

**NEP Broadcast Services New Zealand  
Limited**

**Sky Network Television Limited**

**Notice seeking clearance for NEP to acquire the assets  
of Outside Broadcasting Limited**

**Public version**

September 2020



## **CONTENTS**

<b>COMMERCE ACT 1986: BUSINESS ACQUISITION</b>	<b>3</b>
<b>SECTION 66: NOTICE SEEKING CLEARANCE</b>	<b>3</b>
<b>PART 1: APPLICANT</b>	<b>4</b>
Applicant for clearance	4
<b>PART 1A: SUMMARY</b>	<b>4</b>
Commercial context and rationale	5
Why now?	5
No SLC	6
Transaction benefits	8
<b>PART 2: TRANSACTION OVERVIEW</b>	<b>9</b>
The proposed transaction	9
NEP Group	9
NEP New Zealand	10
Sky	10
<b>PART 3: CONTEXT AND COMMERCIAL RATIONALE</b>	<b>11</b>
Sky's commercial decision to "de-verticalise"	11
Recent new entry	13
NEP's rationale	14
Precedent	14
<b>PART 4: FACTUAL AND COUNTERFACTUAL</b>	<b>14</b>
Factual	14
Counterfactual	16
Legal comment on the Commission's Guidelines	16
Difference between factual and counterfactual	17
<b>PART 5: NO SLC</b>	<b>18</b>
Relevant market of overlap	18
Appropriate timeframe for analysing the outside broadcasting services market	21
Efficiencies from the proposed transaction	22
Competition in the outside broadcasting market	25
<b>CLEARANCE CONCLUSION</b>	<b>34</b>

## **COMMERCE ACT 1986: BUSINESS ACQUISITION**

### **SECTION 66: NOTICE SEEKING CLEARANCE**

The Registrar  
Mergers and Acquisitions  
Commerce Commission  
PO Box 2351  
WELLINGTON

In this document, NEP gives notice that it seeks clearance of a proposed business acquisition under s66(1) of the Commerce Act 1986.

## **PART 1: APPLICANT**

### **Applicant for clearance**

- 1 This notice is given by NEP Broadcast Services New Zealand Limited (**NEP**). Sky Network Television Limited (**Sky**) supports this application.

### **Sky**

10 Panorama Road  
Mount Wellington  
Auckland

### **NEP**

60 Stanley Street  
Parnell  
Auckland

- 2 All correspondence should be directed in the first instance to both:

### **Counsel for Sky**

Matt Sumpter (matt.sumpter@chapmantripp.com)  
Chapman Tripp  
Level 34, PwC Tower  
15 Customs Street West  
Auckland

### **Counsel for NEP**

Dr Mark Berry, Barrister (mark.berry@mblaw.co.nz) and Stephen Lowe  
(stephen.lowe@wynnwilliams.co.nz)  
Wynn Williams  
Level 25, 48 Shortland Street  
Auckland

## **PART 1A: SUMMARY**

3 This transaction involves outside broadcasting “units”, which are trucks containing cameras and equipment used to film live events. NEP seeks clearance to acquire Sky’s six aging trucks for \$[ ]m. Sky supports this application.

4 Those six trucks are all equipped with old “HD” camera technology. And [ ]. The [ ].

### **Commercial context and rationale**

5 Sky has decided to exit the business that its subsidiary, Outside Broadcasting Limited (OSB), conducted with those six trucks (“outside technical production services”).

6 Sky used OSB to film its own live sport events. That vertical integration has helped Sky acquire New Zealand sports rights in recent years. But OSB’s strategic value to Sky has faded with global players now offering Sky and its competitors access to high-quality outside technical production services.

7 In the commercial circumstances, Sky has decided to sell its six trucks and buy technical production services from the market. Doing so, in Sky’s judgement, will best enable it to bid for future sports rights under a leaner, more efficient, variable cost-based business model.

