COALITION for BETTER BROADCASTING

Submission to the Commerce Commission on Vodafone Europe B.V. and Sky Network Television Limited Application for Clearance of Merger.

Prepared for the CBB by Peter A. Thompson[1], August 2016

The Coalition for Better Broadcasting welcomes the opportunity to make a submission on the Vodafone Europe B.V. (hereafter Vodafone) and Sky Network Television Limited (hereafter Sky) Application to the Commerce Commission for Clearance of Merger. The CBB[2] is an independent charitable trust with a grassroots membership, board of trustees, chief executive and regional committees. The Trust is non-profit, has no political party affiliation or vested interest in any commercial enterprise. Our primary interest is to inform civic debate and policy formation in regard to public service broadcasting, although media convergence extends the scope of our concern to other platforms and content providers, particularly when these support public interest functions.

Competition issues and the Sky-Vodafone merger:

1. By way of contextualising the merger proposal, it is essential to note that the New Zealand media market is an outlier in regards to its light-handed 'laissez-faire' approach to (de)regulation. Unusually within the OECD, here are no restrictions or provisions on:
   - foreign or cross-media ownership;
   - proprietary media technologies (such as the requirement of specific hardware, software and content-such as Apple's i-player and i-tunes or electronic programme guide architecture for television),
   - anti-siphoning for cultural and sporting events (coincidentally a very topical issue for Sky on the question of exclusive rights to the Olympic games)
   - licensing obligations (e.g. must-offer/must-pay) on subscription content services which carry free-to-air channels
   - local content minimum requirements;
   - levels of advertising (with the exception of Sunday morning commercials on television)

   Moreover, there are;
   - significant gaps and ambiguities between the respective Telecommunications and Broadcasting acts (particularly in respect to SVOD), and
   - a vague and outdated Commerce Act which, in the absence of concrete evidence of imminent reductions of competition, predisposes the Commerce Commission to afford the market strategies of incumbent actors the benefit of any doubt without sufficient recourse to post-hoc remedial action when deleterious outcomes do ensue.

2. Given the government's ongoing response to the feedback on the discussion papers on convergence issues related to content and telecommunications[3] and the fact that this merger raises a range of issues

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[2] See the Coalition for Better Broadcasting website http://betterbroadcasting.co.nz/about-coalition-better-broadcasting/structure-people/

[3] See http://convergencediscussion.nz/ and
http://www.mch.govt.nz/contentregulation and
http://www.mbie.govt.nz/info-services/sectors-industries/technology-communications/communications/regulating-the-telecommunications-sector/review-of-the-telecommunications-act-2001/consultation-8-sept-2015

central to both the markets identified as salient to the Sky-Vodafone merger, the CBB contends that it is very difficult to model the factual and counter-factual scenarios prior to the resolution of the government's investigations and potential regulatory responses to convergence. Even if the Commerce Commission considers the merger to be unproblematic under the *current* terms of the Commerce Act and Telecommunications Act, the long-term interest of the public is not served by permitting the merger to proceed before the future shape and direction of government policy on telecommunications and content regulation has been determined because the respective areas of legislation could (and in the CBB's view, should) be significantly revised[4]. Indeed, it would seem naïve to suppose that the timing of significant media market merger proposals (including Sky-Vodafone and also NZME-Fairfax) submitted to the Commerce Commission during a period of regulatory deliberation is entirely coincidental.

3. It must be noted that Sky Network Television Ltd has been the historical beneficiary of numerous legislative oversights and favourable rulings despite enjoying an effective monopoly position in the Pay-TV sector for well over a decade and exerting its considerable market power (if not political lobbying influence) to defend its market position from regulatory intervention across successive governments[5]. Despite the emergence of competition in the subscription content market (specifically from SVOD providers such as Netflix and Spark's Lightbox) and the future potential for its market power over the acquisition of sporting rights to be diluted by OTT services (which may be developed by sports bodies like NZRU[6]), Sky remains the dominant market incumbent in regard to subscription content provision. Although it has (unsurprisingly) dropped some share of the subscription market to SVOD competitors, the scale of its operations still exerts an impact on the media sector (including the free-to-air television sector which is finding it increasingly difficult to compete for content rights packages given that Sky controls Prime[7]).

