

**NOTICE SEEKING CLEARANCE FOR A BUSINESS ACQUISITION
UNDER SECTION 66 OF THE COMMERCE ACT 1986**

17 May 2019

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
Wellington
New Zealand
registrar@comcom.govt.nz

Pursuant to section 66(1) of the Commerce Act 1986, notice is hereby given seeking clearance of a proposed business acquisition.

Pursuant to section 66(1) of the Commerce Act 1986, notice is hereby given seeking clearance of a proposed business acquisition (**the transaction**) in which:

- (a) Infratil Limited (**Infratil**) and/or any of its interconnected bodies corporate will acquire shares in a special purpose vehicle (**SPV**), such shareholding not to exceed 50%; and
- (b) the SPV and/or any of its interconnected bodies corporate will acquire up to 100% of the shares in Vodafone New Zealand Limited (**Vodafone**).

EXECUTIVE SUMMARY AND INTRODUCTION

1. This proposed transaction will result in Infratil having an up to 50% interest in Vodafone, in addition to its existing 51% interest in Trustpower Limited (**Trustpower**).
2. Vodafone provides telecommunications services in New Zealand.
3. Trustpower has historically been primarily a retailer of electricity and gas. In recent years, Trustpower has repositioned itself as a multi-utility retailer. It now also sells fixed broadband and voice services in bundles with its electricity and gas products, with approximately 96,000 broadband connections. Trustpower also recently entered into an arrangement with Spark to offer wireless broadband and mobile services. If Vodafone and Trustpower merged, there would therefore be some limited aggregation in fixed line broadband and voice markets and potentially (in the future) the mobile phone services market.
4. The transaction will not result in the activities of Vodafone and Trustpower being merged. The sole connection between Vodafone and Trustpower will be through a common, and, in Vodafone's case, indirect, shareholder. Both with and without the transaction, Vodafone and Trustpower will continue to operate as separate entities. They will not be interconnected bodies corporate, and therefore coordination between, or integration of, the two companies will continue to be restricted under the Commerce Act 1986.
5. However, even if the transaction were analysed as a merger of Vodafone and Trustpower, it would not have the effect or likely effect of substantially lessening competition in a market, including because:
 - (a) in telecommunications markets, Trustpower has a market share of only 5%. It offers broadband/voice services in order to offer a multi-utility value proposition, and is a retailer of commodity services for which barriers to entry and expansion are low;
 - (b) there is a high level of existing competition, which would significantly constrain Vodafone/Trustpower if they were to merge; and
 - (c) the transaction would not enhance coordination in the markets or raise any vertical effect issues.
6. Notwithstanding the fact that Vodafone and Trustpower will not be combined or interconnected, the competition analysis in this clearance application is based on the conservative assumption that the businesses of Trustpower and Vodafone could be combined.

CONTENTS

EXECUTIVE SUMMARY AND INTRODUCTION	2
PART 1: TRANSACTION DETAILS	4
Applicant's details	4
Vendor's details	5
Target's details	5
Co-purchaser's details	5
Overview of the proposed transaction	6
Rationale for transaction	6
Documents relating to transaction	6
Other agencies being notified of transaction	7
PART 2: SCENARIOS WITH AND WITHOUT THE TRANSACTION	8
Scenario with the transaction	8
The Commerce Act would continue to restrict coordination by, or integration of, Trustpower and Vodafone	8
Company law and corporate governance requirements would be a further barrier to attempts to coordinate	8
Scenario without the transaction	9
PART 3: INDUSTRY CONTEXT AND RELEVANT MARKETS	10
Services provided by Vodafone	10
Broadband services	10
Voice services	10
Mobile services	10
Services provided by Trustpower	11
Energy services	11
Telecommunications services	11
Trustpower's repositioning from an energy business to a multi-utility retailer	11
Relevant markets	13
Industry context: broadband services	14
Industry context: mobile phone services	15
PART 4: COMPETITION ANALYSIS	17
No adverse horizontal unilateral effects on competition	17
Residential broadband and voice: national	17
Residential broadband and voice: regional	22
Business broadband and voice	23
Mobile	23
No adverse co-ordinated effects on competition	24
No adverse vertical effects on competition	24
PART 5: CONFIDENTIALITY	25
PART 6: DECLARATION	26
APPENDIX A: PROPOSED OWNERSHIP STRUCTURE	27
APPENDIX B: SALE AND PURCHASE AGREEMENT	28
APPENDIX C: SHAREHOLDERS' AGREEMENT	29
APPENDIX D: ANCILLARY AGREEMENTS	30
APPENDIX E: ANNUAL REPORTS, FINANCIAL STATEMENTS, MANAGEMENT ACCOUNTS, AND SALES REVENUES AND VOLUMES	31
APPENDIX F: CONTACT DETAILS FOR MAIN COMPETITORS AND TRADE AND INDUSTRY ASSOCIATIONS	32

PART 1: TRANSACTION DETAILS

Applicant's details

7. This notice is given by Infratil.
8. Infratil's registered office and physical address is:
 - 5 Market Lane
 - Wellington 6011
 - New Zealand
9. Infratil's postal address is:
 - PO Box 320
 - Wellington 6140
10. Infratil is an NZX-listed infrastructure investment company (NZX: IFT; ASX: IFT). Infratil principally invests in energy, transport, and social infrastructure businesses, in New Zealand, Australia and the United States.
11. The day-to-day management responsibilities of Infratil have been delegated to Morrison & Co Infrastructure Management, which is a wholly owned subsidiary of H.R.L. Morrison & Co Group Limited Partnership (**Morrison & Co**).
12. Morrison & Co is an alternative asset manager that invests in infrastructure and property through private and listed markets. As well as its management responsibilities for Infratil, Morrison & Co invests on behalf of sovereign wealth funds, pension funds, family offices, endowments and other public and private pools of capital.
13. Further information about Infratil and Morrison & Co is available at <https://infratil.com/> and <https://hrlmorrison.com/> respectively.
14. Infratil owns approximately 51% of the shares in the NZX-listed Trustpower (NZX:TPW). Infratil appoints two Trustpower directors and supports the Tauranga Energy Consumer Trust's director nominee to the Trustpower board (four other directors are independent). Trustpower offers retail electricity, power generation, telecommunications, irrigation, and reticulated and bottled gas services. Further information about Trustpower is available at <https://www.trustpower.co.nz>.
15. The contact person at Infratil (c/o Morrison & Co) is:
 - Kellee Clark
 - Head of Legal
 - Morrison & Co
 - 04 550 5414
 - kellee.clark@hrlmorrison.com

16. Please direct all correspondence and enquiries for Infratil in respect of this notice to:

Buddle Findlay
Barristers and Solicitors
PO Box 2694
Wellington 6140
Attention: Tony Dellow / Anna Parker / Dipti Manchanda
Telephone: 04 498 7304 / 09 363 0639 / 04 498 7340
Email: tony.dellow@buddlefindlay.com / anna.parker@buddlefindlay.com /
dipti.manchanda@buddlefindlay.com

Vendor's details

17. The vendor is Vodafone Europe B.V.
18. Vodafone B.V. is a Netherlands-incorporated company. Vodafone B.V. is a wholly owned subsidiary of Vodafone Group Plc, a company listed on the London Stock Exchange. Vodafone Group Plc, together with its subsidiaries, form the Vodafone Group, one of the world's largest telecommunications companies.
19. Please direct all correspondence and enquiries for Vodafone Europe B.V. in respect of this notice to:

Bell Gully
Barrister and Solicitors
PO Box 4199
Auckland 1140
Attention: Torrin Crowther / Glenn Shewan
Telephone: 09 916 8621 / 09 916 8726
Email: torrin.crowther@bellgully.com / glenn.shewan@bellgully.com

Target's details

20. The target for the transaction is Vodafone. Vodafone is a full suite communications company offering fixed broadband, mobile, and content/TV services, with which the Commission is already familiar. Vodafone offers services to consumer and business customers.
21. Further information about Vodafone is available at <https://www.vodafone.co.nz>.