8 Sky’s decision also aligns the company with sports broadcasters around the world who all purchase technical production services from third parties. As far as the parties are aware, *SuperSport South Africa* is the world’s only major broadcaster that bucks that trend.

9 Sky’s (exit) decision was, and is, inevitable.

### **Why now?**

10 OSB’s trucks require [ ] of capital investment to match the quality of outside technical production services that global players have in, and will continue to bring to, New Zealand.

11 Sky cannot justify [ ] that significant capital investment in the context we give above and amidst extensive competition it faces in other areas of its business from Netflix, Amazon and the like.

12 NEP, on the other hand, can make that investment with its significant global resources. It seeks to purchase the six trucks now for that reason, while also supporting that investment by securing Sky’s committed volumes under the long-term services agreement.

**No SLC**

- 13 Absent this merger, []. [].
- 14 Against that reality:
- 14.1 there is no difference between the factual and counterfactual when Sky's []; and
- 14.2 there is no substantial difference between the factual and counterfactual between now and [], because over that period:
- (a) Sky would need to []; and
- (b) that reality would virtually extinguish any *limited* potential competition between OSB and NEP.
- 15 On these facts alone, this merger does not substantially lessen competition.
- 16 Moreover, the market in question here – that for outside technical production services in New Zealand – will remain competitive regardless of the transaction.
- 17 The market consists of companies that have the technology, and incentive, to film customers' live events to their required specifications. That said, we note that the precise boundaries to this product market are unclear. To adopt a market for outside technical production would be the market at its narrowest delineation. Recent experience is that market participants face direct competition from entities in the wider technical production sector. We point to, for instance, UK-based Whisper winning the rights to provide Spark with technical production services, including outside broadcasting, for domestic cricket for the next six seasons.
- 18 The options available to customers in that market depend on: (a) the camera specs they require; (b) the size of their event; and/or (c) the willingness of any vertically integrated supplier (i.e., Sky/OSB) to service them.
- 19 It follows that the merger has no effect on:
- 19.1 customers that want 4K cameras – being the latest and future of broadcasting quality – because OSB's six trucks are HD-only and [];
- 19.2 customers that want to film large-scale one-off events because [] (this application refers to those large events as "one-off internationally significant events"); and
- 19.3 customers like Spark Sport, for instance, who compete with Sky for New Zealand sports rights because OSB is not incentivised to provide competitive

outside technical production services to them (this application refers to those events as "local sporting events").

- 20 Furthermore, "one-off internationally significant events" and, increasingly, "local sporting events" are produced by large multinational production companies, like Sunset + Vine, IMG and Whisper. Those companies use their global resources and considerable countervailing power to bring high quality outside technical production services to New Zealand. Gravity Media's market entry to service Spark Sport's domestic cricket rights with Whisper demonstrates that dynamic. Circle-o's upcoming America's Cup broadcast is another such example.
- 21 That leaves a very small subset of the market that could plausibly be affected by the merger: the broadcast of non-local sporting events in HD (or less). This application refers to that subset as "third party events".
- 22 For context, we note that the number of "third party events" will decline as 4K grows in New Zealand. Indeed, the parties anticipate that New Zealand's major local sports will be 4K within the next two years or so, with that technology also available to third parties.
- 23 Meanwhile the shrinking subset of "third party events" will continue to have competitive options in:
- 23.1 Gravity Media, Circle-o productions and other potential global entrants like Zoom, Euro Media Group and Telegenic;
- 23.2 local outside broadcasting truck providers like:
- (a) Images New Zealand (which was recently selected to film TVNZ's *Dancing with the Stars*);
  - (b) Whitebait Media;
  - (c) Kiwi Outside Broadcast;
  - (d) Multicam Television;
  - (e) TAB New Zealand;
  - (f) Volt Media; and
  - (g) ShowVision.
- 23.3 local IP camera providers like *iFilm*, *Kinetic Media* and a range of others; and

23.4 the ability for new entrants – including large customers like TVNZ and Discovery-owned MediaWorks – to service the “third party events” market subset.

