

COMMERCE ACT 1986

SECTION 66: NOTICE SEEKING CLEARANCE

Date: 29 June 2016

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
Wellington

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

Part A: Executive Summary

The proposed transaction will result in Vodafone Group plc. directly or indirectly owning 51% of the shares in Sky Network Television Limited (**SKY**), and SKY owning 100% of Vodafone New Zealand (**Vodafone**). SKY is New Zealand's leading pay-TV provider, and offers a compelling portfolio of content. Vodafone is, based on customer numbers,¹ the leading mobile operator and the second largest provider of fixed broadband and telephony services in the country.

The proposed transaction will combine Vodafone's and SKY's complementary businesses in New Zealand to create an entity that combines Vodafone's mobile and fixed telecommunication networks with SKY's TV offering. This will assist the Combined Group to provide a better customer experience and to enhance cross-marketing opportunities, and lead to faster innovation to meet changing customer needs.

The parties currently enjoy a successful and complementary strategic relationship, under which Vodafone resells SKY's pay television services, and SKY promotes Vodafone's broadband products and refers customers to Vodafone. The Combined Group will build on this foundation to meet customers' converging communications and viewing preferences. The proposed transaction will allow SKY to respond to the growing consumption of content over internet-based platforms, or "IPTV". The advent of IPTV has permanently changed viewing behaviours, and consumers now expect pay-TV providers to deliver content in new and innovative ways.

The Combined Group will create a number of benefits for New Zealand consumers, including by:

- designing more attractive packages and more effectively cross-marketing pay-TV and telecommunications services;
- meeting customers' evolving preferences, by enhancing the delivery of content across multiple devices and via multiple distribution technologies (including satellite, fixed broadband and mobile);
- innovating and creating new and engaging digital products, tailored to both households and individuals in New Zealand; and
- allowing greater participation in the opportunities created by the expansion of high speed broadband through the Government's fibre and rural broadband initiatives.

The Combined Group will continue to sell wholesale telecommunications and pay-TV services, as each of Vodafone and SKY does today. This is so that the Combined Group can take advantage of growth opportunities in wholesale markets.

The key potentially affected markets for the purposes of assessing the proposed transaction are:

- the national retail market for the provision of residential fixed-line broadband services. This market is extremely competitive, and is served by an increasing number of operators. The market is characterised by low barriers to entry, including due to the market's structural separation, the regulation of input services and the absence of licensing requirements; and
- the national market for the retail provision of pay-TV services. This market is also increasingly competitive, with a growing number of providers offering consumers a range of attractive packages of premium content, from movies and TV series to live sports.

¹ As at 31 December 2015, and based on information in the Commerce Commission's Annual Telecommunications Monitoring Report 2015.

For reasons fully set out below, the proposed transaction will not result in any substantial lessening of competition (**SLC**) in these (or in any other) markets.

The creation of the Combined Group does not give rise to horizontal competition issues, including because:

- Vodafone does not participate in the wholesale market for the provision of pay-TV services, the market for the provision of production facilities for special events, or (to any meaningful extent) any markets for the acquisition of premium content;
- SKY does not participate in the market for the provision of fixed-line services or mobile phone services;
- Vodafone's offering in the retail market for the provision of pay-TV services is largely confined to reselling SKY's pay-TV services as part of Vodafone's wider offering; and
- SKY's participation in the market for fixed-line broadband services is limited to referring SKY customers to Vodafone.

In addition, the proposed transaction will not result in any vertical or conglomerate issues, including because:

- the Combined Group does not supply any "must have" inputs that either SKY or Vodafone's competitors require to participate in telecommunications or pay-TV markets. In fact, despite wholesale access to SKY services being available to third parties, of the 80+ broadband suppliers in New Zealand, only Vodafone has opted to include the full suite of SKY services (i.e. including premium sports) in its bundled offer. Competitors have designed different offerings – the much larger Spark offers Spotify, free Lightbox and Wi-Fi access from 1,000+ payphone booths (among other things) to its customers, Trustpower uses aggressively priced broadband to drive energy sales, etc.;
- the Combined Group would not have the ability or incentive to engage in any foreclosure strategy – even putting aside that it will continue to make inputs available on a wholesale basis; and
- in any event, the high level of competition and ease of entry into the relevant markets would constrain any attempt by the Combined Group to increase price/decrease service levels.

In summary, the Combined Group will face strong and growing competition across pay-TV, premium content, and telecommunications markets. Consumers' viewing behaviours and the relevant markets are changing rapidly, and consumers' expectations of their telecommunications and pay-TV providers are ever increasing. For the reasons set out below, there is no prospect of a combined Vodafone and SKY pursuing any credible foreclosure strategy or otherwise reducing competition.

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Part B: The parties

1. Vodafone

1.1 Vodafone is well known to the Commission and the details of its offerings in New Zealand can be found at www.vodafone.co.nz. A copy of Vodafone New Zealand's Annual Report for the year ended 31 March 2015 is enclosed with Vodafone's application.

1.2 In summary, Vodafone is a telecommunications company offering fixed and mobile telecommunications services, including fixed and mobile broadband internet to consumer and business customers. It is also a reseller of SKY services, whereby consumers are invoiced by Vodafone for the provision of a SKY decoder and SKY services. It also retransmits SKY and Freeview services using a Vodafone set-top box.² Vodafone is directly owned by Vodafone Europe B.V., and is ultimately owned by Vodafone Group plc. (through its 100% shareholding in Vodafone Europe B.V.), a company listed on the UK stock exchange.

2. SKY

2.1 SKY is also well known to the Commission, but in summary, SKY's principal business is supplying pay-TV services (including news, sport, movies and general entertainment) to its subscriber base, mainly via satellite. SKY is listed on the NZX and ASX. A copy of SKY's annual report for the year ended 30 June 2015 is available at www.sky.co.nz/investor-relations.

2.2 SKY's business activities include:

- (a) the provision of pay-TV services, via its own platform and via its 100% shareholding in Igloo Limited (**Igloo**).³ In addition to traditional 'linear' TV, SKY's pay-TV services include:
 - (i) general video-on-demand (**VOD**) services ('SKY On Demand');
 - (ii) subscription video-on-demand (**SVOD**) ('NEON');
 - (iii) transactional video-on-demand (**TVOD**), ('SKY Box Office' and 'SKY Arena'); and
 - (iv) "over the top" (**OTT**) services ('Fan Pass', a linear and video-on-demand OTT service, through which SKY offers daily, weekly and monthly "passes" to view premium sports content, 'SKYGo', a linear and on-demand OTT service through which SKY's satellite customers can stream a selection of SKY's linear channels and view content on-demand, and 'NEON', described above);

² For completeness, Vodafone currently also has a very limited pay per view TV offering. To provide some context, [

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- (b) the operation of one free-to-air TV channel, Prime Television (Prime is a business unit of SKY);
 - (c) the provision of production facilities for special events, through its 100% shareholding in the outside broadcast operator Outside Broadcasting Limited;
 - (d) the provision of online DVD rental services, through its 100% shareholding in Screen Enterprises Limited, which operates Fatso;
 - (e) the provision of background music services for commercial premises, through its SKY Music joint venture; and
 - (f) the provision of pub and corporate quiz night services, through its 51% ownership of Believe It Or Not Limited.
- 2.3 Relevant structure charts for both companies are included as Schedule 14 and 15 of the Sale and Purchase Agreement (please refer to Annexure A (Confidential)).

Part C: The Transaction

3. The Proposed Transaction

3.1 The proposed transaction will result in Vodafone Group plc. directly or indirectly owning 51% of the shares in SKY, which in turn will own 100% of Vodafone New Zealand Limited. Broadly, the transaction involves two acquisitions for Commerce Act purposes:

- (a) the acquisition by Sky Network Television Limited of 100% of the shares in Vodafone New Zealand Limited; and
- (b) the acquisition by Vodafone Europe B.V. (a subsidiary of Vodafone Group plc.) of 51% of the shares in Sky Network Television Limited,

(collectively, the **Transaction**).

3.2 While the acquisitions are interdependent, the acquiring entity differs for each and so separate clearance applications have been filed. That said, for Commerce Act purposes, the issue is whether there is an SLC as a result of the aggregation of SKY and Vodafone's businesses in New Zealand and therefore the arguments in this document apply with equal force to both clearance applications.

3.3 This Application formally seeks clearance for the acquisition by Sky Network Television Limited or an interconnected body corporate of Sky Network Television Limited of up to 100% of the assets and/or shares of Vodafone New Zealand Limited and/or any subsidiaries of Vodafone New Zealand Limited.

3.4 The party seeking clearance is Sky Network Television Limited ("SKY").

3.5 Please direct all correspondence and notices for the Applicant to:

Address

Buddle Findlay
Barristers and Solicitors
PO Box 2694
Wellington 6140

Attention Tony Dellow, Susie Kilty, and Dipti Manchanda

Email Address tony.dellow@buddlefindlay.com
susie.kilty@buddlefindlay.com
dipti.manchanda@buddlefindlay.com

Telephone +64 4 498 7304
+64 4 498 7356
+64 4 498 7340

3.6 Please direct all correspondence and notices for Vodafone to:

Address Bell Gully
Barristers and Solicitors
PO Box 4199
Auckland 1140

Attention Torrin Crowther and Glenn Shewan

Email Address torrin.crowther@bellgully.com
glenn.shewan@bellgully.com

Telephone +64 9 916 8621
+64 9 916 8726

4. Rationale

Vodafone's rationale

- 4.1 The Transaction will combine Vodafone's and SKY's complementary businesses in New Zealand. This will create an entity that offers better services to both parties' customers through the combination of Vodafone's mobile and fixed telecommunication networks and SKY's TV offering.
- 4.2 The Transaction will:
- (a) allow faster innovation to create new and engaging digital products tailored to both households and individuals in New Zealand, and thus meet converging communications and viewing preferences and provide a better customer experience;
 - (b) provide enhanced cross-marketing opportunities (given the complementary strengths of the two businesses); and
 - (c) deliver an enhanced customer experience thus further accelerating the take up of high speed broadband.

SKY's rationale

- 4.3 SKY's rationale is to assist SKY's business to adapt to, and evolve with, changes to the way video content is delivered to, and consumed by, consumers in New Zealand.