Co-purchaser's details

22. Infratil is acquiring up to 50% of the shares in an SPV, which will acquire 100% of the shares in Vodafone. With the exception of a small number of shares to be held pursuant to a management incentive scheme, the remaining shares in the SPV acquiring Vodafone are being acquired by a fund vehicle ultimately owned by Brookfield Asset Management Inc (**Brookfield**).
23. Brookfield is one of the largest owners and operators of critical and diverse global infrastructure networks that facilitate the movement and storage of energy, water, freight, passengers, and data. The Brookfield Group is a global alternative asset manager that invests in long-life, high quality assets across the real estate, infrastructure, renewable power, and private equity sectors.

24. Further information about the Brookfield Group is available at <https://www.brookfield.com/>. Brookfield recently entered into a conditional agreement to purchase a stake of approximately 62% in Oaktree Capital Group LLC, which currently owns MediaWorks. However, Brookfield has no interests in New Zealand telecommunications or related markets.
25. The contact person at Brookfield is:
- Michael Ryan
Brookfield Infrastructure Group (Australia) Pty Ltd
michael.ryan@brookfield.com
26. Please direct all correspondence and enquiries for Brookfield in respect of this notice to:
- Buddle Findlay
Barristers and Solicitors
PO Box 2694
Wellington 6140
Attention: Tony Dellow / Anna Parker / Dipti Manchanda
Telephone: 04 498 7304 / 09 363 0639 / 04 498 7340
Email: tony.dellow@buddlefindlay.com / anna.parker@buddlefindlay.com /
dipti.manchanda@buddlefindlay.com

Overview of the proposed transaction

27. Brookfield and Infratil will each own up to 50% of the shares in a special purpose vehicle (**SPV**).¹ The SPV will acquire 100% of the shares in Vodafone from Vodafone Europe B.V. (a subsidiary of Vodafone Group Plc.). When the SPV acquires the shares in Vodafone, new shares in the SPV will also be issued to each of Brookfield and Infratil, such that each entity will continue to hold equal shareholdings in the SPV of up to 50%. Each of the SPV, Brookfield, and Infratil will give effect to the transaction through subsidiary companies.
28. A diagram showing the proposed ownership structure for Vodafone, including the names of the relevant entities, is set out in **Appendix A**.

Rationale for transaction

29. Brookfield and Infratil are infrastructure investors. They view the transaction as an opportunity to acquire a high quality asset, secure long-term exposure to extensive fixed and wireless telecommunications infrastructure, and contribute to the next phase of growth in data and connectivity.
30. Vodafone Group has publicly stated that it is preparing for an IPO of Vodafone New Zealand, in which it would sell down its shareholding. It is also open to divesting its full shareholding with a view to focus on its core portfolio.

Documents relating to transaction

31. A copy of the Sale and Purchase Agreement is attached as confidential **Appendix B**.

¹ It is intended that a small number of shares will be held pursuant to a management incentive scheme.

32. A copy of the Shareholders' Agreement between Infratil and Brookfield for the SPV is attached as confidential **Appendix C**.
33. A description of ancillary agreements that form part of the transaction is attached as confidential **Appendix D**.

Other agencies being notified of transaction

34. No competition agencies in other jurisdictions have been or will be notified of the transaction. The transaction is New Zealand specific.
35. The transaction is also conditional on consent from the Overseas Investment Office under the Overseas Investment Act 2005.

PART 2: SCENARIOS WITH AND WITHOUT THE TRANSACTION

Scenario with the transaction

36. The transaction will not result in the activities of Vodafone and Trustpower being merged. Both with and without the transaction, Vodafone and Trustpower will continue to operate as separate entities.

The Commerce Act would continue to restrict coordination by, or integration of, Trustpower and Vodafone

37. Following the transaction, Trustpower and Vodafone will continue to be separate companies and will not be interconnected bodies corporate. While Infratil and Trustpower are interconnected bodies corporate, Vodafone will not be a subsidiary of Infratil under the definition in section 5 of the Companies Act 1993.²
38. This means that any contracts, arrangements or understandings between Trustpower and Vodafone would continue to be subject to the restrictive trade practices provisions of the Commerce Act. Any proposal to integrate Trustpower and Vodafone (which, to avoid doubt, is not intended) would also be subject to section 47 (if Infratil increased its shareholding) or section 27 of the Commerce Act (if section 47 did not apply).

Company law and corporate governance requirements would be a further barrier to attempts to coordinate

39. Further, Infratil's ability to influence the decisions made by Trustpower or Vodafone post-acquisition would be limited by company law and corporate governance requirements, including in Trustpower's case NZX listing rules requirements. For example, section 131 of the Companies Act 1993 requires directors of a company, when exercising powers or performing duties, to act in good faith and in what the director believes to be in the best interests of the company.³ Directors appointed by Infratil to Vodafone would be required to act in the best interests of Vodafone (not Infratil or Trustpower),⁴ and directors appointed by Infratil to Trustpower are required to act in the best interests of Trustpower (not Infratil or Vodafone). This means that directors could not act in a way that may be detrimental to the company that they represent on the basis that it would be beneficial to Infratil and other companies in which Infratil has an interest.
40. In Trustpower's case, this is reinforced by the NZX listing rules and the greater transparency of the listed environment. The NZX listing rules require that a third of Trustpower's board of directors be independent of Infratil, and prohibit Trustpower directors who represent Infratil from voting on decisions in which they have a conflict of interest. Independent directors have no incentive to approve anything that would favour Vodafone or Infratil over Trustpower's best interests.
41. Similarly, in the case of Vodafone, Infratil and Brookfield will appoint half of the board each, so will each be able to veto Vodafone board decisions. Directors appointed by Brookfield would have no

² The Applicant can provide the Commission with further analysis on this point if necessary.

³ The exceptions under section 131 are not applicable. Section 131(3) provides that a director of a company that is a subsidiary (but not a wholly-owned subsidiary) may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company and with the prior agreement of the shareholders (other than its holding company), act in a manner which he or she believes is in the best interests of that company's holding company even though it may not be in the best interests of the company. Trustpower's constitution does not provide for Infratil-appointed directors to act in the best interests of Infratil. Amendments to the constitution would require a special resolution of Trustpower's shareholders.