**Transaction benefits**

- 24 In addition to the lack of competitive effects, the transaction will positively benefit the market by allowing NEP to use its global scale to efficiently upgrade the six OSB trucks and bring the best broadcasting technology to New Zealand.
- 25 In the result, the transaction will not lessen competition and ought to be granted Commerce Act clearance.
- 26 We expand below.



## PART 2: TRANSACTION OVERVIEW

### The proposed transaction

- 27 Sky wishes to sell, and NEP wants to buy the assets of Sky's outside broadcasting business, Outside Broadcasting Limited (OSB) (the **proposed transaction**).
- 28 The main assets in the proposed transaction are OSB's six outside broadcasting trucks that each contain ~10-12 HD cameras.
- 29 NEP will pay Sky around NZD [] for the OSB assets, a figure based on the age and condition of those trucks and associated equipment.<sup>1</sup>
- 30 The proposed transaction is subject to receiving clearance from the Commerce Commission (**Commission**). (The OIO granted approval on 1 September 2020).
- 31 On completion of the proposed acquisition, Sky and NEP have agreed to enter into a 10-year non-exclusive supply agreement. We describe the agreement's key terms and commercial rationale later in this application. The parties do not seek clearance for that agreement.
- 32 **Schedule A** contains the non-binding heads of agreement which was superseded by the signed SPA and supply agreement which are attached at **Schedules B** and **C**.
- 33 **Schedule D** contains internal documents Sky considers relevant to the proposed transaction. **Schedule E** contains Sky's responses to the pre-filing information request issued by Commission staff. **Schedule F** provides NEP's response to the Commission staff's pre-filing information request.

### NEP Group

- 34 NEP is the world's largest global technical production company. It is based in Pittsburgh and employs 4,000 plus staff in 110 offices in 24 countries, including New Zealand. It has over 30 years' experience in the industry.
- 35 NEP facilitates the outside broadcast of live events in over 80 countries with notable recent jobs including: Olympics 2020 (now scheduled for 2021); Wimbledon; Commonwealth Games 2018; World Rally Championship; Cricket World Cup 2019; Rugby World Cup 2019; NFL; English Premier League; The Oscars; the Grammy Awards; Eurovision; *Strictly Come Dancing* and *Love Island*.

---

<sup>1</sup> That figure may be adjusted before completion date to reflect any changes to the OSB business before completion date, including unpaid employee entitlements that are accrued, replacement cost of any damaged items and incomings and outgoings.

- 36 By way of example, NEP, Sunset + Vine (a global production company) and Sky Sports UK were awarded the UK's Best Sports Programme for the Cricket World Cup Final 2019.<sup>2</sup> For that event:
- 36.1 NEP provided engineering and technical expertise, including 360° replays, stump camera, ultra-slo-mo and other specialty cameras;
- 36.2 Sunset + Vine provided overlaying creative production services including Hot Spot, Snickometer and Hawk-Eye; and
- 36.3 Sky Sports UK was awarded the right to air the event across UK television and digital streaming applications.<sup>3</sup>
- 37 NEP Group's global turnover was around USD \$1bn in 2019.

### **NEP New Zealand**

- 38 NEP based itself within the New Zealand market in 2018 when it acquired NZ Live,<sup>4</sup> a small local outside broadcasting and production company responsible for delivering vision via a multi-channel play-out facility<sup>5</sup> for TAB New Zealand and providing outside broadcasting and studio services for entertainment shows and other events for the likes of TVNZ and MediaWorks. (We note that the TAB contract does not involve NEP filming New Zealand racing, given that TAB New Zealand own their own outside broadcasting equipment).
- 39 Through that acquisition, NEP also secured one full-size HD outside broadcasting unit and one smaller HD unit.<sup>6</sup> Only [] of NEP's New Zealand revenues are earned from those technical production assets in the field and in-studio.
- 40 NEP's purchase of NZ Live was not its first foray into New Zealand. NEP provided technical production facilities for the outside broadcast of the 2015 Cricket World Cup jointly hosted in Australia and New Zealand. For that event, NEP shipped technical outside broadcasting equipment into the country.