- 4.4 Video content is increasingly being delivered to consumers over the internet,⁴ using both fixed and mobile networks.⁵ This change is being driven by:
- (a) the increasing prevalence of high-speed data networks in consumers' homes;
 - (b) the increasing speed of mobile networks and corresponding increase in the use of mobile networks to consume video content;
 - (c) the low cost of delivering video content over the internet relative to the cost of delivery using traditional broadcasting infrastructure; and
 - (d) changes in consumer preferences. Increasingly, consumers prefer to consume video content on demand rather than from linear broadcasts, and on mobile devices anytime, anywhere, in addition to on their televisions or within the confines of their personal Wi-Fi networks.
- 4.5 The change in how video content is delivered to consumers is transforming traditional television and content markets. In addition to changes on the demand-side of pay-TV markets, such as consumers choosing from a range of pay-TV and free-to-air TV services and changes in how consumers prefer to consume video content, there is increasing competition for the rights to premium content. As a result, the price of premium content, a key input for any TV service, is going up.
- 4.6 SKY expects that the Transaction will put SKY in a better position to respond to changes in pay-TV and content markets, benefit from enhanced cross-marketing opportunities, and develop and market new innovative offerings.
- 4.7 More generally, there are also a number of opex and capex savings which flow from the Transaction.

5. Other filings offshore

- 5.1 The Transaction relates to New Zealand and so there are no such filings.

Part D: The Relevant Markets and Industry Context

6. Relevant markets

- 6.1 The parties believe the key potentially affected markets for the purposes of assessing the Transaction are:
- (a) the national retail market for the provision of residential fixed-line broadband services (having regard to *Vocus/M2* and *Vodafone/TelstraClear*);⁶ and

⁴The Nielsen Company *New Zealand Connected Consumers Report* (January 2016) at 3: [REDACTED]

⁵The Nielsen Company *New Zealand Connected Consumers Report* (January 2016) at 20: Nielsen's research found that, of the [REDACTED]

⁶ Given the nature of the SKY product set, which is overwhelmingly targeted at residential customers, the parties do not believe any separate business-related telecommunications markets are relevant, but are happy to provide further information should the Commission request.

- (b) the national market for the retail provision of pay-TV services.
- 6.2 The Commission has considered the telecommunications and television markets on previous occasions, notably (for telecommunications) *Vodafone/TelstraClear* (2012) and *Vocus/M2* (2015); and (for pay-TV and related markets) the *SKY/Prime* clearance decision (2006),⁷ the *Igloo Report* (2012)⁸ and the *Contracts Report* (2013).⁹
- 6.3 The Commission has previously found there are separate product markets for pay-TV and free-to-air TV services.¹⁰ It has noted a degree of substitutability between the two services and that the boundaries between the two markets are not always clear, but concluded that the differences suggested there may be limited scope for demand and supply-side substitutability. The Commission has noted that the pay-TV and free-to-air markets have the potential to overlap at times, stating:¹¹
- ... from a consumer (i.e., viewer) perspective, new low-cost Pay-TV products such as Igloo appear to fall between a high-cost Pay-TV product such as Sky, and free-to-air TV. This raises the possibility that such new products could provide competitive constraint on prices charged to consumers by traditional Pay-TV operators such as Sky, and start to blur the market boundaries between Pay-TV and free-to-air TV.
- 6.4 In addition, the Commission has recognised that pay-TV and free-to-air TV services "may act as competitive constraints on each other to some degree". This is because "the number of viewers choosing to purchase pay-TV will be impacted by the price of pay-TV relative to the quality of that product and the quality of free-to-air product offerings".¹² The Commission has identified a number of differentiating factors that are relevant to consumers' assessments of the value of an offering, including:
- (a) the value of the content, or perceived quality of the content, to consumers. This is affected by factors such as whether the content is premium content, the newness of the content, and the type of the content. The Commission has noted that "some consumers value one type of content much more highly than others, eg sport";
 - (b) the quality of the picture;
 - (c) ease of access; and
 - (d) price.
- 6.5 The Commission has included linear pay-TV, SVOD and TVOD services in its definition of the market for pay-TV services.¹³ However, the Commission noted that TVOD services may be "more of a complement than a substitute for linear pay-TV in New Zealand".¹⁴ With the exception of

⁷ Commerce Commission Decision No. 573 *Sky Network Television Limited and Prime Television New Zealand Limited* 8 February 2006.

⁸ Commerce Commission *Investigation report: The joint venture between Television New Zealand and Sky Network Television Limited, Igloo* 16 May 2012.

⁹ Commerce Commission *Investigation Report on Sky TV contracts* 8 October 2013.

¹⁰ *Sky/Prime*, page 13. This was affirmed on page 27 of the *Contracts Report*.

¹¹ The *Igloo Report*, page 22.

¹² The *Igloo Report*, page 24.

¹³ The Commission has previously referred to pay-TV markets as "broadcasting pay-TV" markets. However, the definition of "broadcasting" in section 2(1) of the Broadcasting Act 1989 excludes VOD services, and, arguably, excludes all OTT services. Accordingly, for the purposes of this Application, it is not helpful to refer to pay-TV markets as "broadcasting" markets, and this Application does not refer to "broadcasting" markets.

¹⁴ The *Contracts Report*, page 27.

Prime Television, all of SKY's TV services come within this definition of pay-TV. The parties believe the Commission was correct to include SVOD and TVOD in the pay-TV market, and note that the developments since the Commission's earlier consideration of these matters reinforces that view.

- 6.6 The Commission has identified two different functional markets for the provision of pay-TV services, being:
- (a) a market for the wholesale provision of pay-TV services; and
 - (b) a market for the retail provision of pay-TV services.¹⁵
- 6.7 SKY participates in both of those markets. SKY wholesales pay-TV services to Vodafone, and Vodafone retails those services as part of its broader offering.
- 6.8 A number of other markets relevant to pay-TV services have been defined in the past, including those for:
- (a) the acquisition of premium content, being four separate New Zealand¹⁶ markets for the wholesale acquisition of:
 - (i) premium movies by pay-TV providers;
 - (ii) premium movies by free-to-air providers;
 - (iii) live sports rights by television providers; and
 - (iv) first-run TV series by television providers; and
 - (b) the provision of production facilities for special events.¹⁷
- 6.9 That is, the Commission has distinguished between pay-TV and free-to-air TV broadcasters in respect of the acquisition of movie rights, but not in respect of the acquisition of live sports or first-run television series.¹⁸

¹⁵ The *Contracts Report*, page 26, footnote 84: "While the contracts between Sky and the RSPs are at the wholesale level, the key competitive issues relate to the supply of pay-TV to consumers. We therefore define the relevant market at the retail level."

¹⁶ Although see the Commission's comments in footnote 54 of the *Igloo Report* that there is the possibility in the future for the geographic dimension of those markets to become increasingly global.

¹⁷ SKY also participates in the following markets, which it submits are not relevant to this application and hence which are not considered further: (i) the provision of free-to-air broadcasting services; (ii) the provision of DVD rental services; (iii) the provision of background music services for commercial premises; and (iv) the provision of pub and corporate quiz night services. Similarly the markets for television transmission vehicles and television transmission services are not considered to be relevant to this notice, and are not considered further.

¹⁸ *SKY/Prime*, page 19. This was also affirmed on page 64 of the *Contracts Report*. This is because of the Commission's view that, although all broadcasters (whether pay-TV or free-to-air TV) compete to acquire the same premium content in general, movie studios typically release movies under a "windows" system. Under the windows system, different rights for movies become available for certain periods of time in successive order. The existence of the windows affects the purchase price, and accordingly, the likely purchasers in each window. This means that separate product markets can emerge for each window, depending on the types of broadcasters that are able to compete for each category of rights as they become available. The Commission has acknowledged the possibility for the "windows" to evolve over time, for example as a result of technological advances. However, there is no evidence to suggest that the windows have materially changed since they were last considered by the Commission in October 2013.

7. Industry context

TV services

- 7.1 The Commission made a number of predictions about the expansion of TV providers and how pay-TV markets might evolve in its *Igloo* and *Contracts* reports.
- 7.2 The Commission found that new entry into the retail market for the provision of pay-TV services in New Zealand is most likely to be by IPTV providers.¹⁹ The Commission identified four main conditions of entry into IPTV:²⁰
- (a) achieving scale (i.e. the need to achieve a sufficiently large customer base for a pay-TV offering to be profitable);
 - (b) access to content;
 - (c) data caps and unmetering; and
 - (d) partnership with RSPs.
- 7.3 However, the Commission found that the significance of data caps and unmetering, and of partnership with RSPs as conditions of entry was declining, and that this trend was likely to continue.²¹ For the reasons set out later in this section, the parties are of the view these are no longer conditions of entry that could limit the likelihood, extent and timeliness of new entry into markets relating to pay-TV.
- 7.4 The Commission's finding that new entry is most likely to be by IPTV providers has also proven to be correct. In recent years, the rate of entry into the pay-TV market has significantly increased. The following IPTV providers have entered the retail market for the provision of pay-TV services in New Zealand:²²
- (a) Coliseum, Quickflix, iTunes, Apple TV, Google Play Movies, and Xbox Video (now Microsoft Films & TV), which were already providers of video content in New Zealand when the Commission published the *Contracts Report* in October 2013;
 - (b) Spark, which launched Lightbox in August 2014;²³
 - (c) Netflix, which launched Netflix NZ in March 2015,²⁴ and
 - (d) the New Zealand Film Commission, which launched NZ Film on Demand in May 2014.

¹⁹ The *Contracts Report*, page 36.

²⁰ The *Contracts Report*, pages 36-37.

²¹ The *Contracts Report*, pages 51 and 53.

²² The Nielsen Company *New Zealand Connected Consumers Report* (January 2016) at 3: [

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²³ Stuff.co.nz "Spark launches Lightbox Television this month", 14 August 2014 <http://www.stuff.co.nz/technology/digital-living/60652069/spark-launches-lightbox-television-this-month>.