⁴ Clause 4.9 of the Shareholders' Agreement attached as confidential Appendix C.

incentive to agree to anything that favoured Infratil or Trustpower over Vodafone's best interests, and again conflicted directors cannot vote.⁵

42. There will also be restrictions on information sharing between Infratil, Trustpower, and Vodafone. Trustpower's Corporate Governance Statement states that:⁶

The Company has a Board approved policy regarding the disclosure of Group information:

No Director of the Group may disclose information which that Director has received in his or her capacity as a director or employee of the Group, being information that would not otherwise be available to the Director, to

(a) a person whose interests that Director represents; or

(b) a person in accordance with whose directions or instructions the Director may be required, or is accustomed to act in relation to the Director's powers and duties,

without the prior consent of the Board.

43. Despite the legal and practical restrictions that will apply to any coordination between Trustpower and Vodafone post-acquisition, the analysis in this clearance application is based on the conservative assumption that the businesses of Trustpower and Vodafone could be combined.

Scenario without the transaction

44. The likely scenario if the transaction does not go ahead is the same as the scenario if the transaction does go ahead. That is, Trustpower and Vodafone would continue to operate as separate independent entities. Vodafone would continue to offer telecommunications services, and Trustpower would continue to offer energy services and energy/telecommunications bundles.

⁵ Clause 4.10 of the Shareholders' Agreement attached as confidential Appendix C.

⁶ <https://www.trustpower.co.nz/-/media/files/governance-documents/corporate-governance-statement-policy-2018.ashx?la=en>

PART 3: INDUSTRY CONTEXT AND RELEVANT MARKETS

45. As previously outlined, Vodafone and Trustpower, in which Infratil holds an interest, are both providers of telecommunications services.

Services provided by Vodafone

46. Vodafone provides broadband services, voice services, mobile phone services, and TV services to residential and business customers.

Broadband services

47. Vodafone's broadband services include:
- (a) ADSL and VDSL broadband services, provided over Chorus' copper network;
 - (b) broadband services in Wellington, Christchurch, and the Kapiti Coast, provided over Vodafone's hybrid fibre-coaxial (**HFC**) cable;
 - (c) ultra-fast fibre broadband (**UFB**) services, provided over Chorus' and other local fibre companies' (**LFCs**) fibre networks;
 - (d) fixed wireless broadband services, provided over Vodafone's 3G and 4G mobile networks, including as part of the Rural Broadband Initiative (**RBI**). Vodafone sells retail and wholesale RBI services; and
 - (e) satellite broadband services.
48. Vodafone offers its retail broadband customers the option of purchasing naked broadband, or broadband bundled with other services (including other telecommunications services and/or pay-TV services, including via "Vodafone TV").⁷
49. Vodafone provides backhaul services to other telecommunications service providers, in competition with Chorus, Spark, and Vocus.

Voice services

50. Vodafone offers fixed voice services to customers using a "POTS" service, broadband networks and its mobile network.

Mobile services

51. As well as providing retail mobile services to residential and business customers, Vodafone provides other telecommunications service providers with wholesale access to its mobile network. Vodafone currently has a mobile virtual network operator (**MVNO**) agreement with Kogan Mobile.⁸ Kogan Mobile is a division of Kogan.com, an online retailer headquartered in Melbourne, Australia. In Australia, Kogan Mobile already offers mobile services as an MVNO. Kogan.com also offers broadband services in Australia through its Kogan Internet division, as well as a range of retail products, insurance products, and travel services. Vodafone also has a national roaming

⁷ <https://www.vodafone.co.nz/tv/>.

⁸ This agreement was announced in June 2018. Kogan Mobile has not yet announced the date on which it will launch its retail mobile services in New Zealand.

agreement with 2degrees to provide roaming services, which has enabled 2degrees to build a customer base as it built its own network.

Services provided by Trustpower

Energy services

52. Trustpower is an electricity generator and multi-utility retailer. Historically, Trustpower's principal business has been the generation and retail supply of electricity, and the supply of gas (reticulated natural gas and bottled LPG). Trustpower operates 19 hydro-generation schemes across the country.

Telecommunications services

53. As well as energy services, Trustpower currently provides broadband services by purchasing access to the copper and fibre networks owned by Chorus and other LFCs.
54. In November 2018, Trustpower announced that it has entered into a wholesale agreement with Spark, under which Spark will provide Trustpower with wholesale access to its mobile and fixed wireless networks. This will enable Trustpower to enter the mobile market as an MVNO, and provide fixed wireless broadband services. Trustpower confirmed in its May 2019 investor briefing that it intends to launch its fixed wireless services, and its mobile services by the end of the 2019 calendar year. Trustpower has [**REDACTED**].

Trustpower's repositioning from an energy business to a multi-utility retailer

55. Trustpower's strategy in offering multi-utility services (including telecommunications services) is to offer a value proposition to customers, including the convenience of being able to deal with a single provider and receive a single bill for electricity, gas, broadband, and phone services. The objective of this strategy is to reduce churn across its customer base, with traditional electricity-only or electricity and gas-only retailers generally experiencing high rates of churn. For example:
- (a) Trustpower's Annual Report for 2007⁹ states "*In March 2007 Trustpower purchased a telecommunications customer base in line with its ambition to offer telecommunication products to its electricity customers*" (page 24);
 - (b) Trustpower's Annual Report for 2008¹⁰ states "*...Trustpower has steadily grown its Kinect business offering a range of competitive telecommunications products to its electricity customers. Customers indicate they appreciate the simplicity of receiving one invoice, making their dual utility purchase seamless*" (page 9);
 - (c) Trustpower's Annual Report for 2014¹¹ states "*Moving to a multi-product offering enables us to increase the value of existing customers... When we offer additional value by bundling broadband with power and gas, we can acquire multi-product customers, and achieve our growth and profitability targets*" (page 18);

⁹ Available at <https://www.trustpower.co.nz/investor-centre/results>.

¹⁰ Above n 9.

¹¹ Above n 9.

- (d) Trustpower's Annual Report for 2017¹² states "*The completion of the demerger has allowed Trustpower to focus on increasing performance in its two key business areas of hydro generation and multi-product retail. Our bundled product retail strategy is driven by the conviction that customers value the convenience, connectivity and comfort of purchasing energy and telecommunication products from a single provider*" (page 17); and
- (e) Trustpower's Annual Report for 2018 identifies one of its four key strategic themes as "*bundling energy and telecommunications products*".

56. Having said that, [REDACTED]. [REDACTED]:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED].¹³

57. The analysis of the revenue figures in Trustpower's Annual Report for 2019 provided in Table 1 illustrates that the vast majority of Trustpower's revenue is derived from its energy business, as opposed to its telecommunications business. This is consistent with Trustpower having historically been an energy business that now also offers telecommunications services as part of a multi-utility value proposition, [REDACTED].

Table 1: Analysis of revenue figures in Trustpower's Annual Report for 2019

Service	Operating revenue (000s)	Percentage of total revenue ¹⁴	Retail customer connections ¹⁵ (000s)	Revenue per customer connection (average) ¹⁶
All	\$1,030,083 ¹⁷	100%	402	N/A (includes generation and other revenue)
Electricity (generation and retail)	\$861,023 ¹⁸	83.6%	237	N/A (includes generation revenue)
Electricity (generation only)	\$253,224 ¹⁹	24.6%	N/A	N/A

¹² Above n 9.

¹³ [REDACTED].

¹⁴ Calculated from the information in Trustpower's Annual Report for 2019.

¹⁵ Page 47 of Trustpower's Annual Report for 2019, above n 9.

¹⁶ Calculated from the information in Trustpower's Annual Report for 2019.