### **Sky**

- 41 Sky is a New Zealand entertainment company that airs live sport, movies, shows and documentaries on television and digital streaming channels/apps. Well known

---

<sup>2</sup> <https://www.nepgroup.sg/post/icc-cricket-world-cup-final-2019-wins-big>.

<sup>3</sup> Sky Sport aired the 2019 event in New Zealand.

<sup>4</sup> <https://www.stuff.co.nz/business/industries/103681805/us-firm-could-produce-nz-rugby-matches-in-australia-but-says-thats-not-its-plan>

<sup>5</sup> Multi-channel playout facilities provide for broadcasts to be played across multiple platforms.

<sup>6</sup> A converted Mercedes Sprinter van/truck.

Sky brands include *Sky*, *Neon*, *Sky Sport*, sport streaming service *Sky Sport Now* and free-to-air channel *Prime*.

- 42 Sky purchases the rights to entertainment shows, movies and documentaries from various local and international studios. Similarly, Sky buys the right to show live feeds of overseas sporting events from a range of international sporting bodies – such as the last two Cricket World Cups, mentioned above. Those live feeds are typically filmed by a third-party outside broadcasting provider like NEP.
- 43 However, for *local* sport, Sky currently films and produces events using its outside broadcasting division, OSB, and in-house production team, and then airs that content to consumers as part of Sky’s “full package of rights” with sporting bodies.<sup>7</sup>
- 44 Sky has operated that vertically integrated model for local sport since it acquired OSB to produce outside broadcasts for the 2011 Rugby World Cup. That investment ensured New Zealand had an outside broadcasting company capable of filming the country’s largest ever sporting event: 48 international rugby matches over 45 days.
- 45 In addition, when it has capacity, Sky uses OSB to produce outside broadcasts for third-parties’ live events. Typically those events are entertainment shows, like the finale of *The Block*, corporate galas or independent sports like mountain biking. Sky has also provided services to NEP where NEP did not have the resources to serve its own customers (e.g. the 2018 Commonwealth Games in Australia). Given Sky’s vertically integrated business model, it has not filmed sports events for local sport right competitors like Spark Sport.

### **PART 3: CONTEXT AND COMMERCIAL RATIONALE**

#### **Sky’s commercial decision to “de-verticalise”**

- 46 Sky’s primary purpose for buying OSB was to showcase New Zealand’s 2011 Rugby World Cup to the world. Sky achieved that with fantastic success.
- 47 That acquisition, as it turned out, had a secondary “strategic” advantage of vertically integrating Sky’s business, helping it acquire sports rights after the 2011 RWC.
- 48 Sky’s natural business plan from that point forward was to keep OSB running for as long as it remained a strategic asset for acquiring local New Zealand sports rights.
- 49 That plan was kept in motion until about 2018 when NEP and other global outside technical production companies began to expand into New Zealand.

---

<sup>7</sup> See [149] for more detail.