[4] See the CBB's submission on the convergence discussion papers: http://www.mch.govt.nz/sites/default/files/Coalition%20for%20Better%20Broadcasting%20Submission%20(D-0633998).PDF

[5] See Thompson P.A. (2009) Move along, folks – nothing to see here: How National's broadcasting policy cover-up favours Sky. Foreign Control Watchdog #121, August, CAFCA: 18–28. Available from: http://www.converge.org.nz/watchdog/21/04.htm
This Digital TV discussion forum is also instructive: http://www.nzdtv.com/forum/showthread.php?576-TVNZ-and-Sky-trade-salvos&s=cd7eb94ae65e368e69ab60e94dccfa44

[6] Sky has often cited Coliseum's acquisition of English Premier League rights as ostensible evidence of its limited market power and the emergence of substantive market competition (e.g. see section 7.21 of the merger document). However, there is no doubt that Sky could easily have outbid Coliseum had it not been under scrutiny by the Commerce Commission at the time. Indeed, in other cases (such as the acquisition of Netball rights) it has used its greater financial clout to substantially outbid free-to-air rivals. e.g. see http://www.stuff.co.nz/sunday-star-times/sport/4814059/TVNZ-slashes-its-sports-production-roster and http://www.listener.co.nz/entertainment/television/public-service-television-heads-for-extinction/

[7] It is an open secret within the media industry that Sky has the financial capacity to outbid rivals for content rights packages, not only for Pay-TV but also for free-to-air (via Prime). Industry sources have privately suggested that Sky has strategically used its bidding power to drive up the prices of content packages in order to exert commercial pressure on its free-to-air rivals and reduce the risk of them developing ventures which would encroach on other areas of Sky's commercial territory, although documentary proof of such intentionality is not publicly available.
Contrary to orthodox economic assumptions that competition is always desirable, the market for international content rights packages is one where increases in market competition (i.e. on the wholesale side for rights acquisition by local aggregators) are liable to drive consumer-side retail prices for content services *up* not *down*. Indeed, in the UK , Ofcom's decision to require the rights to English Premier League football to be subdivided and sold separately saw BT take a significant share of games from BSkyB- but with the effect of obliging consumers who wanted access to all the games subscribe to two separate providers (which is not a justification for tolerating a commercial monopoly but a strong rationale for regulating exclusive content rights and price levels).
Despite the recent growth in the number of subscription content providers in NZ, it is also important to consider the pattern of market concentration in most domestic media sectors whereby a core duopoly emerges with a handful of more peripheral actors (e.g. TVNZ and MediaWorks Television in the FTA television sector, NZME and MediaWorks Radio in the commercial radio sector, NZME and Fairfax in the newspaper sector- assuming their merger proposal does not result in a near-monopoly- while Spark and Vodafone are the major telephony and internet service operators). Sky arguably retains a significant economy of scale in the Pay-TV by satellite market even if its market share is now declining because of the new SVOD operators. But smaller operations like Quickflix and Coliseum (which has now formed a joint venture with Lightbox) are unlikely to survive long-term unless they can command a distinctive niche market which generally requires exclusive rights to premium or specialist content. The unsuccessful Igloo joint-venture between TVNZ and Sky which aimed to provide a lower-price 'Sky-lite' pay-TV package illustrates the point.
Meanwhile, the growth of Spark's Lightbox has evidently been driven by its bundling with Spark broadband at no extra cost to consumers (which, if maintained, could arguably be an anti-competitive pricing strategy that the Commerce Commission could legitimately investigate). It is also instructive to note that Netflix currently makes virtually no profit on

4. The CBB considers the conclusions of the Commerce Commission's 2013 investigation[8] of Sky's contracts with telecommunication retail providers such as (then) Telstra-Clear (now Vodafone) to be highly relevant to the current merger proposal. Although the Commission did not take action against Sky (other than issuing a formal warning) its finding that the strategic intent of the contracts was to restrict competition is indicative of the company's approach to competition. Of course, Sky is a commercial entity which recognises no obligation to any interests beyond its shareholders. But the historical evidence suggests that it has, and will, push the boundary of any legal impediment to profit maximisation that is not actively (and pre-emptively) enforced. 'Wait and see' approaches to regulating market competition therefore invite incumbent media operators to entrench their position and then resist proposals for remedial 'claw-backs' on the pretext that their market dominance was achieved through legitimate means even when there has been a deleterious outcome for the broader public interest. The Commerce Commission must be cognizant of such considerations in its response to the proposal. Given that current telecommunication and broadcasting legislation does not include specific provisions to ensure net neutrality or prevent the vertical integration of a major content aggregator and a major broadband and mobile distributor, it is incumbent upon the Commission to be especially sensitive to any potential for the merger to reduce or inhibit market competition or to facilitate an accrual of market power which poses a threat to the interests of the public, both in the short term and the long-term.