¹⁷ Page 47 of Trustpower's Annual Report for 2019, above n 9. Includes electricity revenue, telecommunications revenue, gas revenue, and "other" revenue.

¹⁸ Page 47 of Trustpower's Annual Report for 2019, above n 9.

¹⁹ Page 54 of Trustpower's Annual Report for 2019, above n 9.

Service	Operating revenue (000s)	Percentage of total revenue ¹⁴	Retail customer connections ¹⁵ (000s)	Revenue per customer connection (average) ¹⁶
Electricity (retail only)	\$607,799 ²⁰	59%	267	\$2,276.40
Gas	\$29,194 ²¹	2.8%	39	\$748.56
Telecommunications	\$87,699 ²²	8.5%	96	\$913.53
Other	\$52,167	5.1%	N/A	N/A

58. As shown in Table 2 further below, Trustpower's broadband market share has been static for the past 3 years.

Relevant markets

59. This clearance application adopts market definitions that are consistent with the approach that the Commission has taken in previous decisions,²³ namely the national retail market for residential broadband services (fixed-line and wireless).²⁴
60. This application also considers residential broadband services in regions in which Trustpower, for historical and other reasons, has a higher market share than it does nationally. However, given the nature of the underlying services, and the resulting ease with which telecommunications providers can supply regions across New Zealand, the competition analysis for the national market applies equally to the regions.
61. For completeness, this application also assesses the national markets for:
- residential fixed voice services;²⁵
 - business fixed data services; and
 - in light of Trustpower's recent entry into a MVNO contract with Spark, mobile phone services.

²⁰ Calculated by subtracting Trustpower's electricity (generation only) revenue from Trustpower's electricity (generation and retail) revenue.

²¹ Above n 18.

²² Above n 18.

²³ Including *Vodafone New Zealand Limited and TelstraClear Limited* [2012] NZCC 33, *Spark New Zealand Trading Limited and Craig Wireless New Zealand Spectrum Operations Limited and Woosh Wireless Holdings Limited* [2016] NZCC 7, and *Vodafone Europe B.V. and Sky Network Television Limited* [2017] NZCC 1 / *Sky Network Television Limited and Vodafone New Zealand Limited* [2017] NZCC 2.

²⁴ The Commission has previously noted that there are functional similarities between fixed wireless access broadband and broadband delivered over copper or fibre optic networks, but that the extent to which fixed wireless broadband is a substitute for traditional wired services is unclear as it will depend on the broadband options available at the location (*Spark New Zealand Trading Limited and Craig Wireless New Zealand Spectrum Operations Limited and Woosh Wireless Holdings Limited* [2016] NZCC 7). For the purposes of assessing the competitive impacts of the transaction, wireless broadband is included within a broader residential broadband market.

²⁵ Although many residential consumers purchase their fixed voice and broadband products together as a bundle, the Commission has previously defined separate products markets for fixed voice and fixed broadband, but analysed the competition effects collectively. This approach is also adopted in this application.

62. However, given the limited degree of overlap and high level of existing competition, it is not necessary to precisely define the relevant markets and the analysis below focuses generally on broadband and mobile markets.

Industry context: broadband services

63. The fixed broadband market is highly competitive, with over 80 providers in the market. The regulatory regime (and in particular structural separation) secures wholesale access to the network infrastructure required to provide fixed broadband services at prices that enable retail telecommunications service providers to compete with one another. This has encouraged new entry and placed downward pressure on margins in the fixed broadband market. Telecommunications service providers have responded by differentiating their offerings on the basis of value-add propositions (such as bundling broadband services with other products and services), as well as price.
64. According to the Commission's 2018 Telecommunications Monitoring Report, average New Zealand prices for bundles of fixed line broadband and voice services, and for low and high use broadband only plans, are lower than the OECD average.
65. The largest provider of broadband services is Spark, which has over 40% market share. Like Vodafone, Spark provides broadband services, voice services, and mobile phone services to residential and business customers. Spark also operates a low-price brand, Skinny.
66. The next largest competitor, other than Vodafone, is Vocus. Vocus offers broadband services under a number of different brands, including Orcon, Slingshot, and Flip. The Vocus brands are a driving force behind price competition in the market, and have had a significant impact on the broadband market. For example:
- (a) Orcon was the first telecommunications provider to offer new phone and internet plans following the Government's decision to unbundle the local loop in 2006;²⁶
 - (b) Orcon was the first telecommunications provider to unbundle broadband and phone services for small businesses;²⁷
 - (c) Slingshot consistently wins awards for the quality and pricing of its broadband services, including:²⁸
 - (i) in 2018, the Broadband Compare TUANZ Awards People's Choice Award;
 - (ii) in 2017, the Broadband Compare Awards People's Choice Award, the Broadband Compare Awards Consumer NZ Broadband Provider of the Year, the Broadband Compare Awards Best Bundled Plan, the Canstar Blue Most Satisfied Customers Award – Home Telco Bundles category, and first place in the CRM Contact Centre Awards – Technical Helpdesk category;
 - (iii) in 2015, the Reader's Digest Quality Service Awards – Best ISP, and the Canstar Blue Most Satisfied Customers Award – Broadband DSL category; and

²⁶ *Vodafone Europe B.V. and Sky Network Television Limited* [2017] NZCC 1 / *Sky Network Television Limited and Vodafone New Zealand Limited* [2017] NZCC 2 at [478.1.1].

²⁷ Above n 26. See also *Vodafone New Zealand Limited and TelstraClear Limited* [2012] NZCC 33 at [201]-[219].

²⁸ <https://www.slingshot.co.nz/>, accessed on 13 February 2019.

- (iv) in 2014, the Canstar Blue Most Satisfied Customers Award – Broadband DSL category.

67. Vocus has also made considerable investment in building its own backhaul infrastructure and acquiring network infrastructure (eg, through its acquisition of FX Networks in 2014).
68. The rollout of UFB has resulted in increasing competition in broadband markets and the growth of smaller players. Recent Commerce Commission Annual Telecommunications Monitoring Reports have found that there has been a growth in the market share of retail broadband providers other than Spark, Vodafone, and Vocus, due to growth by smaller players and new fibre retailers.
69. The following table sets out the market shares based on connection numbers in the Commission's Annual Telecommunications Monitoring Reports over the last three years (2016-2018):

Table 2: Fixed broadband market shares based on Commerce Commission Annual Telecommunications Monitoring Reports²⁹

	2016	2017	2018
Spark	46%	44%	43%
Vodafone	29%	27%	26%
Vocus	14%	13%	13%
2degrees	3%	4%	5%
Trustpower	4%	5%	5%
Other	4%	7%	8%

70. Broadband and voice services are commodity services. Telecommunications service providers compete on the basis of price, and also seek to differentiate their product offerings on the basis of value-add propositions, such as bundling broadband and voice services with other products or services (eg, entertainment, mobile, and energy services). Smaller players have grown in the market despite their smaller scale, by adopting low-cost business models or bundling services.