- 50 Their arrival offered Sky and its competitors access to high-quality outside technical production services which, in turn, extinguished any material competitive advantage Sky had through its vertically-integrated OSB business.
- 51 Faced with that reality, Sky's future involves either establishing itself as a modern-day outside broadcasting company, or buying those services from the market to ensure that it's positioned to offer local New Zealand sports coverage to consumers in the years ahead.
- 52 [].
- 53 Instead, Sky will sell OSB to NEP and contract back NEP's outside broadcasting services under a long-term supply agreement. The immediate net savings and higher quality services available from that decision will benefit Sky, other industry players and New Zealand as a whole.
- 54 Outside broadcasting is a rapidly changing business dependent on capital intensive, high-fixed cost investments to meet the market's latest technological demands.
- 55 In the early to mid-2000s standard definition technology was the norm. Things shifted to HD technology in the mid-to-late 2000s and now the market expects 4K (4X HD) quality broadcasts shot from Spidercams, ultra slomo and other high tech cameras. Next the market will seek 8K quality filmed from the latest iteration of innovative cameras, and so on.
- 56 Such is that rate of technological change that outside broadcasting is now a specialist art in-and-of itself. The need for outside broadcasters to be nimble has seen NEP become a global leader through its worldwide network of specialist technicians, global production "hubs", flyway kits, and incentive to quickly adapt and innovate to meet the global market's needs.
- 57 An excellent example of NEP's network effects was its production of the 2019 IAAF World Relays in Japan. That live two-day athletics event was filmed on-location by 17 cameras, with the footage instantaneously sent to NEP's Sydney office for production using Telstra's Distributed Production Network. It was the world's first live remote production sporting event.<sup>8</sup> In a similar show of innovation, it was over five years ago that NEP first facilitated the broadcast of live cricket in 4K;<sup>9</sup> a feat that Sky cannot match with OSB's existing HD technology.

---

<sup>8</sup> <https://www.nepgroup.com/post/nep-delivers-sports-broadcasting-milestone-with-remote-production-of-itn-coverage-of-iaaf-world-relays-2019-in-yokohama-japan-from-nep-andrews-hub-in-sydney> and <https://www.telstraglobal.com/insights/news/newsitem/telstra-delivers-sports-broadcasting-milestone-at-world-relay-championships>.

<sup>9</sup> <https://www.nepgroup.com/post/nep-australia-and-bt-first-cricket-broadcast>

58 By contrast, Sky is not an outside broadcasting company equipped for the current digital age or beyond. OSB's core assets – comprising six production trucks and cameras – are all HD and [

- ]

59 The age of Sky's outside broadcasting assets reflect its historical purchase of OSB to secure the rights to the nationally significant Rugby World Cup 2011.

60 If Sky was to transform itself into a specialised outside broadcasting company then that investment would need to have been made yesterday, as there's a 12-month plus lag to order and build the necessary equipment.

61 []. Moreover, and as is well documented, Sky's core entertainment business has faced significant disruption from Netflix, Amazon and other global tech giants.

62 It is against that changed landscape that the [] upfront capital investment Sky needs to make in OSB is [].<sup>10</sup>

63 The proposed transaction is a critical step in Sky's future to ensure that it has access to high-quality outside broadcasting services to retain its place as New Zealand's "home of sport" for years to come.

#### **Recent new entry**

64 The changing landscape that underpinned Sky's commercial decision is exemplified by Gravity Media's entry into the market.

65 Spark Sport issued an RFP for production (creative) and outside broadcast services following its successful bid to secure the broadcast rights for NZ Cricket's domestic matches over the next six years. Spark claim that "seven of the world's largest production companies" responded to that RFP,<sup>11</sup> including, we understand, [].

66 Whisper won the contract to deliver the finished on-air product to be streamed by Spark. Whisper is a UK-based production company and like many creative production companies does not own the technical production infrastructure for an outside broadcast. Whisper put out a tender for outside broadcast services for the NZ Cricket contract and that work was won by Gravity Media (which is based in Australia, UK, USA, France, Germany and Qatar).<sup>12</sup>

---

<sup>10</sup> Sky's internal documents outlining this required investment are provided on a confidential basis in **Schedule D**.

<sup>11</sup> [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=12350679](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12350679)

<sup>12</sup> <https://www.gravitymedia.com/our-locations/>.

### **NEP's rationale**

67 NEP enters the proposed transaction for the reasons set out in paragraphs [129]-[132] below.

### **Precedent**

68 As far as the parties are aware, there has never been a clearance application before the Commission involving the sale of a company's vertically integrated business unit to a "competing" upstream buyer, only for the seller to still require that upstream service as a customer in the "affected" market.

69 We think the lack of precedent reflects that, in those very unique circumstances, a seller's business decision will be the most efficient for the market as a whole. We say that given it is of course the seller that is subjecting itself to any potential competitive effects from the proposed transaction.