5. By way of contextualising the points raised above, it is worth noting some of the findings of the Commerce Commission Investigation Report on Sky TV Contracts. Paragraph 9 and 10 (also 15-16) noted that the Commission considered Sky's contracts with RSPs to have breached section 27 and were at risk of breaching section 36 of the Commerce Act. Moreover, paragraph 18 confirms (on the basis of Sky's own internal documents) that the restriction of competition was a deliberate strategy by Sky, not an unintended consequence, while paragraph 19 acknowledges Sky's near-monopoly position in the Pay-TV market. However, the Commission chose only to issue a formal warning on the pretext that a) future developments in the market (notably the emergence of new competitors for subscription content) would alleviate concerns about significant reductions of competition, and b) uncertainly over whether legal action would be in the public interest. The CBB would suggest that even if the Commission's decision can be justified in hindsight given the subsequent development of SVoD services like Netflix and Lightbox in the NZ subscription content market, the fact that Sky was historically permitted to breach the Commerce Act without consequence constitutes a moral hazard in respect to failing to disincentivise comparable business strategies in the future. It would be erroneous to suppose that the Sky-RSP contracts at that time did not have the effect of significantly reducing competition or imposing a barrier new market entrants. The CBB understands that one free-to-air television provider had explored options for delivering online content services online via a partnership with an RSP but decided not to progress the venture precisely because the prospective RSP was subject to the restrictions of the contract with Sky[9]. As such, the Commerce Commission's modest intervention was too little and too late to prevent breaches of the Act and deleterious outcomes for the interests of consumers. The lesson to be learned from such cases is surely that the protection of the public interest requires the Commission to be more proactive- and indeed pre-emptive- in ensuring the future conditions for fair market competition rather

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its global SVOD services and is currently seeking to expand its global market penetration by investing billions in global content rights as well as in production of its own original high-end content. Unless Spark's Lightbox commits to substantially greater investment in its own content (which seems unlikely insofar as it is primarily intended as a sweetener for Sparks' broadband customers) then in the medium term the most likely market outcome would be the emergence of a core Netflix-Sky duopoly with perhaps one or two smaller, second-tier niche content providers in some form of joint venture. Although there is a massive amount of older audio-visual content available, there is simply not enough high quality first-run content to sustain half a dozen high-end subscription services offering premium movies, drama and sports. This is a very significant barrier to market entry for any provider seeking more than a niche place in the ecology.

The intensified competition for such content also has implications for the free-to-air television and VOD providers, which are struggling to compete for premium content rights at the same time as Sky pays nothing for carriage on its platforms (even though a significant proportion of Sky subscriber viewing is of the Freeview channels). Insofar as the proposed merger would further entrench a dominant actor in the Pay-TV market it cannot be regarded as Pareto-efficient in the sense of benefiting the merged entity without any deleterious consequences for other actors in the Pay and FTA sectors. Despite the size of the NZ market having a structural tendency toward duopoly it must be recognised that this is a product of weak regulation as much as small market size. The Commerce Commission therefore has an obligation to ensure fair competition on the wholesale side and fair prices for the consumer on the retail side as well as to take account of the side-effects of the SVOD market on the FTA television sector.

[8] Commerce Commission (2013) Investigation Report on Sky TV Contracts. 8 October. Available from https://www.comcom.govt.nz/dmsdocument/11184
see also the Commission warning letter to John Fellet: www.comcom.govt.nz/dmsdocument/11161

[9] The CBB is not at liberty to disclose details but the source was a senior executive of the company in question.

than closing the stable door after the horse has bolted, so to speak. This is especially true in cases involving media companies whose track record merit a special degree of scrutiny.

6. Again to contextualise, it is also worth quoting at some length the conclusions section of an article authored by Prof. Dwayne Winseck[10], a leading authority on media regulation, examining the regulatory environment for telecommunications and subscription television in New Zealand (2014, 168-169):.

