex integrated solutions such as managed networks for larger customers. 2degrees offers adjacent services such as cloud (i.e. delivering connectivity between private networks and cloud service providers), unified communications (i.e. integrated voice, video and messaging solutions), hardware procurement (i.e. devices, switches, routers, audio and video equipment, and servers) and security (i.e. data protection) in partnership with market leading suppliers such as Microsoft.
- 103.** 2degrees also utilises its mobile network to offer IoT services.
- 104.** 2degrees currently has approximately [ ] business broadband customers.<sup>37</sup> However, 2degrees' business segment revenue share in business broadband (and mobile) is [ ].

*Mobile Services*

- 105.** 2degrees has approximately [ ] mobile customers, including both business ([ ]) and residential ([ ]) customers.<sup>38</sup>
- 106.** [ ]% of 2degrees' residential mobile customers are on pay-monthly plans, contributing [ ]% of residential mobile service revenue.
- 107.** [ ]

].

*Services to Wholesale Customers*

- 108.** 2degrees actively competes for wholesale MVNO customers. 2degrees provides some fibre backhaul services to other RSPs, but only on a very small scale.
- 109.** 2degrees also provides mobile access point networks for business customers who require mobile connectivity as a backup for their managed networks, and other telco services required by wholesale customers.

37 As at 30 June 2021.  
38 As at 30 June 2021.

## Part F – Market Definition

110. This section contains:

110.1 A description of past consideration by the Commerce Commission of the relevant telecommunication markets; and

110.2 Confirmation of the overlap markets applicable to this application.

### Past Consideration of Telecommunications Industry by the Commerce Commission

111. Below we briefly describe the key recent assessments by the Commission of the relevant New Zealand markets impacted by various mergers and acquisitions in the industry.

#### *Vodafone New Zealand Limited / TelstraClear Limited*

112. In its 2012 decision granting clearance to Vodafone to acquire competing telecommunications provider TelstraClear, the Commission identified the following New Zealand wholesale and retail markets that were relevant to the application:<sup>39</sup>

112.1 Retail market for residential fixed-line voice and broadband services. Despite many consumers purchasing bundles (voice and broadband together), the Commission identified distinct product markets for fixed-line voice, and fixed-line broadband services.<sup>40</sup> It considered there were a considerable number of consumers that purchased voice or broadband services in isolation, and would be unlikely to substitute one for the other in the event of a price increase.<sup>41</sup> However, the Commission assessed these markets together as the market participants were largely the same and the competition in the supply of broadband products / packages was greater than in voice.<sup>42</sup> The merged entity would be constrained by large competitors (Telecom),<sup>43</sup> as well as smaller competitors (including Orcon and Slingshot) which play a “*greater role in driving competition than their market shares suggest*”;<sup>44</sup>

112.2 Retail market for business fixed-line voice and broadband services. The Commission did not find it necessary to conclude whether the provision of fixed-line services to small, medium or large corporates constituted separate markets.<sup>45</sup> However, within its analysis of this market it separately considered supply to small / medium enterprises and corporate / government enterprises.<sup>46</sup> The focus of the Commission’s inquiry was on small / medium enterprises as this was where the entities overlapped the most;<sup>47</sup>

112.3 Retail market for mobile phone services, for residential and business customers. The Commission noted that there was evidence of increased switching away from fixed-line services to mobile.<sup>48</sup> It also identified the

39 NZCC, *Vodafone New Zealand Limited and TelstraClear Limited*, 29 October 2012, paragraph 107.

40 Paragraph 80.

41 Paragraphs 80 and 82.

42 Paragraphs 127 - 128.

43 Paragraphs 237.

44 Paragraph 238.

45 Paragraph 91.

46 Paragraph 91.

47 Paragraph 263.

48 Paragraph 98.

potential for further separation of this market into pre-pay and post-pay, or residential and business customers, but that was not necessary for the application;<sup>49</sup>

**112.4** Backhaul transmission services. Although Vodafone did not operate in this market, the Commission had concerns that, given its large downstream retail presence, it could have an incentive post-merger to increase the price of backhaul services to rivals (partial input foreclosure).<sup>50</sup> The Commission considered this would not occur as it would have required an accommodating response from Telecom, so that the backhaul service providers were reduced to one;<sup>51</sup>

**112.5** Wireless spectrum management rights for mobile phone services. The Commission considered there was a question as to whether spectrum frequencies were individual product markets or part of a broader market, but it did not find it necessary to reach a conclusion on this.<sup>52</sup> It considered the relevant spectra separately as part of its analysis of this market.<sup>53</sup>