## **PART 4: FACTUAL AND COUNTERFACTUAL**

### **Factual**

70 Post-acquisition, NEP will merge the OSB assets (being predominantly the six aged OSB units) into NEP's global business model.

71 NEP and Sky will also enter into a non-exclusive 10-year supply agreement for outside broadcasting services. That supply agreement ensures NEP secures the volumes from Sky needed to make its capital investment commercially viable. And, on the flip-side, ensures that Sky has a first class outside broadcasting option available to it on a variable cost basis for the foreseeable future.

72 In the short (1 year) to medium (5 years) term NEP will place orders with manufacturers to upgrade those OSB assets to ensure that New Zealand has access to market-leading technical production services. That revamp will include retrofitting OSB's old assets and investing in overseas equipment that can be brought into New Zealand.

73 Those upgrades will ensure NEP meets Best Industry Practice, as defined in the parties' 10-year supply agreement. In doing so, NEP will:

73.1 ensure that, at a minimum, NEP's outside broadcasting units are capable of filming in 4K quality;

73.2 invest in technology throughout the 10-year term to maintain its position as a global leader in outside broadcasting services;

- 73.3 provide outside broadcasting services in a professional manner and with the level of care and skill expected of a professional organisation providing similar services; and
- 73.4 hire personnel who have the suitable skills, qualifications and experience to provide outside broadcasting services to the level required under the 10-year supply agreement.<sup>13</sup>
- 74 Independently, NEP will provide vocational training for new NEP staff into the television production industry and up-skilling for local industry personnel, to ensure it continues to meet the supply agreement's performance standards. NEP Australia employs a full-time head to co-ordinate all in-house training activities and that person would extend these training initiatives to New Zealand. In addition, NEP Group provides on-line training courses via NEP University to all its employees worldwide.
- 75 Moreover, the non-exclusivity of the Sky/NEP agreement, means that NEP's market-leading investments will benefit the entire market and not just Sky. The key terms that manage the NEP/Sky relationship are that:
- 75.1 NEP will be Sky's exclusive outside broadcasting provider of "tier 1" events – being those events that require six or more cameras;<sup>14</sup>
- 75.2 NEP's pricing to Sky will be determined by the price list attached to the supply agreement which is subject to annual CPI adjustments; and
- 75.3 NEP will not be restricted from providing outside broadcasting services to any third party, including, for instance, TVNZ and Spark Sport (and as an important aside, NEP expects to have the capacity to meet that third party demand).
- 76 Sky will only engage NEP's services under the supply agreement if it secures ground access rights to an event. If, for example, TVNZ and/or Spark win the rights to a particular sport, then they are free to use NEP's services, just as they are free to use Gravity Media or other OB service providers.
- 77 Ensuring and facilitating robust competition in the downstream sports rights market is key to NEP's business model. The more competition there is for sports rights, the more money sporting bodies will have to expand their game; in turn, increasing demand for NEP's outside broadcasting services. For example, in winning New

---

<sup>13</sup> With Sky's view being that those personnel most suitable are OSB's existing staff.

<sup>14</sup> In contrast, Sky will have the freedom to use any broadcasting company it likes for events that require 5 or fewer cameras.

Zealand Rugby and SANZAAR rights for the next five years, Sky has committed to growing New Zealand rugby by broadcasting more competitions such as the *Farah Palmer Cup*, New Zealand's premiere women's rugby competition.<sup>15</sup>

78 Similarly, when Spark Sport won the New Zealand Cricket rights, NZC noted that the Spark/TVNZ partnership will mean "more cricket games than ever before will be broadcast live".<sup>16</sup> And, naturally, more cricket matches increases the demand for outside broadcasting companies. Indeed, Gravity Media has jumped on that opportunity and entered New Zealand as Whisper's partner to broadcast Spark Sports' six-year NZC rights.