²⁴ "Netflix will begin streaming in Australia and New Zealand on 24 March with thousands of hours of movies, TV shows and kids programming" (3 March 2015) Netflix <<https://media.netflix.com/en/press-releases/netflix-will-begin-streaming-in-australia-and-new-zealand-on-24-march-with-thousands-of-hours-of-movies-tv-shows-and-kids-programming>>

7.5 In addition:

- (a) a number of sports bodies and organisations now deliver their video content directly to consumers in New Zealand, including the UFC,²⁵ the NBA,²⁶ the NFL,²⁷ MLB,²⁸ and the US PGA.²⁹ In addition, Hockey New Zealand,³⁰ Auckland Cricket,³¹ and Cricket South Africa³² now deliver, have experimented with delivering, or are experimenting with delivering, their video content directly to consumers using IPTV, for free; and
- (b) some of New Zealand's major news outlets have started partnering with sports bodies and organisations to deliver video content to consumers over IPTV. For example, the New Zealand National Basketball League has partnered with NZME and iFilm to live stream its games from the NZ Herald website at no cost to viewers,³³ and in recent years, the New Zealand Secondary Schools Rowing Championships have been live-streamed from the NZ Herald website and from stuff.co.nz at no cost to viewers.

7.6 As is the case with pay and free-to-air TV, free IPTV services, such as those listed above, are likely to act as a competitive constraint on pay IPTV services.

7.7 The uptake of IPTV services is reflected in New Zealanders' broadband data usage. As set out in the Commerce Commission's Annual Telecommunications Monitoring Report for 2015, in just one year the amount of data used per connection rose 50% from 32GB to 48GB per month.³⁴ The Commission has attributed this increase largely to the increase of IPTV usage and, in particular, the entry of Netflix.³⁵ The Commission reported that Netflix's entry in March 2015 coincided with a marked increase in data consumption.

7.8 This trend in New Zealand mirrors developments overseas, where pay-TV providers and providers of other services are increasingly delivering video content to consumers through IPTV. Examples include Hulu,³⁶ HBO's HBO Now,³⁷ CBS's ShowTime,³⁸ Amazon.com's Amazon Prime

²⁵ <https://www.ufc.tv/page/>.

²⁶ <https://www.nba.com/leaguepass/>.

²⁷ <https://www.nfl.com/gamepass/>.

²⁸ <https://www.mlb.mlb.com/subscriptions/>.

²⁹ <https://www.pgatourlive.co.nz/>.

³⁰ <http://hockeynz.co.nz/Video>.

³¹ Stuff.co.nz "Auckland Cricket trialling live streaming of home domestic competition matches" 18 December 2015. <http://www.stuff.co.nz/sport/cricket/75283049/Auckland-Cricket-trialling-live-streaming-of-home-domestic-competition-matches>.

³² "Black Caps fans to have online access to remaining ODI's" (22 August 2015) Cricket South Africa <http://cricket.co.za/news/7982/Black-Caps-fans-to-have-online-access-to-remaining-ODIs>.

³³ "Basketball: NZ NBL to be broadcast live and free on nzherald.co.nz" (7 March 2016) NZ Herald http://www.nzherald.co.nz/sport/news/article.cfm?c_id=4&objectid=11601279.

³⁴ Commerce Commission Annual Telecommunications Monitoring Report 2015, page 22. (Published in May 2016.) Comparison between YE June 14 to YE June 15.

³⁵ Commerce Commission Annual Telecommunications Monitoring Report 2015, page 23.

³⁶ Hulu is a joint venture between the Disney-ABC Television Group, the Fox Broadcasting Company and NBC Universal Television Group.

³⁷ <https://order.hbonow.com> HBO (Home Box Office) is a US-based premium cable and satellite television network owned by Home Office Inc., a subsidiary of Time Warner Inc. It provides two television services – HBO and Cinemax – to approximately 127 million subscribers world-wide. In 2015 HBO launched HBO Now, a US streaming service which does not require a home HBO subscription, allowing viewers to access its content directly via the internet. The online streaming service has initially been offered in the United States, but there are plans to offer it overseas [

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³⁸ <http://www.sho.com/sho/home> CBS Corporation is a mass media company that creates and distributes industry-leading content across a variety of platforms to audiences around the world. One such platform is Showtime; the television network owned by

Video,³⁹ NBC's Hayu, New York baseball clubs' Major League Baseball Advanced Media joint venture, and Optus' and Telstra's delivery of EPL games and NRL games respectively to mobile and fixed customers in Australia. In addition, Twitter recently announced that it has won the streaming rights for Thursday night NFL games.

7.9 A brief overview of the various players is set out below.

(a) Netflix

Netflix is the world's first global IPTV provider with more than 81 million subscribers in more than 130 countries. It is widely regarded as the global leader. Subscribers can watch a range of exclusive and licensed content from many of the world's leading distributors including Warner Bros., BBC, FOX, NBC Universal, Village Roadshow Entertainment, Beyond Distribution, Australian Broadcasting Corporation (ABC) and The Walt Disney Company.

As well as acquiring licences to content produced by other studios, Netflix creates a substantial amount of its own original content. Netflix recently announced that it intends to spend US \$6 billion on producing original content in 2017.

Netflix NZ launched in New Zealand in March 2015. Research by AC Nielsen states that, just 10 months after Netflix NZ launched in New Zealand, [REDACTED].⁴⁰ It has also been reported that by the end of 2015 it had some 264,000 subscribers.⁴¹

(b) Lightbox

Launched by Spark in August 2014, Lightbox is a New Zealand subscription video on demand service offering a selection of TV shows over a range of devices via broadband connection. It currently carries ad-free hit TV shows like Breaking Bad, Suits and Better Call Saul. Lightbox chief executive Kym Niblock spoke earlier this year about Netflix's investment in programme production, noting that Lightbox had initiated discussions with a few regional players in other markets. "We've been talking to all sorts of people. There's a really vibrant group out there who are doing SVOD in lots of different territories, and we've definitely explored ways to work together—whether around content creation or content acquisition, we're all about beating Netflix basically."⁴²

Spark makes Lightbox available to all of its residential broadband customers at no extra cost. This means that, of the 3.1 million New Zealanders estimated to use the internet on a weekly basis,⁴³ consumers in at least 680,000⁴⁴ households are entitled to use Lightbox

Showtime Networks Inc., a wholly-owned subsidiary of CBS Corporation. Showtime's programming primarily includes new release movies and original television series, along with boxing and mixed martial arts matches, occasional stand-up comedy specials and made-for-TV movies. ShowTime was initially launched in the United States, but there are plans to offer it overseas [

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³⁹ http://www.amazon.com/b/ref=PV_ShortUrl?_encoding=UTF8&node=2676882011.

⁴⁰ The Nielsen Company New Zealand Connected Consumers Report (January 2016) at 32.

⁴¹ NZ Herald "Streaming gets serious: The war for TV hearts and eyes", 6 June 2016. http://www.nzherald.co.nz/entertainment/news/article.cfm?c_id=1501119&objectid=11651395.

⁴² "Netflix can't buy all the content out there – Lightbox's Kym Niblock", 29 January 2016. <http://stoppress.co.nz/news/netflix-cant-buy-all-content-out-there-lightboxes-kym-niblock>.

⁴³ The Nielsen Company New Zealand Connected Consumers Report (January 2016) at 5.

⁴⁴ Based on Spark's residential broadband subscriber numbers as at 30 June 2015.

free of charge (compared with SKY's ≈[REDACTED] registered NEON subscribers as at the end of May 2016).

(c) Coliseum

Coliseum Sports Media is a digital media company specialising in delivering live and on-demand sports content online, via subscription. Shortly after its inception, Coliseum won the sought-after broadcasting rights to the English Premier League, which (until recently) Coliseum broadcast through its web platform Premier League Pass. In 2015, in partnership with the PGA Tour and the LPGA, Coliseum introduced PGATourLive to New Zealand, the first ever streaming subscription service of PGA events, and WorldGolfPass, a dedicated golf channel that featured some of the world's biggest tournaments, including the LPGA, European Tour and Ryder Cup.⁴⁵

In 2014, Coliseum partnered with Lightbox to create the Lightbox Sport joint venture.

[REDACTED]

Coliseum recently launched the RugbyPass web platform, through which Coliseum offers live and on-demand streaming of rugby games in 23 countries. Rugby games available for streaming through RugbyPass include every home game played by the All Blacks, Wallabies, Springboks, and England, Ireland, Scotland and Wales (other than Six Nations games), Super Rugby games, NRL games, and State of Origin games. RugbyPass will also stream the British Lions' tour of New Zealand in 2017. The rights acquired by Coliseum do not cover Australia, New Zealand, or South Africa, but, in acquiring rights to multiple jurisdictions, Coliseum is clearly seeking scale.

In April 2016, Discovery Communications acquired a minority stake in RugbyPass. Coliseum's chief executive, Tim Martin, has commented that "Discovery brings real scale and is global in ambition".⁴⁶ Discovery operates over 50 network entertainment brands globally, including 13 channels in the United States of America (such as the Discovery Channel and Animal Planet), and generated US\$6.4 billion of revenue in 2015. As a result of the deal with Coliseum, some of the sports content acquired by Discovery's subsidiary, Setanta Sports Asia, will be made available on RugbyPass. Discovery's investment in RugbyPass is one of a number of moves by Discovery to begin delivering sport content over its TV services, having acquired the European sports channel Eurosport in 2014, the multiplatform rights to broadcast the Olympic Games across Europe from 2018 to 2024 in June 2015, and the worldwide rights to broadcast all home tests played by France's rugby union team (including those against the All Blacks).

(d) Apple TV

Apple TV is a digital media receiver in the form of a set top box which puts Apple's iTunes media store and library on high definition television screens. Customers can use apps to watch movies or shows (e.g. Netflix and iTunes), play games or access services such as YouTube. Apple TV is part of multinational technology giant Apple Inc, which has a market cap in excess of US\$500bn and, in Q2 2016, had revenues of more than US\$50bn.

(e) Amazon.com – Amazon Video

⁴⁵ It has been reported that the PGA Tour and LPGA partnerships come to an end on 30 June 2016. More information about the current holders of the New Zealand rights to the EPL and to PGA content is set out in paragraph 7.21.

⁴⁶ NBR "Coliseum bags investment from US giant Discovery, launches RugbyPass", 28 April 2016. <http://www.nbr.co.nz/article/rugby-pass-ck-p-188265>.