**113.** The Commission also considered there were possibly several wholesale markets under the “*consumer fixed-line voice and broadband services umbrella*”.<sup>54</sup> However, there was no overlap in this sector between the merging parties so it did not consider this further.<sup>55</sup>

#### *Vocus Communications Limited / M2 Group Limited*

**114.** In its 2015 decision granting clearance to Vocus Communications Limited to acquire M2 Group Limited, the Commission considered that the markets identified in the above decision (*Vodafone / TelstraClear*) remained relevant and were appropriate for assessing the application.<sup>56</sup> The Commission considered the following NZ markets:<sup>57</sup>

**114.1** Residential fixed-line voice and broadband services. The Commission did not consider the residential fixed-line services market further than to identify an overlap, because it noted that Vocus’ residential market share was minimal;<sup>58</sup>

**114.2** Business fixed-line voice and broadband services. The Commission did not divide this market further by business size or individual services as that would not have captured all of the overlap between Vocus and M2.<sup>59</sup> In its competition assessment, the Commission considered that Vocus provided services to large corporate / government customers, while M2 targeted small / medium enterprises;<sup>60</sup>

**114.3** National backhaul services. For the purposes of the application, the Commission focused on those wholesale services where there was actual

49 Paragraph 99.

50 Paragraph 101.

51 Paragraph 324.

52 Paragraph 106.

53 Paragraphs 335 – 358.

54 Paragraph 92.

55 Paragraphs 95 - 96.

56 NZCC, *Vocus Communications Limited and M2 Group Limited*, 3 December 2015, paragraph 23.

57 Paragraph 33.

58 Paragraph 25.

59 Paragraphs 26 – 27.

60 Paragraph 44.

or potential overlap, being national backhaul and data tails.<sup>61</sup> However, it did not reach a “*firm conclusion*” on whether each of the products offered at the wholesale level formed a discrete market.<sup>62</sup> It considered that Spark, Vodafone and Chorus would continue to provide “*strong competition*” to the merged entity in backhaul services;<sup>63</sup>

- 114.4** Data tails. No party had raised concerns regarding the overlap between Vocus and M2 in the data tails market and they were not considered “*close competitors in this area*”.<sup>64</sup>

*Infratil Limited / Vodafone New Zealand Limited*

- 115.** In its 2019 decision granting clearance to Infratil Limited (51% shareholder of Trustpower Limited) to acquire shares in a special purpose vehicle that would acquire Vodafone New Zealand Limited, the Commission assessed the following New Zealand markets as relevant to the application:<sup>65</sup>

- 115.1** Retail supply of broadband services to residential customers. The Commission defined the market as a single broadband product market;<sup>66</sup>

- 115.2** Retail supply of mobile services. The Commission considered in assessing the unilateral effects of the merger that for the mobile market “*MVNOs to date do not appear to have had a major impact on the market*”.<sup>67</sup> It noted that with three national MNOs, “*competitive conditions have developed at a wholesale level to allow MVNOs to emerge where commercially viable*”.<sup>68</sup>

**Confirmation of the Markets Relevant to this Application**

*Areas of Overlap Between the Parties*

- 116.** The parties’ businesses in New Zealand are highly complementary, with limited competitive overlap. The table below sets out where each party is active in New Zealand (with shading showing the overlaps).

<b>MARKET</b>	<b>VOCUS NZ</b>	<b>2DEGREES</b>
<b>Residential fixed-line voice: Network</b>	Owens and operates national network.	None
<b>Residential fixed-line voice: Services</b>	Full fixed voice services to residential customers.	Full fixed voice services to residential customers.
<b>Residential fixed-line broadband: Network</b>	Owens and operates national network.	None