### **Counterfactual**

79 If the Commission declined the proposed transaction, Sky would have to [ ].

80 In the counterfactual Sky would look to [ ].

81 The uncertainty of [ ]. That's because, without Sky's volume commitments contained in the 10-year supply agreement, NEP would not risk those assets being underutilised for a period of time. Instead, NEP would incrementally invest in outside broadcasting services [ ]. Investing in that way would be more costly to NEP than the factual, as it would forgo discounts from bulk purchasing outside broadcasting equipment.

82 As a result, in the short (1 year) to medium (5 years) term,<sup>17</sup> [ ]. All the while, NEP's, Gravity Media's and other OB providers' services will be available to third-party buyers of outside broadcasting services on an unencumbered basis.

### **Legal comment on the Commission's Guidelines**

83 Sky notes that OSB's counterfactual [ ].

84 While [ ].<sup>18</sup>

85 Those guidelines (which are, of course, just guidance<sup>19</sup>) are drafted for situations where [ ]. The guidelines ask, for instance, whether [ ]. Counterfactual analysis does not require that all these [ ] need to be made. The comparative question posed by

---

<sup>15</sup> [https://www.sky.co.nz/-/mk\\_pressrelease\\_141019](https://www.sky.co.nz/-/mk_pressrelease_141019).

<sup>16</sup> <https://www.sparknz.co.nz/news/Spark-expands-sport-offering-securing-New-Zealand-Cricket-rights/>

<sup>17</sup> Those timeframes [ ].

<sup>18</sup> Commerce Commission *Merger and Acquisition Guidelines*, [ ].

<sup>19</sup> [ ].



the counterfactual test focuses upon an inquiry into what will likely happen without the merger.

86 The critical question for this line of inquiry is simply whether, on the facts, the [].

87 That said, the parties are conscious that framing the counterfactual around the Commission's published guidelines risks wrongly focusing on [] and not the most likely future scenario for the OSB assets.

88 While [],<sup>20</sup> without this transaction Sky will be forced to []. Sky has not identified any other *out-of-market* third party buyer more suitable than NEP to serve the market's needs.<sup>21</sup> Nor does Sky see there being any realistic prospect of [], as explained above.

89 Moreover, even if an "alternative" buyer was to come forward after this clearance application is filed, it is hard to imagine another company being in a better position than NEP to upgrade OSB's aging assets for the benefit of the market and competition.<sup>22</sup> NEP is the global leader in technical production and in order to meet the Best Industry Practice obligations must upgrade the OSB assets should the transaction proceed.

90 The fact that Sky has decided to sell to NEP and become an outside broadcasting customer demonstrates that Sky believes the proposed transaction is the best market outcome in the current environment. Plainly, if Sky – with its intimate industry knowledge – thought a more competitive counterfactual was available then it would have chosen that path. But there is no better alternative.

#### **Difference between factual and counterfactual**

91 Ultimately, in both the factual and counterfactual, NEP will become a significant supplier of outside broadcasting services in this country.

92 NEP was intent on reaching that position when it acquired NZ Live. NEP recognised that Sky's OSB assets were aging and spotted an opportunity to position itself as a supplier of technical production services to the television industry in New Zealand.

---

<sup>20</sup> [].

<sup>21</sup> Gravity Media is now within the market, so there is nothing to suggest that a counterfactual where Sky sells OSB to Gravity Media (if it were interested) is more competitive than the proposed transaction. Both scenarios are the same; two global broadcasting companies with small footprints in New Zealand buying OSB. [].

<sup>22</sup> On this point, the parties note the Commission's recent decision to allow Cardrona ski field to acquire Wanaka-rival Treble Cone, despite the Commission finding that a sale to an alternative buyer was a "real chance". *Cardrona Alpine Resort Limited and Treble Cone Investments Limited* [2019] NZCC 24, at p8.