E-commerce giant Amazon.com has launched its own internet-based video on demand service in a number of countries, including the US, UK, Japan, and Germany, and looks set to enter others. Amazon Prime members are able to stream TV shows and movies from the Amazon Video, or Amazon Instant Video, VOD streaming service. Amazon Prime members can also elect to subscribe to a number of “add ons” to the basic Amazon Video Service. In addition, customers who are not members of Amazon Prime can rent or purchase TV shows and movies from Amazon Video on a TVOD basis. Amazon.com has pursued a number of exclusive content deals to differentiate its service, with the most significant being with HBO.⁴⁷ Signed in 2014, the deal allows Amazon Prime customers unlimited streaming access to many of HBO’s most popular series.

(f) YouTube Red

Google has recently announced YouTube Red which, for NZD 9.99/month, offers subscribers: a Google Play Music subscription, advertisement-free videos, the ability to save videos and songs to mobile devices for offline playback, and the ability to listen to audio only on the YouTube Music app. YouTube Red is available for mobile phones, tablets, desktop computers, and TVs.

7.10 While SKY publicly releases aggregated subscriber numbers for all SKY services (including subscribers to SKY's satellite service, Fatso, FanPass, and NEON), SKY's other competitors do not release subscriber numbers. This means that it is not possible to obtain reliable and robust estimates of pay-TV market shares. However, some third parties have estimated various pay-TV providers' market shares or subscriber numbers as follows:

(a) [

REDACTED

];⁴⁸ and

(b) [

REDACTED

].^{49,50}

7.11 Content creators are increasingly delivering their content direct to consumers, i.e. by cutting out the traditional ‘middle man’ (the broadcaster). A number of sports bodies and organisations now deliver (or are experimenting with delivering) their video content directly to consumers in New Zealand. For example:

(a) Auckland Cricket first trialled live streaming at the end of 2015. Believed to be the first of its kind for New Zealand domestic cricket, Auckland Cricket’s approach follows the lead of other key New Zealand sporting organisations like Hockey New Zealand and New Zealand Football, who have also broadcast live matches online. Auckland Cricket communications and marketing assistant Ben Mackey said, "The interest is there from

⁴⁷ EW.com “HBO makes huge Amazon Prime deal: see which shows are going online”, 23 April 2014. <http://www.ew.com/article/2014/04/23/hbo-amazon>.

⁴⁸ [REDACTED]

⁴⁹ [REDACTED]

⁵⁰ The actual numbers of NEON subscribers over time are set out in Annexure D (Confidential).

the cricketing community and there are people out there who usually follow the games on things like live scoring, but we are trying to give them the alternative to be able to see some of the games as well."⁵¹

- (b) New Zealand National Basketball League has partnered with NZME and iFilm to live stream its games from the NZ Herald website. NZME's Head of Sport Trevor McKewen says live events are no longer consumed purely by traditional means and watching streamed events has become commonplace in New Zealand.⁵²

"NZME is delighted to bring this viewing opportunity to basketball fans in New Zealand. The fast-moving nature of basketball as a sport and the tremendous athleticism makes it a very attractive live streaming option. In addition, our comprehensive news coverage of basketball at all levels whether it's NBA, Tall Blacks, Breakers or the New Zealand NBL competition means we are rapidly becoming a one-stop content shop for fans of the game."

7.12 In New Zealand, as mentioned above, Spark, through Lightbox, has led the delivery of content by telecommunications providers. This is consistent with market developments in Australia. In Australia:

- (a) Telstra is offering customers access to live NRL and AFL streaming in order to encourage subscriptions to its mobile plans. Customers who sign onto particular Telstra mobile plans will get the option of a 12-month NRL Digital Pass, an ASFL Live Pass, or 6 months to Foxtel's Presto SVOD service. Telstra is also understood to be seeking deeper technology, production and data partnerships with sports bodies and organisations. Earlier in 2015, it signed a deal with Racing Victoria.⁵³ Telstra has also partnered with the ARL Commission, Nine Network, News Corp Australia and FOX SPORTS to provide free to air television, pay television and mobile coverage of rugby league for five years from 2018.⁵⁴
- (b) Telstra's competitor, Optus, has signed a range of sporting and streaming video partnerships with other players in content and pay-TV markets, such as Cricket Australia, the English Premier League and Netflix, in a push to be seen as more than a phone and internet provider. Optus CEO Allen Lew said "we are dedicated to delivering the best domestic and international entertainment for our customers."⁵⁵

7.13 It is relevant to note that the streaming platforms themselves can be outsourced – for instance, Premier League Pass used NeuLion, which, in addition to powering SKY Fan Pass, is used by the NBA and NFL (among others) for their direct to consumer services.⁵⁶ This illustrates that a pay-TV provider entering the retail pay-TV market with an IPTV based offering is less dependent on building its own extensive infrastructure than traditional broadcasters have been in the past.

7.14 As well as the trend for new entrants to rely on IPTV rather than traditional broadcasting networks as their delivery mechanism, new entrants have increasingly diverse business models. For example:

⁵¹ Stuff.co.nz "Auckland Cricket trialling live streaming of home domestic competition matches", 18 December 2015. <http://www.stuff.co.nz/sport/cricket/75283049/Auckland-Cricket-trialling-live-streaming-of-home-domestic-competition-matches>.

⁵² NZ Herald "Basketball: NZ NBL to be broadcast live and free on nzherald.co.nz", 7 March 2016. http://www.nzherald.co.nz/sport/news/article.cfm?c_id=4&objectid=11601279.

⁵³ Financial Review, "Telstra backs off from big-bucks sports rights", 10 August 2015. <http://www.afr.com/business/telecommunications/telstra-backs-off-from-bigbucks-sports-rights-20150807-qitue9>.

⁵⁴ NRL.com, "NRL broadcast rights deal announced" 27 November 2015. <http://www.nrl.com/nrl-broadcast-rights-deal-announced/tabid/10874/newsid/91023/default.aspx>.

⁵⁵ The Conversation "Optus, the new player in Australia's sports media rights battle", 2 November 2015. <http://theconversation.com/optus-the-new-player-in-australias-sports-media-rights-battle-50069>.

⁵⁶ http://www.neulion.com/SportSelect.dbml?DB_OEM_ID=30000&SPID=159308&SPSID=1071310.

- (a) Spark uses Lightbox to drive uptake of Spark's broadband services, by offering Lightbox subscriptions at no cost to Spark's broadband customers;⁵⁷
 - (b) many new entrants are content creators (e.g. sports organisations) that have cut out video content aggregators in favour of delivering content direct to consumers; and
 - (c) an increasing proportion of new or expanding entrants are pursuing premium live sports rights, rather than just rights to premium movies in the first pay-TV subscription windows or rights to premium first-run TV series. Examples include Coliseum, Optus, Telstra and Twitter. In this regard, it is worth reiterating that all sports rights are contestable at renewal time. The success of 'non-traditional' broadcasters in securing such rights reveals how contestable those rights are in practice.
- 7.15 One aspect of the changing business models of new entrants is that new entrants can and do achieve scale through means other than growing a 'pay-TV only' subscriber base in New Zealand. For example, the following pay-TV providers have achieved scale (or, in many cases, are growing in scale) through other means:
- (a) Lightbox achieves scale by being a part of Spark, the largest telecommunications provider in New Zealand. In particular, Spark makes Lightbox available at no additional charge to all of Spark's residential broadband customers, meaning that, based on Spark's subscriber numbers as at 30 June 2015, 680,000 New Zealand households are entitled to use Lightbox at no additional cost;
 - (b) Netflix achieves scale through its pay-TV operations in other markets around the world;
 - (c) Apple TV achieves scale by being a part of Apple Inc., the multinational technology giant; and
 - (d) Amazon Prime Video achieves scale by being a part of Amazon.com; the e-commerce, cloud computing, and consumer electronics giant.
- 7.16 The scale required for a new entrant via IPTV is different from the scale required by a traditional broadcaster. A traditional broadcaster needs to achieve greater scale than an IPTV provider, to offset the greater cost of the infrastructure necessary to deliver a traditional broadcaster's services.
- 7.17 It is also worth noting the well-developed offerings of the two major free-to-air broadcasters, being TVNZ and MediaWorks. (As discussed in paragraph 6.4, the Commission has recognised⁵⁸ that pay-TV and free-to-air offerings may act as competitive constraints on each other to some degree.)
- 7.18 TVNZ and MediaWorks each have substantial catalogues and arrangements with the major studios, and – particularly in the case of TVNZ – have also shown a willingness to compete strongly for premium sports rights (for example, in recent times, TVNZ has secured Wimbledon, NFL, AFL, certain EPL games and WRC content). TVNZ and MediaWorks have each developed their own OTT offerings:
- (a) TVNZ OnDemand is an IPTV service that offers programmes broadcast on-air to users in New Zealand. TVNZ OnDemand is available on a variety of platforms, such as

⁵⁷ Spark previously offered Lightbox to its broadband customers for free for a period of 12 months, but recently announced that it is making Lightbox available to Spark broadband customers for the duration of customers' broadband contracts with Spark.

⁵⁸ The *Igloo Report*, page 24.

iOS/Android devices, smart TVs, web browsers and the PlayStation 4, and a spokesperson is reported as saying it has more than 1.16 million registered users.⁵⁹ TVNZ typically makes content available on TVNZ On Demand within an hour of the show's transmission, for a period of 7 to 30 days. Certain shows are uploaded within a day of their US airing, prior to being transmitted on-air in New Zealand. The range of content offered includes TV dramas, reality TV, news/current affairs, comedy shows, movies and sport. TVNZ OnDemand offers select English Premier League matches and highlights, with DUKE (a TVNZ channel live-streamed online) offering live sports, including the AFL, NFL and WRC.

- (b) MediaWorks makes content broadcast on TV3 and channel FOUR⁶⁰ available to stream on demand through 3NOW. 3NOW is available on web browsers, Android/iOS devices, and on smart TVs. The available content includes TV dramas, comedy shows (e.g. 7 Days), reality TV (e.g. The Bachelor) and news/current affairs shows. MediaWorks has also made a live stream of TV3 available from the TV3 website.