61 Paragraph 32.

62 Paragraph 32.

63 Paragraph 49.

64 Paragraph 51.

65 NZCC, *Infratil Limited and Vodafone New Zealand Limited*, 10 July 2019, paragraph 62.

66 Paragraph 59.

67 Paragraph 63.2.

68 Paragraph 78.

<b>MARKET</b>	<b>VOCUS NZ</b>	<b>2DEGREES</b>
<b>Residential fixed-line broadband: Services</b>	Full fixed broadband services to residential customers.	Full fixed broadband services to residential customers.
<b>Business fixed-line voice: Network</b>	Owens and operates national network.	None
<b>Business fixed-line voice: Services</b>	Full fixed voice services to business customers.	Full fixed voice services to business customers.
<b>Business fixed-line broadband: Network</b>	Owens and operates national network.	None
<b>Business fixed-line broadband: Services</b>	Full fixed broadband services to businesses.	Full fixed broadband services to businesses.
<b>Mobile phone: Network / Spectrum Management Rights</b>	None	Operates nationwide network structure. 2degrees supplies network access to MVNOs on a wholesale basis.
<b>Mobile phone: Services</b>	Full voice and mobile broadband (retail and business) via MVNO agreements with Spark and Vodafone.	Full voice and mobile broadband (retail and business) via 2degrees' network.
<b>National and international backhaul: Network</b>	Owens and operates national inter-city backhaul fibre optic network.	2degrees leases national and international fibre optic services from fibre owners. (primarily Chorus for national fibre).
<b>National and international backhaul: Services</b>	Wholesale backhaul transmission services (including wholesale internet access through Vocus' Asia-Pacific network). Vocus NZ also offers data tails services.	Offers wholesale national and international backhaul services, but on a very small scale (annual revenue of less than \$[ ]).

#### *Relevant Markets*

117. While in the past the Commission has considered separate residential and business broadband markets, in practice the Parties consider most broadband products for small businesses and consumers to be substitutable on the supply-side (including wireless broadband products). Products and services offered to small businesses are similar to those provided to consumers in that they are typically “mass market” propositions with minimal variation in design or pricing. These products are readily available through customer facing websites and there are high levels of automation for ordering. Consumers and small business customers are serviced by the same divisions within the Vocus NZ business.

118. In contrast, the services provided by the Parties on the Enterprise & Government side are typically bespoke solutions that are designed by technical consultations based on the needs of business customers, which are generally medium sized businesses, large businesses (100+ employees) and Government organisations.
119. While each of the Parties is present on the Enterprise & Government side, each has a minimal presence (Vocus NZ estimates that it has [ ], [ ]). As such, the Parties do not consider that Enterprise & Government services are a material overlap between them, and do not deal with them further in the application.
120. Accordingly, the Parties consider that the markets relevant to the competition analysis of the Proposed Transaction are the following national markets:
- 120.1 Retail supply of fixed-line voice and broadband services to consumers and small business customers (**Consumer & Small Business Broadband Market**); and
- 120.2 Retail supply of mobile phone services (**Mobile Market**).

## Part G – No Lessening of Competition in the Consumer & Small Business Broadband Market

121. In this section, we set out the reasons why the Proposed Transaction will not have the effect or likely effect of substantially lessening competition in the Consumer & Small Business Broadband Market.

### Minimal aggregation

122. In the Commission’s 2020 Telecommunications Report, the estimates of the fixed broadband retailer market shares by connections were:<sup>69</sup>

Provider	Market Share
Spark	40%
Vodafone	21%
Vocus	13%
2degrees	7%
Trustpower	6%
Other	13%

123. The Commission did not delineate its market share estimates by consumers and business customer segments. Nevertheless, based on these figures, the merged entity would have a combined market share of 20% for fixed broadband retail post the Proposed Transaction.
124. The 20% combined market share figure for the merged entity is at the level of the Commission’s concentration indicator threshold. This highlights that the Proposed Transaction is a merger which is less likely to raise competition concerns under the Commission’s *Mergers and Acquisitions Guidelines*.
125. Vocus NZ’s 13% market share is comprised of approximately 208,000 consumer and small business broadband connections.<sup>70</sup>
126. Likewise, 2degrees’ 7% market share is comprised of around [ ] consumer broadband connections, and a small number of small business broadband connections.
127. The Commission’s market share assessment is consistent with (but if anything, slightly overstates) Vocus NZ’s internal market share analysis on revenue figures, which shows the merged entity as having an [ ] share of the Consumer & Small Business Broadband Market.