Industry context: mobile phone services

71. Mobile services in New Zealand are predominantly supplied by three mobile network operators (**MNOs**) in New Zealand, being Spark, Vodafone, and 2degrees. The three MNOs have a combined market share of over 90%. According to the Commission's 2018 Telecommunications Monitoring Report, market shares in the mobile market based on subscriber numbers in 2018 were as follows:³⁰
- (a) Vodafone: 41%
- (b) Spark: 32%

²⁹ <https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/annual-telecommunications-market-monitoring-report>

³⁰ A direct comparison of market shares in 2017 and 2018 based on the Commission's 2018 and 2017 Telecommunications Monitoring Reports is not possible, as the Commission began to account for MVNO connections separately from direct connections to MNOs in 2018.

- (c) 2degrees: 21%
- (d) Skinny (Spark): 5%
- (e) Other (including MVNOs, discussed further below): 1%.

72. The Commission's *Study of mobile telecommunications markets in New Zealand: Issues Paper* published on 31 August 2018 (**Mobile Issues Paper**) and *Mobile Market Study – Preliminary Findings* report published on 16 May 2019 (**Mobile Market Study Preliminary Report**) observe that competition in the supply of mobile services has strengthened since the arrival of 2degrees in 2009, and that prices generally appear to have declined. 2degrees has built a mobile network with extensive coverage. 2degrees also has access to a national roaming arrangement with Vodafone to provide its customers with coverage outside of the main centres. However, it now relies on national roaming for less than 1.5% of its traffic.³¹
73. The Commission's recent Annual Telecommunications Monitoring Reports also observe that retail prices for mobile services have been declining, and mobile prices in New Zealand are generally below average OECD prices.
74. New Zealand's mobile market is also seeing increased participation by MVNOs, who purchase access to an MNO's network on a wholesale basis. All three MNOs have entered into at least one wholesale agreement with an MVNO. There is competition among MNOs to provide wholesale mobile services to MVNOs, with at least one MVNO, Vocus, having switched MNOs from Vodafone to Spark.
75. Other MVNOs currently include Compass (operating on Spark's network) and Warehouse Mobile (operating on 2degrees' network). A number of other entities have also announced intentions to begin operating as MVNOs in the near future, including Kogan Mobile (to operate on Vodafone's network), Trustpower (to operate on Spark's network), and MyRepublic (to launch as a cloud-based MVNO, supported by global digital infrastructure provider Tata Communications' MOVE platform).³² In short, Trustpower will only be one of a number of MVNOs.
76. While MVNOs have not achieved a high level of penetration in New Zealand relative to other markets, this is likely due to the competitive nature of New Zealand's mobile market (recognised in the Commission's Annual Telecommunications Monitoring Reports and as discussed above).

³¹ 2degrees' submission of October 2018 on the Commission's *Study of mobile telecommunications markets in New Zealand: Issues Paper*, page 2.

³² <https://www.tatacommunications.com/press-release/myrepublic-joins-forces-with-tata-communications-for-new-range-of-mobile-services-disruptive-plan-offerings/>, accessed on 13 February 2019.

PART 4: COMPETITION ANALYSIS

No adverse horizontal unilateral effects on competition

Residential broadband and voice: national

77. The highly competitive nature of the residential broadband market and number of existing and potential competitors mean that there would be no substantial difference in competition with and without a (theoretical) merger of Vodafone and Trustpower.
78. It is easy for consumers to switch between broadband providers, with providers typically offering open term plans as well as 12 month and 24 month term plans.
79. As highlighted in Table 2 above and Table 3 below, Trustpower has only a small share of the broadband market. While Trustpower has continued to add customers, this has resulted in it only maintaining its market share.

Table 3: Trustpower broadband connections³³

Year	Trustpower broadband connections (y/e 31 March)	Growth on previous year
2019	96,000	9,000 (10.3%)
2018	87,000	11,000 (14.4%)
2017	76,000	14,000 (22.5%)
2016	62,000	24,000 (63.1%)
2015	38,000	7,000 (22.5%)
2014	31,000	11,000 (14.4%)

80. Meanwhile, the market share of providers labelled as "other" by the Commission has doubled from 4% in 2016 to 8% in 2018, and 2degrees has quickly grown to a comparable size to Trustpower.
81. The Commission's Annual Telecommunications Monitoring Reports do not provide separate market share estimates for UFB. However, IDC provides estimates of UFB market shares. The following table shows the IDC data, with actuals for Vodafone.³⁴

[

REDACTED

³³ Based on information from Trustpower's Annual Reports, above n 9.

³⁴ Vodafone has supplemented the IDC table with actual figures. Note that the IDC data does not take into account Vodafone's broadband over HFC products and so Vodafone has excluded those from the table for comparison purposes. Trustpower's most recent operating report (December 2018) estimates that its UFB market share is 7%, with 59% of its broadband connections being UFB, which is consistent with the IDC estimate for June 18 (the most recent available).

REDACTED

]

82. The above table reveals that:

- (a) Trustpower's share of UFB connections, while marginally higher than its broadband share overall, is still only [**REDACTED**].
- (b) Spark has by far the highest share of UFB connections.
- (c) "Others" have a much larger share of UFB connections than they do broadband overall. Notably, such providers now account for nearly one in five UFB connections.

83. Although Trustpower has in the past been described as competing aggressively on price, the pricing of plans currently on offer in the market indicates that Trustpower does not currently have a particularly aggressive pricing strategy compared with other players and [**REDACTED**]. Trustpower's standard pricing for unlimited UFB (100/20 Mbps) plans begins at \$94 per month if the customer also joins a Trustpower energy plan for 24 months, or at \$109 per month for other customers.³⁵ Contact Energy, MyRepublic, Skinny, Slingshot, Spark, Stuff Fibre, Orcon, Vodafone, and 2degrees all offer lower standard prices for unlimited UFB (100/20 Mbps) plans. 2degrees has recently stated that it will not increase its residential broadband prices for the duration of 2019.³⁶ Trustpower is currently offering promotional pricing for its bundled unlimited UFB (100/20 Mbps) and electricity offering, under which customers who sign up to a 24 month plan will receive the broadband component of the bundle at half price for 24 months. Even compared with that promotional offer, taking into account the total price over a 24 month period and any account credits on offer,³⁷ Contact Energy and Nova Energy offer lower pricing for the unlimited UFB (100/20 Mbps) components of their bundled offers, and 2degrees offers lower pricing for its UFB (100/20 Mbps) offer.³⁸

³⁵ We have conducted price comparisons based on pricing in Wellington.

³⁶ See, for example, *2degrees looks to chase down rivals with no price-rise pledge*, available at https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12210197, accessed on 4 April 2019.

³⁷ In the case of account credits available under 12 month plans, this analysis is based on the conservative assumption that those account credits are only available for the first 12 month term.

³⁸ In addition, taking into account Stuff Fibre's \$5 loyalty discount, the price of broadband over the life of Stuff Fibre's 24 month UFB (100/20 Mbps) offer is within \$2 of that available under Trustpower's promotional offer.