7.19 More generally, in relation to content, the Commission has previously found that:

- (a) regarding the acquisition of live sports rights, new entrants focusing on providing an SVOD service do not necessarily need sport.⁶¹ A new entrant focussing on providing a fuller range of services may need sport, but is unlikely to require more than one contract for premium sports content;⁶²
- (b) regarding the acquisition of premium movies, a new entrant is likely to enter initially using library content, available on a non-exclusive basis, and would then seek to compete for a contract for premium movie content from a content provider. Again, initially, a new entrant would not need to contract with more than one content provider;⁶³ and
- (c) regarding the acquisition of first run television series, sufficient content is available for a new entrant, whether one considers programmes or channels.⁶⁴

7.20 Since the Commission made the above findings, premium content markets have developed as follows.

- (a) Pay-TV providers, which have traditionally filled the role of content aggregators, are increasingly creating their own premium content. Both Netflix and Amazon.com have been producing original premium content to provide through their own services since 2012 and 2013 respectively, and now have extensive catalogues of original premium content. Examples of premium content developed by pay-TV providers include Netflix's House of Cards and Orange Is the New Black, and Amazon.com's Hand of God. Having

⁵⁹ http://www.nzherald.co.nz/entertainment/news/article.cfm?c_id=1501119&objectid=11651395.

⁶⁰ MediaWorks recently announced that it has entered into a joint venture with NBC Universal, under which FOUR will be rebranded as "Bravo".

⁶¹ *Contracts Report*, paragraph 346.1.

⁶² In the *Contracts Report*, the Commission considered a theory of harm under which Sky's contracts with content providers could deny rival new entrants access to sufficient content to enter effectively. As the Commission recorded in paragraph 346.3 of the *Contracts Report*, the Commission's theory of harm required a new entrant to need more than one contract for rights to SVOD content. At paragraph 346.3, the Commission found that "New entrants focussing on a fuller range of service may need sport ... the theory of harm requires a new entrant to need more than one contract, and so with the type of entry we consider to be likely it does not hold, and Sky's contracts are unlikely to have the likely effect of substantially lessening competition".

⁶³ *Contracts Report*, paragraphs 344 and 345.

⁶⁴ *Contracts Report*, paragraph 347.

committed US\$5 billion to creating original content in 2016, Netflix recently announced that it is committing US\$6 billion to creating original content in 2017. As at 6 April 2016:

- (i) Netflix had produced 52 original series (four of which were in partnership with a traditional broadcaster), 59 one-off specials and one-off documentaries, and five movies, and had committed to produce a further 53 original series, five one-off specials and one-off documentaries, and 22 movies; and
 - (ii) Amazon.com had produced 16 original series, and had committed to produce a further six original series.
- (b) Pay-TV operators have adopted various business models when entering markets, and compete for subscribers on a number of differentiating factors, including price, the quality and range of content offered, standards of service and other facilities. Whereas traditional pay-TV retailers have focused on offering a wide range of content at different price points, OTT operators such as Netflix have shown that offerings focused on one or two types of content (e.g. TV series and movies) can also be competitive.
 - (c) Content creators are increasingly delivering their content directly to consumers, rather than making rights to their content available to content aggregators. This includes studios, as well as sports bodies and organisations.
 - (d) When a content creator adopts a direct-to-consumer approach, they often withdraw their content from the markets for the acquisition of premium content. [

REDACTED

].

- (e) Netflix, which has global scale and presence in over 130 countries, has publicly stated that it is seeking to acquire global content rights.

7.21 The factors outlined in paragraphs 7.19 and 7.20 above mean that there is increasing competition in the markets for the acquisition of premium content. This is reflected in the increasing cost of premium content. Rights to premium content are contestable, and rights often change hands. For example, SKY previously held the New Zealand rights to the EPL and to PGA Golf. Coliseum successfully outbid SKY to win those rights in 2014 and in 2015 respectively. Earlier this year, Doha-based beIN Sports (a subsidiary of Al Jazeera) won the rights to broadcast the EPL in New Zealand for three years from August 2016, reportedly outbidding both SKY and Coliseum. beIN subsequently reached an arrangement with SKY, under which beIN retains the EPL rights (which SKY could not afford to buy from beIN), and will broadcast the EPL using two new channels on SKY's platform, at no cost to beIN. Subscribers to SKY's satellite service (including customers who currently only subscribe to SKY's Basic package) will be able to subscribe to those channels for \$11.96 a month, and SKY will pass on all revenue from those subscriptions to beIN. In other words, SKY will retain no revenue from the arrangement. SKY has successfully bid for the in-season PGA and LPGA golf rights for three years beginning in 2016, although PGA Tour fans will be able to subscribe directly to the PGA's \$20-a-month online product also called PGA Tour Live for early round coverage and highlights.

7.22 In relation to data caps and unmetering, the Commission found in the *Contracts Report* that "in the future data caps are unlikely to be an issue for a new pay-TV entrant, as in recent years data caps have grown significantly".⁶⁵ Research conducted by AC Nielsen estimates that 3.1 million New Zealanders use the internet on a weekly basis. According to figures released by Chorus in

⁶⁵ *Contracts Report*, paragraph 264.

March 2016, one in three households are now on unlimited data plans, over 60% of broadband connections have a monthly cap greater than 50 gigabytes (compared with 1.2% in 2011), and the average broadband speed across New Zealand continues to increase. Statistics New Zealand estimates that, from 2014 to 2015, the number of internet users on unlimited plans quadrupled from 155,000 to 628,000. The widespread uptake of fast, unlimited or high cap broadband plans means that data caps and un-metering no longer limit the likelihood, extent, and timeliness of entry into the retail market for the provision of pay-TV services.

- 7.23 Finally, in relation to partnership with RSPs, the Commission found in the *Contracts Report* that RSPs are not a required marketing channel for OTT providers,⁶⁶ and, as outlined above, IPTV and OTT providers no longer need to enter into un-metering arrangements with RSPs.
- 7.24 All of these trends are having an effect on SKY's traditional subscriber base. The chart below shows SKY's recent actual and forecast residential subscriber numbers for its traditional linear product (absent the Transaction).

Figure 1 SKY residential subscriber estimates [Confidential]

[

REDACTED

]

- 7.25 As the chart shows, SKY's traditional linear subscriber base has been declining [**REDACTED**].

- 7.26 SKY's subscriber numbers broken down by package and by region, and SKY's subscriber numbers for channels offered as add-ons, for the period June 2012 to May 2016 are set out in Annexure D (Confidential).

Broadband

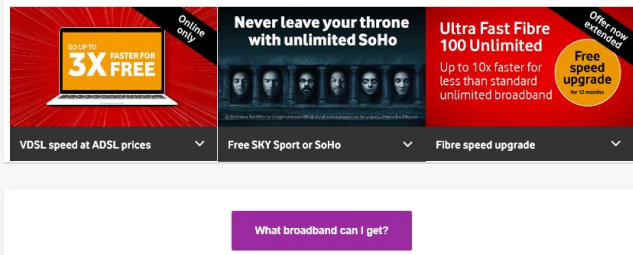
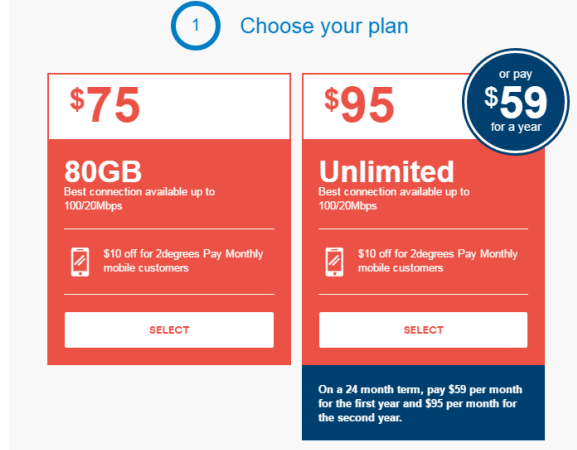
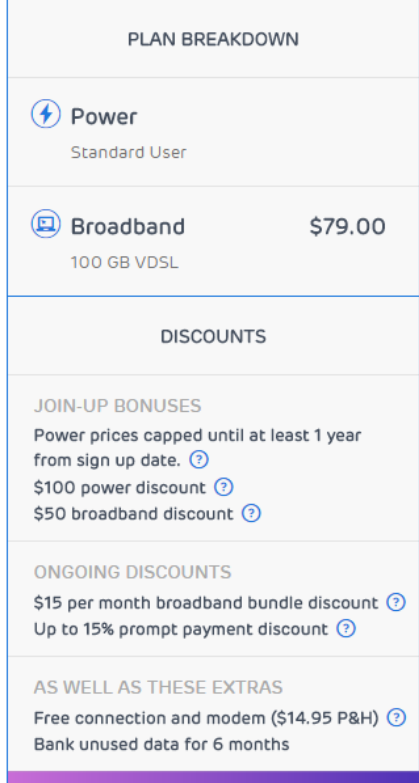
- 7.27 In relation to broadband, the major players compete aggressively on a number of differentiating factors, most notably on price and 'value-adds' in order to attract broadband customers.

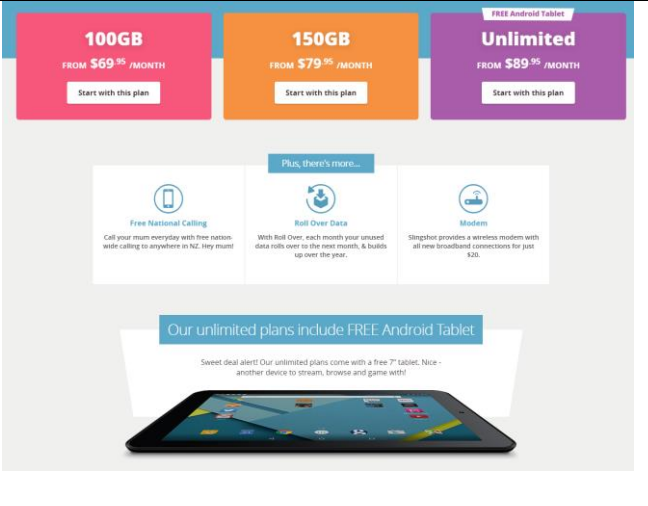
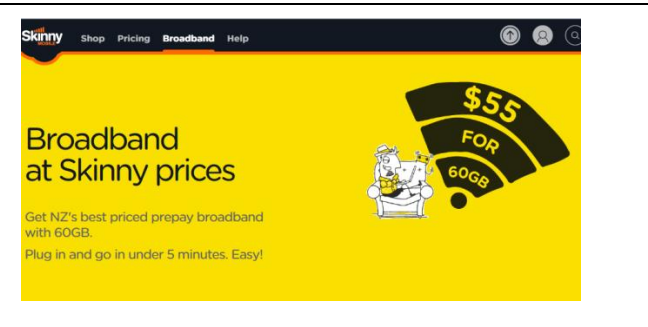
⁶⁶ *Contracts Report*, paragraph 276.