69 Page 25.

70 Connection figures as at June 2021.

## Existing market participants will continue to constrain the merged entity going forward

128. Based on the market shares above, Vocus NZ and 2degrees are the third and fourth largest market participants in the Consumer & Small Business Broadband Market.
129. The two largest competitors in the Consumer & Small Business Broadband Market are Spark and Vodafone, with 40% and 21% market share respectively.
130. Spark offers fixed-line and fixed wireless broadband and mobile services to residential and business customers. It operates a national mobile network and wholesales access to MVNOs. Spark also owns a backhaul network and wholesales some of its capacity to other telecommunications services providers. Spark is an aggressive competitor in the Consumer & Small Business Broadband Market. For instance, Spark's budget brand Skinny has recently offered three months' free fibre broadband plus a free modem for any new customer who signs up for a 12 month plan.<sup>71</sup> More information about Spark generally can be found on its website <https://www.spark.co.nz/>.
131. Vodafone offers fixed broadband, mobile, and content/TV services to residential and business customers. It owns and operates its own nationwide mobile network. As well as retailing mobile services, Vodafone wholesales access to its network. It also owns and operates a backhaul network. More information can be found on its website <https://www.vodafone.co.nz/>.
132. Post-merger, Vodafone and Spark will still both be larger by market share than the merged entity, and will continue to offer a serious competitive constraint on the merged entity's ability to increase prices in future.
133. In *Vodafone/TelstraClear*, the Commission concluded that the combination of Vodafone and TelstraClear, would result in some loss of competition between the parties but that the merger would offset this loss by "*creating a more efficient competitor that would be better able to compete with Telecom.*"<sup>72</sup> Just as the *Vodafone/TelstraClear* acquisition created a strong competitor to Telecom, the Proposed Transaction will create a stronger third competitor that would be better able to compete with Spark and Vodafone in the Consumer & Small Business Broadband Market.
134. Aside from Spark and Vodafone, there are also smaller competitors that are competing aggressively and gaining market share, and that would constrain the merged entity:
- 134.1 Between 2017 – 2020, the market share figures in the Commission's annual Telecommunications Reports show that Spark and Vodafone have lost a combined 10% market share. The majority of this lost market share has been captured by smaller competitors in the "Other" category, which has grown a combined 6% in the same time period.<sup>73</sup>

71 Refer to "[Broadband - Skinny Mobile](#)". See also "[Broadband wars: Skinny dangles six months' free broadband - NZ Herald](#)", Chris Keall, NZ Herald, 18 October 2021.

72 At [278].

73 2020, 2019, 2018 and 2017 Telecommunications Monitoring Reports, accessible at: <https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/annual-telecommunications-market-monitoring-report>

	2017	2018	2019	2020
Spark	44%	43%	41%	40%
Vodafone	27%	26%	24%	21%
Vocus	13%	13%	13%	13%
Trustpower	5%	5%	6%	6%
2degrees	4%	5%	5%	7%
Others	7%	8%	11%	13%

**134.2** As is evident from this table, Trustpower remains a significant participant in the Consumer & Small Business Broadband Market. It is similar in size to 2degrees, and has rapidly grown market share since entering the Consumer & Small Business Broadband Market. It offers consumers bundled energy (electricity and gas) and broadband packages. It is currently giving away televisions and appliances to attract new customers, with more offered if energy is bundled. Further information about Trustpower can be found on its website [www.trustpower.co.nz](http://www.trustpower.co.nz);

**134.3** In terms of other significant market participants falling within the “Others” category:

**134.3.1** Contact Energy is another gentailer that is competing aggressively in the Consumer & Small Business Broadband Market through the use of bundled power and broadband products. For example, Contact Energy is currently offering a loss-leading unlimited broadband \$59.95 per month plan, when bundled with energy and gas. Contact Energy has also rapidly gained market share. For instance, Contact’s 2021 Full Year Results Presentation states “*broadband connections up 25k (now 51k broadband connections)*”.<sup>74</sup> Further information about Contact Energy can be found on its website <https://contact.co.nz/>;

**134.3.2** Sky is another new entrant that is expected to compete aggressively initially to gain market share. Sky is currently offering a \$104.99 per month unlimited fibre plan, which includes a 12 month free Disney + subscription and offers \$20 off per month when bundled with Sky TV. Further information about Sky broadband can be found on its website <https://broadband.sky.co.nz/>.

**135.** In total, there are approximately 90 broadband retailers operating in New Zealand.<sup>75</sup>

**136.** This strong competition from existing market participants led the NZ Herald to note in commentary on 18 October 2021 that the “*bottom line*” was that “*broadband price*”

74 Contact’s 2021 Full Year Results Presentation of 16 August 2021 for the 12 months ended 30 June 2021 at p6. Refer to “[FY21 Annual Results Presentation.pdf](#)”.

75 <https://www.broadbandcompare.co.nz/broadbands/index?ProviderSiteSearch%5Bname%5D=&sort=-rating>

*wars will only intensify in the year ahead*'.<sup>76</sup> This statement was made in an article that assumed that the Vocus NZ / 2degrees merger would proceed.