84. Trustpower has also made public statements suggesting that it now charges “market rates” for broadband and [**REDACTED**]. For example, Trustpower’s investor presentation from May 2019³⁹ lists one of Trustpower’s strategic convictions as “*Profitable growth will come through value led acquisitions not price discounting*”. The presentation further states that “*Targeted value based offers outperform simple discounting*” and “*Incentive costs aligned to cost of discounting or account credits, however value based offers outperform*”.⁴⁰
85. As outlined above, Trustpower’s core strategy in offering telecommunications products is to offer multi-utility bundles as a value proposition, reducing churn across both its telecommunications and energy customer bases. If Vodafone and Trustpower were to merge, it would not be rational for Trustpower to reduce the attractiveness of those offers in order to drive customers towards Vodafone’s telecommunications services. Doing so would undermine Trustpower’s multi-utility value proposition. That proposition is one of Trustpower’s main strategies for winning and retaining energy customers, with energy customer connections having accounted for 61.8% of Trustpower’s total revenue in the 2019 financial year.
86. Although Trustpower offers energy/broadband bundles and free Samsung appliances to some customers, its bundled value-add propositions are not unique. The largest player in the market, Spark, has made significant investments in its ability to bundle other services, such as pay-TV services, with its fixed-line broadband and mobile services. In 2019, Spark also launched a series of innovative Unplan Fibre broadband plans which incorporate different price tiers based on a customer’s data consumption in a given month. For example, as at 8 May 2019, Spark’s offers include free Netflix for 12 months and a Lightbox standard plan to customers who purchase its Unplan Fibre Entertainment broadband plan for 12 months.⁴¹ A customer is charged \$75 for a month in which they consume less than 60GB of data, \$85 for a month in which they consume 60GB to 120GB of data, or \$95 for a month in which they consume over 120GB of data.⁴² Spark has also launched a new sport streaming service.⁴³
87. Other examples of current broadband offers include:
- (a) a free BBQ, tablet or Fitbit on selected Slingshot plans;⁴⁴
 - (b) Apple TV or a UE Boom 3 for an extra \$5 per month, or Google Wifi rental on selected Orcon plans;⁴⁵
 - (c) a \$200 joining credit and free Amazon Prime video for a year on unlimited 12 month plans with 2degrees;⁴⁶ and

³⁹ Available at <https://www.trustpower.co.nz/investor-centre/investor-publications>

⁴⁰ Other examples of public statements along similar lines include *Trustpower: Riding the Disruption*, available at <https://thedownload.co.nz/our-stories/trustpower/>, and *Power plays – how bundling has become the fashion du jour*, available at <https://www.nbr.co.nz/story/power-plays-how-bundling-has-become-fashion-du-jour>, accessed on 14 February 2019.

⁴¹ <https://www.spark.co.nz/shop/internet/unplan/>

⁴² Spark also offers standard Unplan Fibre broadband plans, which do not include Netflix or Lightbox but under which the pricing for each tier is \$10 lower than under Unplan Entertainment Fibre plans.

⁴³ <https://www.spark.co.nz/sport>

⁴⁴ <https://help.slingshot.co.nz/hc/en-us/articles/360012455954-Slingshot-s-Summer-Shout>

⁴⁵ <https://www.orcon.net.nz/>

⁴⁶ <https://www.2degreesmobile.co.nz/broadband/>

- (d) movie credits for Stuff Pix with Stuff Fibre, as well as a promotional offer of two months of free broadband on 12 month plans or four months of free broadband on 24 month plans.⁴⁷
88. Given this approach to attracting customers, it is not credible that combining Vodafone and Trustpower would mean that any player in the market could sustainably relax its level of competition.
89. There is also a growing number of providers bundling energy and telecommunications products, offering multi-utility value propositions similar to Trustpower's. If Vodafone and Trustpower merged, bundles based on Vodafone's and Trustpower's product mix could easily be matched by competing providers and the merged entity would not control any of the inputs required to match those bundles. At least three other providers (Vocus through Slingshot and Orcon, Contact Energy, and Nova Energy) already offer bundles of electricity and broadband, and other providers separately offer electricity and broadband (Megatel/Megaenergy), with lower unlimited UFB (100/20 Mbps) pricing than that offered by Trustpower.⁴⁸ In particular:
- (a) Contact Energy, which is primarily an energy generator and retailer, offers bundled broadband/electricity plans.⁴⁹ Contact announced in November 2017 that it would offer broadband to its residential electricity customers. According to Contact's Annual Report for 2018, as at August 2018, 2000 customers purchased their broadband from Contact. Contact offers unlimited UFB (100/20 Mbps) plans to its residential electricity customers from \$59.99 per month if bundled with electricity and gas, or from \$64.99 per month if bundled with electricity alone, with no fixed term. Prompt payment discounts of 18% are available for the energy component of the bundles.
- (b) Vocus, through Slingshot and Orcon, offers bundled broadband/electricity plans.⁵⁰ Slingshot currently offers unlimited UFB (100/20 Mbps) plans from \$84.95 per month with a 10% prompt payment discount available to customers who purchase broadband/electricity bundles across both the broadband and electricity components of the bundles. Orcon's standard offers for unlimited UFB (100/20 Mbps) plans begin at \$89.95 per month. Orcon also offers a \$150 account credit to customers who purchase broadband/electricity bundles, and prompt payment discounts of 10% for the electricity component of broadband/electricity bundles, and is currently offering broadband customers a discount of \$5 per month (bringing the price of its unlimited UFB (100/20 Mbps) plans down to \$84.95 per month).
- (c) Nova Energy, an electricity generator and electricity/gas retailer, offers standalone broadband and phone plans and bundled broadband/energy (including or excluding phone) plans in addition to energy plans.⁵¹ Nova currently offers unlimited UFB (100/20 Mbps) plans from \$89.99 per month. Nova also offers account credits of \$350 to new broadband customers who sign up to a 12 month plan. The account credit increases to \$500 if a customer purchases broadband in a bundle with either electricity or gas, and to \$650 if the customer

⁴⁷ <https://stuff-fibre.co.nz/stuff-pix>

⁴⁸ As outlined above, Trustpower currently offers unlimited UFB (100/20 Mbps) to its electricity customers at \$94 per month, and to other customers at \$109 per month.

⁴⁹ <https://contact.co.nz/residential/all-plans/broadband-bundle>

⁵⁰ <https://www.slingshot.co.nz/power> and <https://www.orcon.net.nz/power>

⁵¹ <https://www.novaenergy.co.nz/home-broadband> and <https://www.novaenergy.co.nz/broadband-energy-bundle>

purchases broadband in a bundle with electricity and gas services. Prompt payment discounts are available for the energy component of broadband/energy bundles.

- (d) Megatel/Megaenergy offer broadband plans and electricity plans, as well as bundled broadband/electricity plans in Auckland.⁵² Megatel's standalone UFB (100/20 Mbps) plans begin at \$99 per month, and Megatel is currently offering 6 months of free broadband to customers who purchase broadband/electricity bundles on 24 month terms.⁵³
 - (e) Genesis Energy has also previously provided a special offer for Spark broadband customers.⁵⁴
90. There are a number of additional electricity retailers in the market,⁵⁵ who could also purchase access to the broadband network from Chorus, make arrangements with one of Spark, Vodafone or Vocus for provisioning support, and offer equivalent bundles.
91. The recent growth of smaller broadband providers shows that barriers to entry and expansion in the broadband market are low. The primary requirement for entry into the market is a contract with a network service provider for access to the network. As outlined above, access to both the copper and UFB networks is regulated under the Telecommunications Act. Service providers also need access to backhaul data transport and other provisioning services, which is readily obtained from providers such as Chorus, Vodafone, Spark, and Vocus. That nearly one in five fibre connections is supplied by suppliers outside the five largest is evidence of these low barriers.
92. In relation to fixed wireless broadband, Trustpower's recent announcement that it has an agreement with Spark to enable it to provide fixed wireless broadband (as well as mobile services, as discussed further below) highlights that providers that do not own a network can enter the market. Under the agreement with Spark, Trustpower would only be reselling Spark's product, not building a competing network. Others (eg, other energy providers or other broadband providers) would be able to offer wireless broadband services on the same basis.
93. Existing and potential competition in the broadband market would therefore significantly constrain Vodafone and Trustpower if they were to merge, and there is no basis to find that the transaction would have the effect or likely effect of substantially lessening competition in the market for residential broadband services.
94. Similarly, given that voice services can be delivered over broadband and mobile (and will increasingly be delivered solely over broadband and mobile as POTS services are phased out), the transaction would not have the effect or likely effect of substantially lessening competition in the residential voice services market.
95. In response to specific queries raised by the Commission:
- (a) The transaction would not have any implications for the RBI. The first phase of the RBI was completed in June 2016.⁵⁶ Under the second phase of the RBI, Crown Infrastructure