7.28 Vodafone offers various value-adds, including free speed updates from time to time (e.g. VDSL at ADSL pricing), as well as deals on certain SKY packages. Similarly, major competitors compete by offering their own add-ons.

7.29 The table below illustrates recent offerings by Vodafone's major competitors. The table reveals that, while Vodafone sees its SKY offering as a useful value-add to differentiate its wider broadband offering, and notwithstanding SKY's willingness to enter into reselling arrangements with third parties, Vodafone's competitors have opted *not* to resell SKY services, but rather to include other types of value-adds in their bundles.

<p>Spark offers:</p> <ul style="list-style-type: none"> • a free Lightbox subscription; • free public wifi (1GB a day) using the 1,000+ phone booths across the country; • a free Spotify Premium subscription on certain mobile plans; and • the potential to get \$10 a month off your mobile bill if it is on the same account. 	
<p>MyRepublic offers two different broadband plans, targeted at:</p> <ul style="list-style-type: none"> • General households, which includes Chromecast and a \$160 Google Play Gift Card; and • Gamers, which offers a free Razer Kraken 7.1 (gaming headset) and a free online gaming pass or Razer Diamondback mouse. 	

<p>Vodafone offers various “value adds” at various times. For instance, VDSL at standard broadband pricing, SKY Sports or NEON for 12 months, or UltraFast Fibre deals for the first 12 months.</p>	
<p>2Degrees provides a monthly \$10 discount to 2Degrees Pay Monthly mobile customers.</p>	
<p>Trustpower has been very aggressively using broadband to drive additional power sales. It offers significant multi-service discounts. These include capping power prices until at least 1 year from sign up date, \$100 power discount, \$50 broadband discount and \$15 per month broadband bundle discount.</p> <p>It also offers a 24 month unlimited data broadband contract at \$59 a month for the first 12 months and \$84 a month for the second 12 months. This deal is not available in conjunction with the multi-service discounts outlined above.</p>	

<p>Slingshot offers a free Android tablet with its unlimited plans. Slingshot provides a \$5 discount on mobile plans that are bundled with broadband plans.</p>	
<p>Others focus on price/service and offer a 'no frills' product. For instance, Skinny (a Spark brand) promotes itself as broadband "without the frills".</p>	

Part E: Competition Assessment

8. Introduction

- 8.1 While, strictly speaking, both SKY and Vodafone offer consumers pay-TV services, Vodafone's offering is largely confined to its reselling of SKY services as part of its wider offering.⁶⁷ For the reasons set out in 10 below, there is currently no material competition between the parties in any relevant sense in relation to the supply of pay-TV services, and hence no SLC.
- 8.2 While there is no meaningful competitive overlap (in a horizontal sense), we expect that the Commission will nevertheless wish to ensure there are no vertical or conglomerate effects which might give rise to an SLC. For the reasons set out in 11 below, the parties do not believe that there are.

9. Without the Transaction

- 9.1 Confidential detail in relation to the Applicant's counterfactual is provided as Annexure B (Confidential).

10. No horizontal issues

- 10.1 The parties do not believe the Transaction will result in any horizontal issues, including because:

⁶⁷ Vodafone offers consumers SKY services, Freeview, and access to pay per view movies.

- (a) Vodafone does not participate in the wholesale market for the provision of pay-TV services, the market for the provision of production facilities for special events or any markets for the acquisition of premium content to any meaningful extent,⁶⁸
- (b) SKY does not supply fixed-line or mobile phone telecommunication services;
- (c) Vodafone's offering in the retail market for the provision of pay-TV services is largely confined to reselling SKY's pay-TV services as part of Vodafone's wider offering. Vodafone has not engaged in any strategy of genuine competitive pay-TV differentiation from SKY using SKY's services, [REDACTED] (although Vodafone provides a discount for bundles that include SKY services with Vodafone's own products). Rather, Vodafone's focus is on providing a value-add to customers in order to drive broadband sales, in the same way that its major competitors do (albeit with different value-adds); and
- (d) SKY's participation in the market for the provision of fixed-line broadband services is limited to referring SKY customers to Vodafone, and, in any case, in the three months to 31 March 2016, SKY successfully referred [REDACTED] customers to Vodafone.

10.2 10.1(c) and 10.1(d) are discussed further below.

No horizontal issues in the retail pay-TV services market

- 10.3 Vodafone is a reseller of SKY's services to approximately [REDACTED] customers and retransmits SKY to approximately [REDACTED] customers.⁶⁹
- 10.4 While SKY is willing to provide wholesale access to other third parties on commercial terms, Vodafone is currently the only telecommunications provider which resells SKY.⁷⁰ Spark previously resold SKY services. However, in February 2014, Spark announced its decision not to continue as a reseller of SKY's products,⁷¹ and to launch its own OTT pay-TV service (Lightbox) instead.⁷²
- 10.5 Although Vodafone and SKY both operate at the retail functional level of the market for pay-TV services, Vodafone does not provide a competitive constraint on SKY's pay-TV offerings at the retail level. Under the reseller arrangement, [REDACTED]

REDACTED

⁶⁸ [REDACTED]

REDACTED

].

⁶⁹ FY2015 figures.

⁷⁰ Although SKY has an arrangement with 2Degrees that relates to SKY's NEON product, the arrangement is in the nature of a referral arrangement. [REDACTED]

REDACTED

⁷¹ Radio NZ "SKY TV and Telecom end resell deal", 5 February 2014 <http://www.radionz.co.nz/news/business/235288/sky-tv-and-telecom-end-resell-deal>.

⁷² NZ Herald "More choice for viewers as Telecom takes on SKY", 22 February 2014 http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11207551.

].

10.6 The wholesale price [

REDACTED

].⁷³

10.7 The nature of the reseller arrangement reflects the fact that the benefit to Vodafone of reselling SKY services is as a 'value-add' to its wider broadband offering.

10.8 The absence of any competition between the parties is borne out by a comparison of the price at which Vodafone resells SKY packages and SKY's retail price [

REDACTED

].

Figure 2 Comparison of Vodafone and SKY's pricing of SKY services [Confidential]

[

REDACTED

]

10.9 As the graph illustrates, the pricing of the packages is virtually identical and – more to the point – Vodafone's retail price changes at the same time as SKY's retail price changes [

REDACTED

].

The slight lag in Vodafone implementing the 2015 price increase was due to [

REDACTED

]. (Note

that this graph does not include the \$15 bundled discount, equivalent to the MySKY fee, that Vodafone offers consumers in recognition of those customers buying the bundle.)

⁷³ As the Commission is aware, the parties also have a Retransmission Agreement, pursuant to which Vodafone receives SKY content and transmits that to customers who utilise a Vodafone STB. [

REDACTED

].

10.10 In addition, if there was practical scope for resellers such as Vodafone to impose a constraint on SKY's pay-TV pricing, then we would expect other firms to have taken up the option to wholesale in response to such an opportunity. That they have not is consistent with the view that resellers such as Vodafone resell SKY services not as a 'pay-TV operator', but rather as a telecommunications retailer looking to increase the value of its offering *vis a vis those of competing telecommunications retailers*, and also to reduce customer churn. Accordingly, Vodafone's pricing for its Vodafone/SKY bundle reflects competition in telecommunication markets where bundled offers are commonplace.

10.11 In addition, as set out in section 11, in the factual, the Combined Group will still be strongly incentivised to:

- (a) sell SKY services on an unbundled basis to customers at prices that reflect the level of demand for SKY services; and
- (b) continue to offer wholesale access to SKY services, which third parties will take up if they consider there is value in doing so.

10.12 Having regard to the above factors, the Transaction will not result in any lessening of competition in the retail market for the provision of pay-TV services.

No horizontal issues in the market for the provision of fixed-line broadband services

10.13 As noted above, SKY and Vodafone have a referral arrangement under which SKY refers customers to Vodafone for Vodafone residential fixed-line broadband services. SKY and Vodafone entered into the referral arrangement on 30 June 2015. Under this arrangement, SKY, with the customer's consent, can refer a SKY customer to Vodafone. The customer then engages with Vodafone, and decides whether or not to enter into a contract with Vodafone. If the SKY customer does decide to enter into a contract with Vodafone, the customer receives a discount off their SKY bill for as long as the customer continues to purchase services from both SKY and Vodafone. [

REDACTED

]. Importantly, the customer's contract for the provision of fixed-line broadband services is with Vodafone alone, and not SKY.

10.14 Accordingly, the parties do not believe that SKY is a supplier of fixed-line broadband services, in which case there are no horizontal issues in this market.

10.15 If the Commission takes the alternative view, any aggregation in the factual in the market for the provision of fixed-line broadband services would be *de minimis* at most. The referral arrangement resulted in **[REDACTED]** new customer contracts for Vodafone over the period 1 January 2016 to 31 March 2016. To put this in context, Vodafone activated more than **[REDACTED]** customers in the same period.

10.16 There is therefore no SLC through horizontal aggregation in the market for the provision of fixed-line broadband services.

11. No vertical or conglomerate issues

11.1 In the following sections we set out why:

- (a) the Combined Group does not supply any "must have" inputs to either SKY's or Vodafone's competitors, and hence does not have the *ability* to engage in any foreclosure strategy (even if one assumes (incorrectly) that the SKY services would no longer be available on a wholesale basis);

- (b) the Combined Group does not have the *incentive* to do so in any event; and
- (c) even if it did, an SLC would not result because the high level of competition and ease of entry into the relevant markets would constrain any attempt by the Combined Group to increase price/decrease service levels post any such foreclosure.