"*The Commerce Commission's (2013) Report on the Sky TV Contracts basically agreed [that]*
• Data caps were used in anti-competitive ways, helping to keep Netflix and other over-the-top television services out of the pay television market.
• The contracts' exclusive bundling arrangements did deter TelstraClear, Telecom and Vodafone from creating their own television services.
• Sky did hoard content rights to deter potential competitors.
• Sky did have editorial control over the telco's programming packages and EPGs (2013: 70–1).
Still, the Commerce Commission decided to do precious little in response. Why? Because the Sky contracts are mainly relics of the past, it said. The steady growth of broadband capacity, rising data caps and two new pay television services since 2012 (Quickflix and Coliseum) (and presumably 2degrees with its 20 per cent share of the mobile wireless market, by subscribers) have made the original worries behind the review redundant. Its 'warning letter', the Commission argues, also puts Sky on notice that if similar problems emerge in the future, it could always hold another review. Exonerating New Zealand's major broadband carriers and pay television service company for past illegal behaviour because the future looks bright is an odd approach to regulation. […]
Vodafone took over TelstraClear in 2012. In line with the practices it has set in place with respect to its mobile wireless offerings around the world, it thinks the Sky contracts are fine. Vodafone's 43 per cent market share in retail wireline and wireless internet in New Zealand means that Sky's contracts still figure prominently across the country. In fact, given that Vodafone has the largest share of the market, Sky contracts will be at the very core of the broadband media market. Add Sky into the mix, and the two share almost half of total revenues in broadband and television markets (45.5 per cent) […]. One would never know any of this from reading the Commission's heavily redacted public review of the situation.
Why the commission might act in the future given these facts already on the ground now is a mystery, especially in light of its track record. Beyond such considerations, there is the government's bid to raise copper-based broadband prices. If successful, it will likely raise broadband prices, slow the takeup of broadband and cause competition to suffer (Schiff and Small, 2013).
Clearly, New Zealand stands at the crossroads, and decisions taken now will shape the broadband internet media ecology for decades to come – and maybe even for the rest of the twenty-first century. As this article has shown, recent policy and institutional reforms – especially since 2006 – have improved things tremendously. The UFB has the potential to consolidate these changes, further overcoming a legacy of a neglect and broadband under-development. Yet while there is much to praise, there is no reason to be sanguine, and pitfalls abound:
• The regulator has yet to be either firm in its own convictions or entrenched within the institutional context of the network media ecology – or the system of government as a whole, for that matter.
• A fundamental lack of openness and basic information compromises the ability of policy-makers, researchers and citizens to act on the basis of the best knowledge possible. The Commerce Commission's heavily redacted Sky TV Contracts Report stands as a travesty of democratic policy-making.
• Levels of internet and media use are strikingly low by global standards, likely made worse by data caps that are restrictive and exceptionally low by the same standards.
• The main use of data caps in multi-sided markets is to obtain new revenue streams – that is, sponsored content and pay-for-carriage on the content side and overage charges on the subscriber side; they are opaque to users, likely dampen social demand for broadband, and are generally at odds with an open internet-centric media ecology.
• Incumbents continue to use their market power to their utmost ability to preserve legacy business models and extend their influence over the future."

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[10] Winseck, D. (2014). New Zealand's Ultra-Fast Broadband Plan: Digital Public Works Project for the Twenty-First century or Playfield of Incumbent Interests? Media International Australia (special edition on broadband futures)151: 151-170. Winseck is professor of communication at Carleton University in Canada. He was also an invited speaker at the Commerce Commission's 2012 conference, The Future with High Speed Broadband*:* Opportunities for New Zealand. His discussion paper from that conference on the regulatory environment in New Zealand is well worth revisiting.

7. In respect to market definition, the proposal document put forward by Sky and Vodafone (section 6.1) emphasises two markets- a) the NZ retail market for fixed line broadband and b) the NZ retail market for Pay-TV services. The merger would therefore primarily entail further vertical integration of Sky's content production/ aggregation with Vodafone's online and wireless distribution services. It is on this pretext that the parties have argued that there is a) no substitutability or loss of competition and (given that Vodafone is already a reseller of Sky's content packages) no significant change in the market if the merger (factual scenario) is permitted. Sky and Vodafone have also asserted (see merger proposal section 10.11 and 11.8) that they would not seek to bundle Sky's content Vodafone's distribution to restrict competition. However, this raises the question of why the benefits which would ostensibly accrue to the merged entity could not just as easily be realised as separate entities under the *current* set of contractual arrangements. It also raises questions about the extent to which the merger could engender anti-competitive arrangements similar to those identified in the Commerce Commission's 2013 investigation of Sky's contracts with RSPs. Although there is now greater competition for SVOD services and greater capacity and choice for higher speed uncapped fixed line broadband, such developments do not obviate the concerns about competition previously signalled by the Commission.