⁵² <https://www.megatel.co.nz/>

⁵³ https://www.megatel.co.nz/promotion/happy_halfyear

⁵⁴ <https://www.genesisenergy.co.nz/spark-bundle-terms>

⁵⁵ Electricity Authority electricity market data at www.emi.ea.govt.nz/r/eap00 indicates that as at 31 December 2018 there were 35 registered retailers.

⁵⁶ <https://www.mbie.govt.nz/science-and-technology/it-communications-and-broadband/fast-broadband/broadband-and-mobile-programmes/>

Partners has contracted with the Rural Connectivity Group (a joint venture between Spark, Vodafone, and 2degrees) to provide additional rural broadband coverage.⁵⁷ Trustpower is not involved in the RBI. As noted above, entities building broadband networks as part of the RBI have signed deeds of open access undertakings, requiring them to provide other retail service providers with access to the networks on a non-discriminatory basis. The Rural Connectivity Group deed relating to the second phase of the RBI requires the Rural Connectivity Group to ensure there is non-discrimination (ie, not treating access seekers differently) in relation to the supply of the relevant wholesale tower co-location services and wholesale backhaul services.⁵⁸

- (b) The transaction would also not have any impact on the joint initiative between Vodafone and Vocus to unbundle the fibre network. The joint initiative proposes to unbundle the fibre local loops of local fibre companies, with a view to providing wholesale fibre products to the retail market in competition with the local fibre companies. On 15 February 2019, Vodafone and Vocus unveiled New Zealand’s first unbundled fibre broadband connection.⁵⁹ The transaction will not alter Vodafone’s incentives to maximise its revenue by providing wholesale fibre products to other parties, and retail providers will continue to be able to access fibre products from local fibre companies. Vodafone’s expectation is that unbundled fibre products would be made available to other RSPs on a wholesale (or equivalent) basis.

Residential broadband and voice: regional

- 96. [REDACTED]
- 97. [REDACTED]

- 98. Statistics published by the Electricity Authority confirm that Trustpower’s market share in the Tauranga/Bay of Plenty retail electricity market (44.5% of ICPs) is more than double that of its nearest competitor (Genesis Energy at 17% of ICPs).⁶⁰ As outlined above, Trustpower offers telecommunications services primarily in bundles with energy services, on the basis that a multi-utility value proposition enables it to reduce customer churn. [REDACTED]

- 99. If Vodafone and Trustpower were to merge, they would be subject to the same competitive constraints in [REDACTED] as they would be nationally. For the same reasons as outlined in relation to the national residential broadband and voice market, the transaction would not have the

⁵⁷ <https://www.crowninfrastructure.govt.nz/rural/what/>
⁵⁸ https://comcom.govt.nz/_data/assets/pdf_file/0020/90443/Rural-Connectivity-Group-RBI2-Deed-8-September-2017.PDF
⁵⁹ <https://news.vodafone.co.nz/article/better-internet-coming-vocus-and-vodafone-usher-fibres-unbundled-future>
⁶⁰ <https://www.emi.ea.govt.nz/Retail/Reports/HR5D1V>

effect or likely effect of substantially lessening competition in the residential broadband and voice market in [REDACTED].

Business broadband and voice

100. Trustpower's business is focused on residential customers, and has only few business broadband/voice customers (which are SME customers such as home offices). There will therefore be negligible overlap in this market, and separate analysis of the business market is not required.

Mobile

101. Trustpower does not currently offer mobile services, but has recently entered into an agreement with Spark to enable it to offer mobile services as an MVNO in the future. Although this means that Trustpower and Vodafone are potential competitors for the provision of mobile services, the potential impact on the mobile market of merging Trustpower and Vodafone would be negligible.
102. The transaction would not affect the strong competition between the MNOs described in the Mobile Issues Paper and Mobile Market Study Preliminary Report.
103. MVNOs such as Compass, Vocus, and Warehouse Mobile would continue to compete to provide mobile phone services (through buying wholesale services from MNOs) with and without the transaction. Even if Vodafone and Trustpower were to merge, the incentives of MNOs to provide wholesale mobile services to MVNOs would not change. Spark and 2degrees already have agreements with MVNOs, and Vodafone has recently agreed to provide access to Kogan. The ability and willingness of Spark and 2degrees to provide wholesale access to their networks help ensure that Vodafone has incentives to do the same – the transaction has no impact on these incentives. Vodafone's incentives are to maximise its revenue, and refusing to provide MVNOs with access to its network will not prevent them from entering the market – it will only drive that revenue towards Spark or 2degrees, as is the case today.
104. Recent announcements about upcoming entry by new MVNOs (such as Kogan and MyRepublic) also indicate that barriers to entry for MVNOs are relatively low.
105. The transaction will not affect competition for business mobile customers. The Commission's Mobile Issues Paper reflects the views of business customers that they generally expect their suppliers to have an established reputation and track record. In particular, business customers require reliable services, and confidence that their suppliers will not withdraw their services. As outlined in the Mobile Issues Paper, this usually means that suppliers of mobile phone services need to have been in the market for about ten years before many businesses will seriously consider purchasing their services.
106. Trustpower signed its MVNO agreement with Spark in November 2018, and has not yet started to offer a retail mobile phone service. This, combined with the lessons of 2degrees' experience building a business customer base as discussed in the Mobile Issues Paper and Mobile Market Study Preliminary Report, suggests that, in the counterfactual, it will be 2029 before a standalone mobile offering or a bundled offering for electricity, broadband, and mobile by Trustpower could provide any real alternative to Spark, Vodafone, and 2degrees in the business customer segment of the mobile phone services market. Rather, both with and without the transaction, any significant competitive constraint is likely to arise from Spark, 2degrees, and Vocus. In addition, even if

Trustpower could eventually position itself as a real alternative for business customers, it would only be doing so as one of many current and potential MVNOs.

107. Further, Trustpower's strategy in offering telecommunications services is based on being able to offer a multi-utility value proposition to reduce churn among its customer base. Business customers are less likely to be as attracted to a multi-utility offering. This is consistent with the low number of business customers who purchase broadband/voice services from Trustpower.
108. In any case, without the transaction, Trustpower's ability to impose a significant competitive constraint in the mobile market for any type of customer is likely to be limited by Trustpower's dependence on its wholesale agreement with Spark to provide mobile services. Trustpower will not be a participant in the mobile market in its own right, but will resell Spark's mobile services.
109. Accordingly, the transaction would not have the effect or likely effect of substantially lessening competition in the mobile phone services market.