### **The Parties are not close competitors**

137. While Vocus NZ and 2degrees compete in the Consumer & Small Business Broadband Market, they are not each other's closest competitors.
138. 2degrees' broadband offerings are more focused on content and entertainment. For example it currently offers a free 12 month subscription to Amazon Prime with its Unlimited Fibre 100Mbps and Unlimited Fibre 900Mbps plans.<sup>77</sup> Spark and Vodafone are 2degrees' closest competitors in this regard. For example, Spark currently offers Netflix as a \$10 add-on to its "Unplan" 4G Wireless Broadband and "Unplan" Fibre Broadband 100Mbps plans. Neon can be added for \$11.99 per month, and Spark Sport for a further \$19.99 per month.<sup>78</sup>
139. On the other hand, Vocus NZ's broadband offerings focus on a broadband / power bundle (10% off both bills when these services are bundled).<sup>79</sup> In this respect, it is a closer competitor with Trustpower and Contact Energy which also offer bundled broadband and power plans.
140. More generally, with its multi-brand approach, Vocus NZ targets the premium, value and budget customer segments respectively. In contrast, 2degrees predominantly focuses on value-focused customers.
141. In the past year, only approximately [ ] of Vocus NZ's new customers had 2degrees as their incumbent broadband provider.

### **Low Barriers to Entry and Expansion**

142. As noted by the Commission in *Vodafone/Infratil*, barriers to entry in the Consumer & Small Business Broadband Market are not significant. While scale can make it easier to compete, the Commission acknowledged that smaller providers have entered the Consumer & Small Business Broadband Market in New Zealand in recent times, and have found different ways to compete for customers.<sup>80</sup>
143. A significant factor lowering barriers to entry is the requirement that Chorus and other LFCs provide equal access to fibre networks, regardless of the scale of an access-seeker. Competition has strengthened since the structural separation of the retail market and the adoption of regulated open access wholesale markets. Barriers to entry into the retail supply of broadband services have decreased significantly as investment requirements have decreased.
144. More recent new entrants into the Consumer & Small Business Broadband Market include Sky, Trustpower and Contact Energy (which are described above). These new entrants have grown market share very rapidly, in contrast to when 2degrees acquired Snap in 2015 where it took multiple years to grow subscribers to their current level. Other recent new entrants include:
  - 144.1 NOW, which offers unlimited fibre plans starting at \$85 per month. More information can be found on its website <https://www.nownz.co.nz/>;

76 Refer to "[Broadband wars: Skinny dangles six months' free broadband - NZ Herald](#)", Chris Keall, NZ Herald, 18 October 2021.

77 As at 11 October 2021.

78 As at 11 October 2021.

79 As at 11 October 2021.

80 *Vodafone/Infratil* at [68].

**144.2** YelloHalo, which offers unlimited fibre plans starting at \$69 per month. YelloHalo is New Zealand's first charity broadband provider and gives 100% of profits to frontline ambulance workers. More information can be found on its website [www.yellohalo.co.nz](http://www.yellohalo.co.nz).

**145.** There is a long tail of niche business to business providers in NZ (200+ total RSPs). There are also wholesalers who make it easy to enter (eg Devoli and Voyager).

### **Countervailing Customer Power**

**146.** As set out above, the Consumer & Small Business Broadband Market in New Zealand feature competitive market conditions, with new market entrants aggressively growing market share through low pricing. There is real time switching and BYOD compatibility.

**147.** In particular, switching providers is straightforward. The TCF administered Customer Transfer Code, to which major providers are parties, allows for easy switching between providers including matters such as number portability.<sup>81</sup>

**148.** This combination of competitive markets and the ability for customers to switch easily between providers operates as a significant constraint on the ability of participants in the Consumer & Small Business Broadband Market to increase prices and/or reduce service quality.

81 Accessible at: <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-transfer-regulated-services/regulated-customer-transfer-code.PDF>

## Part H – No Lessening of Competition in the Mobile Market

149. In this section, we set out the reasons why the Proposed Transaction will not have the effect or likely effect of substantially lessening competition in the Mobile Market.

### Minimal aggregation

150. In the 2020 Telecommunications Report, the Commission's estimates of the Mobile Market shares by connections were:<sup>82</sup>

Provider	Market Share
Spark	40%
Vodafone	40%
2degrees	19%
MVNOs <sup>83</sup>	1%

151. While both Vocus NZ and 2degrees operate in the Mobile Market, the 2020 Telecommunications Report shows that Vocus NZ's presence as an MVNO is less than 1%.
152. As such, the Proposed Transaction will lead to negligible aggregation in the Mobile Market. Post the Proposed Transaction, the merged entity would likely have less than 20% of the Mobile Market.
153. The Commission's assessment is again largely consistent with Vocus NZ's own market share analysis based on revenue figures, which shows Vocus NZ as having [ ] market share and 2degrees with [ ], meaning the merged entity would have [ ] market share with negligible aggregation.