8. Vodafone and Sky have suggested that they would have no incentive to restrict other RSPs entering into an agreement to acquire the re-selling rights for Sky's content services or to restrict its own broadband customers from accessing rival content services such as Netflix and Lightbox. This is certainly plausible, given the decline in data-capped broadband plans and the new entrants to the Pay-TV market. But it must be noted that there is currently nothing explicit in the Telecommunications Act formally requiring net neutrality and preventing Vodafone from (for example) zero-rating Sky's content or prioritising 'fast lane' bandwidth for its own traffic over its rivals. There are also potentially important differences in the licensing conditions that could apply to wholesale *re-selling* agreements for Sky's linear schedule and *retransmission* agreements for Sky content on an SVOD basis. A formal undertaking to ensure the merged entity's market power is not abused occur as a condition of the transaction being cleared/authorised would be needed to allay such concerns.

9. The market definition that applies to the Sky-Vodafone transaction needs to take account of another significant market subsector which is distinct from the consumer-side retail for fixed line broadband services but likely to be of central importance to the merger- namely *content delivery via mobile devices* and the associated hardware and software/'apps' architectures which can determine the conditions under which content can be accessed. It is in this sub-market where the factual scenario could entail greater risks of a substantial reduction in market competition and outcomes that are deleterious to the public interest, including bundling/tying and input/customer foreclosure. Indeed, given that Vodafone's fixed line broadband services and Sky's content are, in effect, already vertically integrated under the current arrangements, the efficiencies to be gained from the merger are most likely to derive from Vodafone's capacity to integrate Sky's on-demand content with mobile applications. Accordingly, the merger document (section 11.21) acknowledges that *'the Transaction will allow the Combined Group to better serve customers' evolving preferences by enhancing the delivery of content across multiple devices and via multiple distribution technologies, including satellite, broadband (UFB and fixed wireless (rural) and mobile.'* This rationale very clearly extends beyond the parameters of the two market sectors identified as significant by Sky and Vodafone. Depending on how such services are developed, potential concerns could arise in respect to the bundling of specific hardware/devices, software/'apps' and content/formats in order to create a 'walled garden' business model across the value chain which could serve to inhibit consumers from unbundling those components of the value chain and switching to rival services.

10. The Australian media regulator, ACMA, recently commissioned PriceWaterhouseCoopers to provide a study of production and consumption trends in the communication sector[11]. This report identified significant growth in consumer demand for access to content via streaming on mobile devices. Specifically, it identifies an increasing tendency for this access to depend on 'apps' within 'walled garden' architectures: *"Apps have been with us for a long time however audio and audio-visual content is increasingly being delivered by apps downloaded to smartphones, tablets or internet-connected televisions or gaming consoles. […] As part of this trend, app aggregators are emerging – Telstra's Roku box, Fetch TV and a number of the connected television manufacturers are doing deals with content companies to have their content streaming apps pre-loaded."* (PWC; content consumption trends para 5). At the same time, the report identifies another important trend- i.e. that as content distribution

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[11] PWC (2015) Emerging Trends in Content Creation and Consumption and Implications for the Australian Communications Sector. ACMA Review 2015 Report.

increasingly migrates to online platforms, consumer payments for content are shifting from content makers/owners to telecommunication providers (content consumption trends para 7) which would help elucidate the rationale for the proposed Sky-Vodafone merger. Importantly, there is a concomitant increase in the proportion of costs borne by the consumer for distribution/content carriage where content preferences are bandwidth-heavy (such as streamed HD audio-visual content) and also a pressure on ISPs/RSPs to invest in their infrastructure access so as to be able to reliably deliver increasingly volumes of content to consumers (see PWC report 'implications' section). Similar trends in the US have been noted by Forbes magazine[12].