11.2 We first recap the fairly settled legal framework within which to assess vertical and conglomerate impacts, and go on to explain the basis for the parties' view that no such issues arise in respect of the Transaction.

No vertical issues

- 11.3 There is arguably a vertical aspect to this transaction, insofar as SKY makes pay-TV services available to third parties to resell. However, the evidence is that SKY services are not 'key inputs' which are needed to compete effectively in telecommunications markets.
- 11.4 In this regard, we refer the Commission to the above discussion of the wide availability of alternative pay-TV services and content generally, and also to the discussion below. In relation to broadband, the discussion below expands on the fact that, of the 80+ suppliers in New Zealand, only Vodafone has opted to include the full suite of SKY services (i.e. including premium sports) in its bundled offer. This is despite wholesale access to SKY services being available to third parties. The only other supplier currently using SKY services to promote the use of its own services in any way is 2Degrees, which has offered NEON discount codes to certain broadband customers.⁷⁴ The NEON package to which the discount codes apply does not include premium sports, and is therefore analogous to Netflix, Lightbox, Apple TV, etc.
- 11.5 Accordingly, because the Combined Group does not supply a key input, a foreclosure strategy to damage Vodafone's competitors and consequently competition more generally is not viable. The absence of any such key input is also central to the assessment of whether there are any conglomerate issues.⁷⁵

No conglomerate issues

- 11.6 So called conglomerate mergers will often facilitate the bundling of products to attract customers.⁷⁶ Bundling generally has a pro-competitive efficiency rationale and raises consumer welfare, e.g., by lowering prices or improving quality by overcoming information failures. The Commission has said:

the effect of conglomerate mergers can often lead to an increase in output if the merged entity takes into account the increased demand for a complementary product when it sets the price of the other product. As such, bundling is often pro-competitive and can lead to lower prices for consumers.⁷⁷

⁷⁴ During the 2015 Rugby World Cup, 2Degrees briefly ran a promotion that included access to FanPass. However, that offer is no longer available. [REDACTED]

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⁷⁵ For completeness, via Outside Broadcasting Limited, SKY provides specialist equipment and facilitates coverage of live events for SKY and other content creators and broadcasters. The incentives to make those production facilities available to others will not change as a result of the Transaction. Moreover, in both the factual and the counterfactual, third parties seeking production capability have the options to invest in production facilities themselves, or source the relevant infrastructure from overseas.

⁷⁶ References to bundling in this application are references to a bundle of products which can otherwise be acquired separately, but which if bought as a bundle can be acquired for a lower overall price.

⁷⁷ Vodafone/TelstraClear at paragraph 420.

11.7 Equally, the Commission has also acknowledged that, in some cases, a competition issue could arise. In *BlueScope Steel / Pacific Steel*, the Commission postulated the potential theory of harm in the following terms:

We have considered whether or not the proposed acquisition would create or increase the ability and incentive of the merged entity to foreclose competitors at different levels in the supply chain by offering bundled discounts or by tying purchases of flat and long steel products together.

In order for such a strategy to be possible and profitable, two factors would have to hold:

- 90.1 that the merged entity has a “must-have” product for which there are few good, cost-effective alternatives;
- 90.2 that tying or bundling the sale of this “must-have” product to a second product, which has substitutes, forecloses a competitor(s) for that second product.

Any losses made by discounting the bundled product would be recouped once producers of the second product are foreclosed (or are rendered less competitively effective). The market power of the merged entity in the second product may thus be enhanced and competition may be lessened.

11.8 In *Vodafone/TelstraClear*, the position was summarised in the following terms:

[Bundling] could raise competition concerns if bundling prevented rivals obtaining sufficient scale to be viable. Alternatively, bundling might take the form of predatory pricing. It would also have to be likely that following any foreclosure, Vodafone would be well positioned to exercise enhanced market power, such as increasing prices, resulting in a substantial lessening of competition.

Bundling may be a concern in this case if the merged entity acquired the *ability* and *incentive* to foreclose its rivals. We note that pro-competitive bundling can also have an exclusionary effect as a result of superior competitive performance. An additional requirement before bundling becomes a concern, therefore, is that foreclosure would need to have the *effect* of substantially lessening competition.⁷⁸

...

The Commission notes that for there to be a substantially lessening of competition as a result of anti-competitive foreclosure via bundling, the conditions of entry would need to be such that an exercise of market power by Vodafone post foreclosure would not attract price disciplining entry or expansion.⁷⁹

11.9 For the reasons set out below, the parties do not believe that the Combined Group would have the ability, or the incentive, to engage in conduct which might harm competitors or competition more generally.

No SLC among providers of broadband or other telecommunication services

11.10 The telecommunications markets are highly competitive, with firms competing on a number of differentiating factors. Notably:

- (a) the Commission’s 2015 Annual Monitoring Report stated that “Mobile pricing continues to be competitive across all bundle sizes”, and that fixed broadband pricing, while more dispersed, was such that a 100GB data and voice bundle can be purchased for \$75 a month, 5% below the OECD average;⁸⁰
- (b) as noted, data caps continue to increase, with unlimited plans becoming increasingly common;
- (c) the intensity of competition has driven innovation in the individual services and bundles offered to consumers, and this dimension of competition is expected to continue;

⁷⁸ At paragraphs 408, 409.

⁷⁹ At paragraph 423.

⁸⁰ Page 5.

- (d) there has been an increasing uptake of fibre via the government-led rollout of UFB (20% as at 1 March, with the Minister noting that uptake should increase following changes to the consenting process for new connections);
- (e) there are some 80+ suppliers of broadband in New Zealand, and the non-discriminatory access terms under the UFB roll-out will ensure the ongoing absence of any barriers to entry; and
- (f) the Combined Group will continue to face strong competition from a number of large, well-resourced competitors, including:
- (i) **Spark**, one of New Zealand's largest listed companies and the largest broadband supplier. In June 2015, Spark reported a mobile market share of 41% (revenue), and a broadband market share of 48% (connections).⁸¹ It has recently announced that it is making Lightbox available at no cost to all of its ≈ 680,000+ residential subscribers. It is also leveraging its nationwide footprint of 1,000+ payphones (which it secured as part of Telecom's separation) to offer over 1,000 free Wi-Fi zones to Spark customers;
 - (ii) **Vocus Communications Ltd**, listed on the ASX with a market cap of close to NZ\$ 4.8 billion. After the merger with M2 Group Ltd, Vocus became the third largest telecommunications company in New Zealand, operating under the leading brands of **CallPlus, Slingshot, Orcon, 2Talk and Flip**. It is also a leading telecommunications provider of data centres, dark fibre and international internet connectivity across Australia, New Zealand, Singapore and America;
 - (iii) NZX-listed **Trustpower** (NZ\$ 2.4 billion market cap), which is leveraging its substantial electricity and gas business to offer aggressively priced broadband to its customer base. In its May 2016 submission to the Commission on the Section 30R Review of the UBA Standard Terms Determination, Trustpower said that, *"Trustpower has grown from [a] small reseller of under 1,000 telecommunications services in 2004 to its current position providing close to 100,000 services to over 50,000 customers. Trustpower provides over 15,000 fibre broadband connections on the Chorus and Ultrafast fibre networks, and over 35,000 XDSL services nationwide."* Trustpower further stated that, *"Trustpower's growth has been largely organic, achieved through its unique ability to bundle telecommunications and energy services, creating unique propositions and a superior service model. We are New Zealand's fourth-largest telco, and potentially the fastest growing."* [Emphasis added];
 - (iv) **2Degrees**, which has a substantial mobile base and, according to recent reports, is considering a trans-Tasman sharemarket listing.⁸² A *Herald* article reports that 2Degrees spokesperson Mat Bolland said 2Degrees was a growth company, and its board was constantly assessing ways in which it could grow even faster.

11.11 The market evidence is that SKY services are not 'must have' inputs for telecommunications retailers in New Zealand.

- (a) Of the 80+ broadband suppliers in New Zealand, all but Vodafone have opted not to resell SKY services.

⁸¹ Commerce Commission Annual Telecommunications Monitoring Report 2015, page 22.

⁸² NZ Herald "2degrees tipped for NZX listing", 3 May 2016.
http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11632629.

- (b) Spark previously exited the SKY reseller arrangement, and has since developed Lightbox. It has also forged a (currently exclusive) arrangement with Spotify, one of the world's leading online music streaming services under which Spark sells bundles of mobile services and the Spotify Premium service.
- (c) CallPlus was previously a reseller of Igloo, however, the Igloo reseller arrangement expired on 1 December 2015 and has not been renewed.⁸³
- (d) 2Degrees has an arrangement with SKY whereby 2Degrees provides discount access codes for SKY's NEON service to certain broadband customers. As previously noted, NEON does not include premium sports, and is therefore much closer to Lightbox, Netflix, Apple TV, etc. in terms of content offered.

11.12 Despite these developments in pay-TV offerings, broadband market shares have remained relatively constant over recent years.

Figure 3 Broadband market shares (by revenue) [Confidential]

[

REDACTED

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Source: IDC New Zealand. NB: in 2016 Vocus acquired M2 (which had in 2015 acquired CallPlus). The Vocus/M2 and Orcon lines reflect CallPlus' acquisition of Orcon in 2014.

11.13 This indicates that pay-TV offerings do not drive substantial changes in broadband share, i.e. pay-TV services, including SKY services, should not be considered "must haves" in order to compete in other markets. If they were, because Vodafone is the only broadband supplier currently reselling the full suite of SKY services, a substantial increase in Vodafone's share would be expected to be observed. However, as Figure 3 shows, that is not the case. (The absence of any rational basis on which to impose a hard tie is discussed at 11.22 below.)

11.14 Indeed, while the parties believe that by aligning incentives and working together they will be able to design more attractive packages and market them more effectively, the [

⁸³ The subscriptions of CallPlus' Igloo customers have been rolling over on a month-to-month basis.

REDACTED

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11.15 More generally, as set out above, there are many content services available if a telecommunications provider considers it desirable to include some form of content offering as part of its wider product mix. In addition to 'TV' services, content offerings could include music/radio services (Spotify, Pandora, Apple Music, etc.) and use of highly trafficked sites such as YouTube. In relation to the latter, some broadband providers overseas have a 'content offering' whereby a customer can nominate a website, and the customer is not charged for any traffic originating from that website. However, the growth in unlimited and high data cap broadband plans means that this is becoming less relevant.