### Competition driven by Spark and Vodafone

154. The two largest competitors in the Mobile Market are Spark and Vodafone, each with 40% market share respectively. Post the Proposed Transaction, the merged entity would be the third largest competitor. This reflects the current status quo where 2degrees is already the third largest competitor in this market.
155. As noted above regarding the Consumer & Small Business Broadband Market, the Proposed Transaction will create a stronger third competitor to Spark and Vodafone that will be better able to compete.
156. 2degrees only completed its 4G rollout in 2021 and has not had time to generate a return from that infrastructure prior to needing to invest in 5G to continue to compete. Closing the network gap to the incumbents was essential to 2degrees being able to continue to compete and grow, and it is critical for ongoing competition in the Mobile Market that a network disparity relative to far larger incumbents does not re-emerge through the transition to 5G. 5G will be particularly important for driving business growth, and the ability to compete for higher value consumer mobile customers. Growth in those segments is needed to deliver an ROI and future investment. Scale, a full telco service offering and operating efficiently are key to future investment in mobile infrastructure. Data growth continues to

82 2020 Telecommunications Report, page 25.

83 Mobile Virtual Network Operators: Compass, Kogan, Mobile, Trustpower, Vocus and Warehouse Mobile.

accelerate, and significant capital demands are high on mobile network owners in terms of 5G investment.

157. Against that backdrop, the merged entity will have sufficient scale and capital to accelerate 5G investment (requiring investment in both spectrum and network infrastructure), therefore ensuring competitiveness against Spark and Vodafone, both of which have already indicated nationwide 5G roll-outs over the coming 2 – 5 years. Maintaining an equivalent network to the incumbents for 5G will be essential to enable ongoing competition in the Mobile Market. More generally, a scale third player is key to continued investment in competitive infrastructure and the underlying service offerings it enables – in particular for 5G, wireless broadband and the IOT.

158. In comparison to the Consumer & Small Business Broadband Market, where Spark and Vodafone are losing market share to fringe competitors, market share data from the past three Commission Telecommunication reports shows that smaller competitors are struggling to capture market share from the largest two competitors in the Mobile Market:<sup>84</sup>

	2018	2019	2020
<b>Spark</b>	32%	40%	40%
<b>Vodafone</b>	41%	37%	40%
<b>Skinny</b>	5%	-	-
<b>2degrees</b>	21%	22%	19%
<b>Other</b>	1%	1%	1%

159. In its 2019 Mobile Market Study, the Commission noted that, while 2degrees was viewed as a disruptor in the Mobile Market, since 2013 its market share has remained “flat”.<sup>85</sup>

160. Accordingly, it is important that a stronger third player emerges in the Mobile Market, and the Proposed Transaction will help to achieve that.

**The Parties are not close competitors**

161. As noted above, Vocus NZ’s presence in the Mobile Market is negligible with less than 1% market share and approximately 34K mobile connections.

162. Vocus NZ provides mobile services via a MVNO arrangement with Spark. Vocus NZ predominantly focuses on gaining mobile customers through bundling mobile services with broadband and energy services as part of a broader strategy to increase customer loyalty. Vocus NZ does not offer pre-pay mobile services, and also does not offer standalone mobile services (i.e. the service offered is post pay and must be bundled with broadband).

84 2020, 2019, and 2018 Telecommunications Monitoring Reports, accessible at: <https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/annual-telecommunications-market-monitoring-report>

85 2019 Mobile Market Study at [3.13.1].

163. In comparison, 2degrees competes more broadly with the other MNOs Spark and Vodafone for mobile customers. It also offers mobile services that Vocus NZ does not such as prepay.<sup>86</sup>

#### **Countervailing Customer Power**

164. The Commission has found that a number of barriers to switching suppliers have been reduced in the Mobile Market, and that most consumers consider switching between mobile suppliers to be easy.<sup>87</sup> Factors influencing this included that mobile number portability is available, there are low numbers of locked handsets, and long-term contracts for residential consumers are not prominent.
165. As a result, the merged entity will be constrained post acquisition from increasing prices or reducing quality of services by the countervailing power of customers through their ability to switch providers.