No adverse co-ordinated effects on competition

110. The transaction would not enhance the ability for Vodafone/Trustpower and other competitors to coordinate their behaviour. As highlighted above, the relevant markets are highly competitive. One of the largest players, Spark, has an aggressive strategy, and has made significant investments in its ability to bundle other services, such as pay-TV services, with its telecommunications services. There are a number of other vigorous competitors of varying sizes that are fighting for broadband and mobile market share, with the ability to expand in response to any softening of competition among any of the larger players.

No adverse vertical effects on competition

111. The transaction does not raise vertical effect issues. Combining Vodafone and Trustpower would not in any way limit their competitors' access to essential inputs.

PART 5: CONFIDENTIALITY

112. Confidentiality is sought for the information in this application included in square brackets and highlighted as follows:

- information is confidential from the public
- information is confidential from the public, the Target, and the Vendor
- information is confidential from the public and the Applicant
- information is confidential from the public, the Target, the Vendor, and the Applicant.

113. A public version of this notice with the confidential information deleted will be provided to the Commission.

114. We request that we be notified of any request made under the Official Information Act 1982 for the information, and be given the opportunity to be consulted as to whether the information remains commercially sensitive at the time that the request is made.

115. These requests for confidentiality are made because the information is commercially sensitive and disclosure would be likely to unreasonably prejudice the Applicant or, alternatively, the person who is the subject of or who provided the information.

PART 6: DECLARATION

I, _____, 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 me 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.

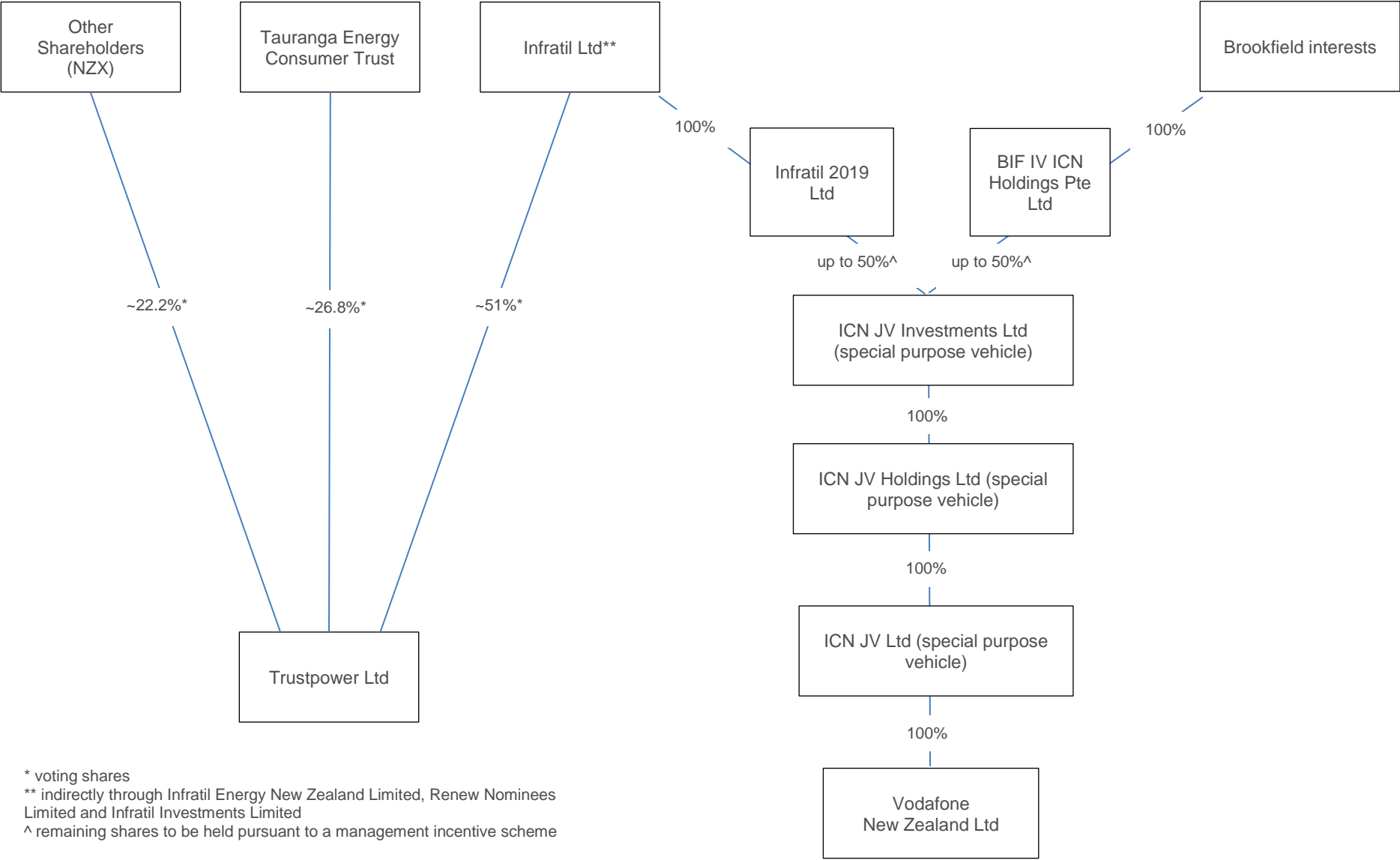
I am a director/officer of the company and am duly authorised to submit this notice.

Name and title of person authorised to sign:

Sign: _____

Date: _____

APPENDIX A: PROPOSED OWNERSHIP STRUCTURE



* voting shares
** indirectly through Infratil Energy New Zealand Limited, Renew Nominees Limited and Infratil Investments Limited
^ remaining shares to be held pursuant to a management incentive scheme

APPENDIX B: SALE AND PURCHASE AGREEMENT

[REDACTED]

APPENDIX C: SHAREHOLDERS' AGREEMENT

[REDACTED]

APPENDIX D: ANCILLARY AGREEMENTS

[REDACTED]

**APPENDIX E: ANNUAL REPORTS, FINANCIAL STATEMENTS, MANAGEMENT ACCOUNTS, AND
SALES REVENUES AND VOLUMES**

Infratil's annual reports are available at <https://infratil.com/for-investors/reports/>.

Trustpower's annual reports are available at <https://www.trustpower.co.nz/investor-centre/results>.

Vodafone's annual report for the year ending 31 March 2018 (confidential) is **attached**.

**APPENDIX F: CONTACT DETAILS FOR MAIN COMPETITORS
AND TRADE AND INDUSTRY ASSOCIATIONS**

Competitors

Operator	Contact Name	Contact details
Spark	John Wesley-Smith (GM Industry & Regulatory Affairs)	[REDACTED]
Vocus NZ	Jonathan Eele (GM Regulatory and Commercial)	[REDACTED]
2Degrees	Tim Matthews (General Counsel)	[REDACTED]
Compass Communications	Karim Hussona (Group CEO)	[REDACTED]

Industry Associations

Operator	Contact Name	Contact details
New Zealand Telecommunications Forum Inc	Geoff Thorn (CEO)	[REDACTED]