11. Even if one regards the fixed line broadband retail market to be sufficiently mature and competitive to avoid any threat of anti-competitive bundling/tying and/or foreclosures to undermine net neutrality (a rather optimistic position) it would be entirely premature to assume this is true in the case of mobile data. The potential for a *de facto* 'walled garden' to arise increases when proprietary devices and 'apps' are available. Both are evident in the Sky-Vodafone scenario including Vodafone's own mobile telephone contracts (involving non-interchangable SIM-cards) and Sky's MySky and EPG[13]. The restrictions on mobile device bandwidth and data limits are also far more substantial than in the fixed line broadband retail market, raising the prospect of zero-rated content and 'fast lanes' being used to disadvantage rivals[14] or (less obviously but more insidiously) the deployment of proprietary 'apps' architectures and formats which function optimally when the merged entity's own content is accessed via preferred devices. It is important to note that such foreclosures of competition may not entail any formal bundling of services and outright restrictions on rival providers operating 'upstream' (rival content aggregators seeking a distribution platform on Vodafone mobile) or 'downstream' (RSPs seeking to carry Sky content on their own mobile platforms). Consequently, the merger raises the prospect of both technical and contractual barriers being imposed with the potential to undermine net neutrality principles in the mobile content subsector.

12. Given the potential for the merger to facilitate the entrenchment of Sky's still-dominant market position in the retail Pay-TV market (with ongoing implications for its FTA rivals in the wholesale market for premium content rights) and the potential for a 'walled garden' scenario to emerge in the mobile content market, the insistence of the prospective mergees that the transaction represents no vertical or conglomerate issues and *'no prospect of a combined Vodafone and SKY pursuing any credible foreclosure strategy or otherwise reducing competition'* (merger document p.3) must be regarded as self-interested*.* The counter-factual scenario is naturally difficult to discern with accuracy, but the evidence of market entry by other operators such as Coliseum/ Lightbox in the retail content subscription sector or (recently) Fairfax in the Auckland fixed line broadband retail sector[15] does not obviate the point that *the merger will almost certainly preclude the entry of another market actor of comparable scope, scale and market power to the merged entity.* Sky and Vodafone have no natural right to entrench a position of market dominance as part of a dual-sector duopoly (with Spark in the broadband retail market and Netflix in the SVOD retail market).

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[12] Kamdar, S. (2015) 3 Things about Walled Gardens that Drive Digital Publishers 'Up the Wall'. Forbes. October 18. Available from http://www.forbes.com/sites/sachinkamdar/2015/10/18/3-things-about-walled-gardens-that-drive-digital-publishers-up-the-wall/#2f1975ef4cba

[13] Sky CEO, John Fellet, has acknowledged that MySky is a key revenue stream and that this would be enhanced by its extension onto mobile devices https://www.tvnz.co.nz/one-news/new-zealand/sky-ceo-hints-cloud-based-mysky-after-vodafone-merger

[14] For example, see this Web Foundation commentary: http://webfoundation.org/2015/02/guest-blog-the-real-threat-to-the-open-internet-is-zero-rated-content/ which notes, among other things, that Vodafone was recently fined in the Netherlands for zero-rating HBO content.

[15] Indeed, if these competitors are considered to have comparable market power to Sky and Vodafone in their respective markets then the counter-factual scenario would surely include the possibility of Sky investing in its own retail broadband services and Vodafone investing in its own content aggregation- both of which are precluded by the merger.

Conclusion and Recommendations:

Given the uncertainties of the current regulatory, technological and market context and in the absence of any undertaking from either Sky or Vodafone to ensure the outcomes of the merger (factual scenario) are not deleterious to ongoing market competition and the long term interests of the public, the Coalition for Better Broadcasting considers that the Commerce Commission should**:**

- **Defer any final decision on the clearance/authorisation of the proposed merger between Sky and Vodafone until the government has completed its response to the recent feedback on its convergence issues papers, or, if this is not possible, decline to clear or authorise the proposed merger between Sky and Vodafone at this time.**

- **In the event of the merger being cleared/authorised, require a formal and binding undertaking from Sky and Vodafone that they will a) not engage in anti-competitive practices as previously identified by the Commerce Commission in respect to the subscription content market (both wholesale and retail) and fixed line broadband retail market, and b) also to refrain from anti-competitive practices pertaining to the formation of a *de facto* 'walled garden' (including the use of proprietary hardware/devices, software/'apps' architectures or content formats) to bundle/tie services and foreclose competition in the retail market for mobile content.**