86 Refer to "[Prepay Plans | Prepaid Mobile Plans | 2degrees](#)".  
87 2019 Mobile Market Study at [4.136].

## Part I – No Vertical / Conglomerate Foreclosure or Coordinated Effects

### No ability or incentive of merged entity to foreclose competitors

- 166.** Both Parties to the Proposed Transaction currently provide wholesale services to other telecommunications services providers via their respective, complementary networks.
- 167.** The merged entity will not have the ability or incentive to foreclose its competitors in respective of these wholesale services:
- 167.1** The merged entity will not have the ability or incentive to foreclose its broadband rivals by refusing to supply broadband network or backhaul capacity. In the event that the merged entity attempted such conduct, there would be other suppliers of these types of capacity, including Chorus, Spark and Vodafone who could supply the merged entity's customers;
- 167.2** The merged entity will not have the ability or incentive to foreclose its mobile rivals by refusing to supply MVNOs with access to its mobile network. As above, both Spark and Vodafone would remain available to supply MVNO services. As such, any MVNO refused access by the merged entity has other potential mobile network options. Given 2degrees has a far smaller Mobile Market share than Spark and Vodafone (19% for 2degrees versus 40% for each of Spark and Vodafone), and having invested in equivalent infrastructure from which it needs to generate revenue, 2degrees is currently strongly incentivised to grow total users on the network and compete to supply MVNO services – on the basis that the provision of wholesale mobile services accelerates such growth. This is consistent with the fact that third operators are typically the more aggressive hosts of MVNOs in other countries. These incentives would not change for the merged entity following the Proposed Transaction.
- 168.** Similarly, the merged entity would also not be able to foreclose its customers in any market by bundling energy, broadband and mobile services.
- 168.1** The merged entity would not supply a unique or essential part of a bundle as there are other suppliers of energy, broadband and mobile;
- 168.2** As noted above, the merged entity is unlikely to have significant market power in any relevant markets, and would face material constraint from competitors;
- 168.3** Bundling is already the norm in each of the relevant markets, and similar services are already bundled by several competitors such as Contact Energy and Trustpower.
- 169.** For the reasons above, the Proposed Transaction will not substantially lessen competition in any of the relevant markets due to vertical or conglomerate effects.

## No coordinated effects

- 170.** The Commission has previously concluded that New Zealand's broadband and mobile markets "*do not appear vulnerable to coordination*" because:<sup>88</sup>
- 170.1** Coordination is more likely when the product or service is homogenous, and telecommunications services products compete on product / service differentiation, for example by bundling broadband with TV content or power;
  - 170.2** Coordination is more likely when firms have similar cost structures. However, in the relevant markets cost differences arise as a result of the varying scales of telecommunications services providers, undermining the ability to engage in coordinated behaviour; and
  - 170.3** Apart from the parties involved in that merger, there were several other aggressive players in the relevant markets using different strategies to win customers.
- 171.** These factors apply equally to the relevant markets in the present case and will not be impacted by the Proposed Transaction. As highlighted above, there are high levels of competition in the relevant markets, where product differentiation through bundling is a key element to how parties compete. Apart from the parties involved in this merger, there are several other aggressive players in the relevant markets using different strategies to win customers, meaning that coordination is unlikely even with the reduction in market participants as a result of the proposed merger. As such, the Proposed Transaction would not enhance the ability for the merged entity and other competitors to coordinate their behaviour.
- 172.** Accordingly, the Proposed Transaction will not substantially lessen competition in any of the relevant markets due to coordinated effects.

88 Vodafone/Infratil at [81].

## Part J – Confidentiality

- 173.** Both public and confidential versions of this clearance application have been provided to the Commission.
- 174.** Confidentiality is sought in respect of the information in the confidential version of this application that is highlighted in coloured shading. Confidentiality is sought under:
- 174.1** Section 9(2)(b)(ii) of the Official Information Act 1982 (**OIA**) on the grounds that the making available of that information would be likely unreasonably to prejudice the commercial position of the Party who supplied or is subject to the information;
  - 174.2** Section 9(2)(ba)(i) of the OIA on the grounds that the information is subject to an obligation of confidence, and the making available of the information would be likely to prejudice the supply of similar information and it is in the public interest that such information should continue to be supplied; and
  - 174.3** Section 9(1) of the OIA on the basis that the good reasons for withholding information on the grounds above are not outweighed by other considerations which render it desirable in the public interest to make that information available.
- 175.** A schedule is provided in **Appendix 7** which identifies the confidential information and sets out the reasons for each confidentiality request with reference to the grounds in the OIA.
- 176.** Vocus NZ requests that it be notified of any request made to the Commission under the OIA for release of the confidential information, and that the Commission seeks its views (and those of 2degrees where applicable) as to whether the information remains confidential and commercially sensitive at the time responses to those requests are being considered.
- 177.** The above applies equally in respect of any additional information subsequently provided to the Commission that is expressed to be confidential.

## Part K – Declaration

I, Anirudha Satchcroft, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the applicant that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am an officer of the applicant and am duly authorised to submit this notice.