11.16 The wide availability of content services also means that consumers are able to build their own bundles (if they wish), by picking and choosing the content services they want and then acquiring standalone telecommunications services.

11.17 While the issues associated with the use of VPNs in certain situations is acknowledged, the fact remains that some consumers will supplement their own standalone broadband services by building their own content 'bundles' by accessing content services (including live sports) illegally – whether from overseas via VPN or by watching live streams (notwithstanding the clear copyright violation). [

REDACTED

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11.18 In any event, the Combined Group is financially incentivised to continue to allow firms to resell SKY services. The Combined Group will continue to seek the widest possible distribution for its offering. Resellers will simply source content or pay-TV services from other providers if the Combined Group does not wholesale SKY's pay-TV services.

11.19 Naturally, as well as offering the standalone products, the Combined Group will also offer bundled packages of pay-TV and other services as part of its wider efforts to compete for customers – in much the same way as various providers do today in various markets. But that bundling will simply be one of a multitude of means by which the Combined Group will compete for telecommunications (and pay-TV) customers, alongside factors such as price, flexibility, network coverage and speed, customer service, Wi-Fi hotspots (in the case of Spark, which utilises its nationwide network of payphone booths to provide free WiFi to its mobile customers), etc.

11.20 In addition to access to SKY services not being a must have for Vodafone's competitors in New Zealand, the market for the provision of residential fixed-line broadband services is extremely competitive, and expected to become more so (in light of the nature of the open access regime ushered in by the UFB roll-out). Given:

- (a) this high level of existing competition;
- (b) the ease of entry and expansion, whereby fixed network access is simply purchased on regulated terms from Chorus on a variable basis, with other inputs such as interconnection also subject to regulation; and

⁸⁴ Based on revenue.

⁸⁵ Stuff.co.nz "Joseph Parker fight illegally broadcast to more than 100,000 viewers". 22 May 2016. <http://www.stuff.co.nz/sport/other-sports/80250556/joseph-parker-fight-illegally-broadcast-to-more-than-100000-viewers>.

- (c) the fact Vodafone has only a 29% share of residential broadband connections,⁸⁶ and faces in particular a much larger and well-resourced competitor in Spark,

even if a foreclosure strategy were viable (which it isn't) there is no scope for the Combined Group to force competitors below a minimum viable scale and preclude others from re-entering and/or re-expanding. Consequently, there is no scope for the Combined Group to increase prices/reduce service levels such that competition could be said to be substantially lessened for Commerce Act purposes.

11.21 As noted above, 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. For instance, the parties envisage that over time they will be able to offer pay-TV subscribers the ability to seamlessly move between delivery technologies and viewing devices, e.g. start watching a show on their television via UFB and then pick up where they left off on another device, e.g. their mobile phone via WiFi or the user's mobile network. To that extent, the mobile market is relevant in the sense that over time new technologies are likely to see more pay-TV content delivered over such networks – be that content served up by Netflix, TVNZ OnDemand, SKY or others.

11.22 Finally, for completeness, in order to meet consumer demand, the Combined Group will continue to offer SKY services and Vodafone telecommunication services separately. To do otherwise would give rise to a substantial consumer backlash / loss of goodwill with ongoing financial ramifications. More generally, it would not make commercial sense for the Combined Group to try and force such an outcome given:

- (a) there is no basis to assume an increase in overall broadband customers would be achieved; and
- (b) such an approach would likely cause a material loss of higher margin pay-TV customers (especially relevant given the high fixed cost component of each broadband connection, i.e. the Chorus/LFC charge).

11.23 In short, in the Commerce Act context:

- (a) there is no basis upon which to conclude there is any likelihood that:
 - (i) the Combined Group would cease to offer content to resellers and require all SKY customers to use Vodafone telecommunications; or
 - (ii) the Combined Group's bundles would harm competition in a market; and
- (b) even if there was (which is denied), there is no basis to conclude that the Combined Group could then increase price/drop service levels in what are highly competitive markets such that an SLC was likely.

12. No SLC among pay-TV providers

12.1 Similarly, competition among the increasing number of other pay-TV providers will be unaffected by the Transaction.

⁸⁶ Commerce Commission Annual Telecommunications Monitoring Report 2015, page 22.

- 12.2 Competition in this market is not contingent on Vodafone (with 29% broadband share) remaining as an 'independent' broadband player. This is even more so in the current UFB environment, where the barriers to entry are especially low (evidenced by the presence of some 80+ broadband providers in New Zealand). Netflix, Apple TV, Lightbox and the other OTT providers are all effectively servicing customers who access those services using a multitude of broadband providers.
- 12.3 Finally, the lack of potential foreclosure is also entirely consistent with the view of each party that the Transaction is [**REDACTED**] resulting from customers choosing to avail themselves of a more attractive product set.

13. **Entry and expansion**

- 13.1 Please refer to the discussion in the sections above.

14. **Countervailing power**

- 14.1 As set out above, the Combined Group will face strong competition in pay-TV and telecommunications markets.
- 14.2 In addition, content creators will have countervailing power over the Combined Group. Content creators have a number of ways to deliver their content to consumers, and, as previously outlined, are increasingly choosing to deliver their content to consumers by means other than through traditional broadcasters. In addition:
- (a) content creators, particularly the large studios, entities such as Netflix, and many sports bodies and organisations (such as the [**REDACTED**]), each produce enough content for any one of them to sponsor new entry into the retail provision of pay-TV services and the wholesale provision of pay-TV services; and
 - (b) content creators are able to deliver their content to consumers using IPTV.
- 14.3 New entry into the relevant markets, and the development of services such as YouTube, have resulted in consumers showing an increasing elasticity of demand for pay-TV products. Consumers can choose to consume video content from an increasing number of different pay-TV providers, forcing the suppliers of pay-TV offerings to more closely tailor their offerings to different consumer preferences. [

REDACTED

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15. **No coordinated effects**

- 15.1 The relevant markets do not currently exhibit signs of tacit collusion. The Transaction will not change any of the factors which have led to that outcome.
- 15.2 More particularly, the products/services sold in the relevant markets are far from homogenous. Rather, they are varied, sold on an unbundled basis and bundled basis, at varying price points, and with various add-ons and promotions.

Part F: Confidentiality

16. Reasons for seeking confidentiality

- 16.1 Confidentiality is sought in respect of the information in this application that is highlighted and contained within square brackets (the **Confidential Information**). Annexures A, B and D are confidential in their entirety.
- 16.2 Confidentiality is sought for the Confidential Information for the purposes of section 9(2)(b) of the Official Information Act 1982 on the following grounds:
- (a) the Confidential Information is commercially sensitive and valuable information which is confidential to either, or both, of the parties; and
 - (b) disclosure of the Confidential Information would be likely to prejudice unreasonably the commercial position of the parties.
- 16.3 The Applicant requests that it is notified if the Commission receives any request under the Official Information Act 1982 for the release of any part of the Confidential Information, and that the Commission seek and consider its views as to whether the Confidential Information remains confidential and commercially sensitive before it responds to such requests.

Part G: Declaration

I, Jason Hollingworth, 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 the 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:

Jason Hollingworth

Chief Financial Officer, Sky Network Television Limited

Sign: _____

Date: _____

Annexure A: Sale and Purchase Agreement (Confidential)

[REDACTED]

Annexure B: Counterfactual (Confidential)

[REDACTED]

Annexure C: Contact Details for Industry Participants

Providers of TV services

Provider	Contact Name	Contact details
TVNZ	Brent McNulty (General Counsel & Corporate Affairs Director)	[REDACTED]
MediaWorks	Alex Nicholson (Corporate Counsel)	[REDACTED]
Netflix	Quigg Partners (registered office)	[REDACTED]
Lightbox	Sasha Daniels (Spark Senior Counsel Competition and Regulation)	[REDACTED]

Telecommunications

Operator	Contact Name	Contact details
Spark	John Wesley-Smith (GM Regulatory Affairs)	[REDACTED]
Vocus NZ	Graeme Walmsley (GM Commercial and Regulatory)	[REDACTED]
2Degrees	Paul Mathewson (Director of Legal & Business Development)	[REDACTED]
Trustpower	Peter Gregory (Business Manager – Trustpower)	[REDACTED]
Compass Communications	Karim Hussona (Group CEO)	[REDACTED]

Annexure D: Breakdown of SKY subscriber numbers (Confidential)

[REDACTED]

Annexure E Glossary

Defined Term	Definition
2degrees	Two Degrees Mobile Limited
2G	Second generation mobile telecommunications technology which uses digital (rather than analogue) transmissions and provides the capabilities defined by a standard developed by the European Telecommunications Standards Institute enabling voice calls, short message service (SMS) and other limited data services
3G	Third generation mobile telecommunications technology which provides the capabilities defined by the International Telecommunications Union in the International Mobile Telecommunications – 2000 specifications including better bandwidth and increased speed than 2G, enabling the use of global positioning system (GPS) services, mobile television and video calling
4G	Fourth generation mobile telecommunications technology which provides the capabilities defined by the International Telecommunications Union in the International Mobile Telecommunications Advanced Standard, including significantly faster (broadband-like) internet speeds than 3G enabling faster web access, downloads and streaming services
5G	Fifth generation mobile telecommunications technology which is the next major phase of mobile telecommunications standards beyond the current 4G, the standards of which are currently not defined
ADSL	Asymmetric Digital Subscriber Line
HFC Network	The Vodafone NZ owned and operated Hybrid Fibre Coaxial network in Christchurch, Wellington and the Kapiti Coast
ISP	Internet Service Provider
Mbps	Megabits per second
OTT	"Over The Top" which describes a service that provides content over the internet, usually without needing an arrangement with a local telecommunications company and without needing

	to use a set top box
STB	Set Top Box
Spectrum	Radio frequency over which a wireless communication signal is transmitted and which is used by telecommunications service operators to provide mobile wireless networks
SVOD	Subscription Video on Demand
TVOD	Transactional Video on Demand
UFB	Ultra Fast Broadband
VDSL	Very-high-bit-rate Digital Subscriber Line
VOD	general Video On Demand