**Name and title of person authorised to sign:**

**Sign:** \_\_\_\_\_

**Date:** 4 January 2022

Anirudha Satchcroft  
Director  
Voyage Digital (NZ) Limited

## Appendix 1 – Transaction Documents

[ ]

## Appendix 2 – Corporate Structure Charts

[ ]

[ ]

[ ]

## Appendix 3 – Vocus NZ Annual Report

[ ]

## Appendix 4 – 2degrees' Financial Statements

[ ]

## Appendix 5 – Parties' financial information

[ ]

[ ]

## Appendix 6 – Details of Key Customers and Competitors

### Key Other Consumer Telecommunications Providers

Other Providers	Contact Details
<b>Spark (including Skinny)</b>	Mark Beder Technology Director [                    ] [                    ] Address: Spark New Zealand Limited Private Bag 92028 AUCKLAND 1010
<b>Vodafone</b>	Tony Baird CTO [                    ] [                    ] Address: 74 Taharoto Road Takapuna AUCKLAND 0622
<b>Trustpower</b>	Matt Van Deventer Head of Technology [                    ] [                    ] Address: 108 Durham Street TAURANGA 3110
<b>Contact Energy</b>	Mike Fuge Chief Executive Officer  General enquiries: (04) 499 4001  Address: PO Box 10742 The Terrace Wellington 6143
<b>Sky</b>	Sophie Moloney Chief Executive Officer  General enquiries: 0800 759 759  Address: Sky Television PO Box 9059 Newmarket Auckland 1149

## Key Other E&W Telecommunications Providers

Other Providers	Contact Details
<b>Spark</b>	See above.
<b>Vodafone</b>	See above.
<b>Kordia</b>	Shaun Rendell Group CEO  Phone: [            ]
<b>Feenix</b>	David Heald Managing Director  Email: [            ] Phone: [            ]
<b>Devoli</b>	Karl Rosnell CEO  Email: [            ] Phone: [            ]

## NZ Industry Associations

Association	Contact Details
<b>Technology Users Association of New Zealand (TUANZ)</b>	Phone: +64 4 815 8178 (General enquiries) [                    ] (Craig Young, Chief Executive Officer)  Address: PO Box 65503 Mairangi Bay, North Shore AUCKLAND 0754  Website: <a href="http://tuanz.org.nz">Home – TUANZ (tuanz.org.nz)</a>
<b>New Zealand Telecommunications Forum Inc. (TCF)</b>	Phone: +64 9 475 0203 (General enquiries) [                    ] (Paul Brislen, Chief Executive Officer)  Address: PO Box 65503 North Shore AUCKLAND 0754  Website: <a href="http://tcf.org.nz/industry/">Home – TCF (tcf.org.nz/industry/)</a>

## Key Customers – Vocus NZ

Name	Revenue earned in FY21 (NZ\$'000)	Contact Details
<b>Enterprise &amp; Government</b>		
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
<b>Wholesale Customers</b>		
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

**Key Customers – 2degrees**

Name	Revenue earned in FY21 (NZ\$)	Contact Details
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

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100.	[	Section 9(2)(b)(ii)
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104.	[	Section 9(2)(b)(ii)
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105.	[	Section 9(2)(b)(ii)
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106.	[	Section 9(2)(b)(ii)
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107.	[	Section 9(2)(b)(ii)
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116.	[	Section 9(2)(b)(ii)
	]	
119.	[	Section 9(2)(b)(ii)
	]	
119.	[	Section 9(2)(b)(ii)
	]	
126.	[	Section 9(2)(b)(ii)
	]	

127.	[  ]	Section 9(2)(b)(ii)
141.	[  ]	Section 9(2)(b)(ii)
153.	[  ]	Section 9(2)(b)(ii)
Appendix 1	[  ]	Section 9(2)(b)(ii)
Appendix 2	[  ]	Section 9(2)(b)(ii)
Appendix 3	[  ]	Section 9(2)(b)(ii)
Appendix 4	[  ]	Section 9(2)(b)(ii)
Appendix 5	[  ]	Section 9(2)(b)(ii)
Appendix 5	[  ]	Section 9(2)(b)(ii)
Appendix 5	[  ]	Section 9(2)(b)(ii)
Appendix 6 – Other Telecommunications Providers	[  ]	Section 9(2)(b)(ii) Section 9(2)(a)

<b>Appendix 6 – Key Customer s – Vocus NZ</b>	[    ]	<b>Section 9(2)(b)(ii) Section 9(2)(a)</b>
<b>Appendix 6 – Key Customer s – 2degrees</b>	[    ]	<b>Section 9(2)(b)(ii) Section 9(2)(a)</b>