In doing so, NEP appreciated that its independence would also assist broadcasters to compete for sport rights, like Spark Sport.<sup>23</sup>

93 So the key difference between the factual and counterfactual is the timing at which NEP takes that position and the relative efficiencies associated with whether that market outcome occurs sooner or later.

94 For the reasons given in Part 5 below, the parties are certain that the difference between the factual and counterfactual will not result in any substantial lessening of competition in any New Zealand market. Indeed, the parties see the deal as plainly procompetitive.

#### **PART 5: NO SLC**

95 In this section, we explain why the proposed transaction will not substantially lessen competition in a New Zealand market.

#### **Relevant market of overlap**

96 NEP and Sky provide a range of technical production services in New Zealand, from filming live sport and entertainment television to full studio production offerings.<sup>24</sup>

97 Here, the proposed transaction involves just Sky's OSB technology (i.e., six aging units containing HD cameras and initial live-feed production technology). And so, for Commerce Act purposes, the particular "market" under review in this application is that for New Zealand outside technical production services. For convenience, this market is sometimes referred to as that for outside broadcasting services in this application.

98 That said, the parties believe that this market definition is artificially narrow, with the precise boundaries unclear. And, in doing so, we reiterate the High Court's view that market definition is just a "tool" where:<sup>25</sup>

*"the parameters of any market as defined are not necessarily determinative of the analysis of competitive constraints on the conduct of participants in that market. Where the market is appropriately defined in narrow terms, constraints from outside the market must still be taken into account if they operate on the state of competition"*

99 The fact is that a broader set of technical production companies compete for sports rights holders' tenders and, if successful, arrange technical production services by

---

<sup>23</sup> <https://www.nbr.co.nz/article/overseas-broadcast-giant-nep-challenges-sky-nz-ms-p-215774>.

<sup>24</sup> For instance, NEP's studios in Parnell offer: a technical grid; sound insulation; concrete floors; air conditioning; a green room; and make-up and wardrobe area.

<sup>25</sup> *NZME Limited v Commerce Commission* [2017] NZHC 3186, at [42]-[43].

using their own assets or contracting with third-parties. We saw that play out with Spark's cricket tender that attracted "seven of the world's largest production companies"<sup>26</sup> and was awarded to UK-based Whisper. Whisper, in turn, brought Gravity Media's *outside* technical production services to New Zealand to fulfil its tendered commitments to Spark. Similarly, only [] of NEP's New Zealand revenues are earned from its *outside* technical production assets, with the majority coming from its broader production facilities that are not subject to the transaction.

100 For convenience and expediency, though, the parties progress this application against the narrow "outside technical production services" market. But we submit, consistent with High Court authority, that nothing should turn on the precise "market definition" boundaries. What is important here is the competitive constraints NEP will face moving forward and how they compare to the counterfactual.

### **Outside technical production services market**

101 The outside technical production services market comprises suppliers and operators of cameras used to film live action events, including (when needed) the initial production of those live feeds in New Zealand.

102 As we expand on in a moment, customers face different options for outside production services depending on:

102.1 the quality (HD, 4K etc.) of broadcast required;

102.2 the size of the event they want broadcast; and/or

102.3 whether Sky wants to compete for broadcasting rights for the event, given Sky's lack of incentive to offer OSB's services where that is the case.

103 The boundaries between those different options are blurred. For instance, someone who originally set out for HD broadcast might switch to 4K if that option were cheaper on a price/quality basis. Similarly, someone might decrease the scale of their event to give themselves different broadcasting options.

104 That reality means that it is not appropriate to define separate customer or more specific product markets, but instead to view the New Zealand outside broadcasting market as one with a range of participants selling differentiated offerings.

### **Outside broadcasting services**

105 On that note, there are several ways to supply outside broadcasting services.

---

<sup>26</sup> [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=12350679](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12350679)

### *Traditional "onsite" broadcasting*

105.1 Outside broadcasting **"units"** are trucks that contain all equipment needed to film a live event, including cameras and control room computers. A typical unit contains 10-12 cameras.

105.2 **"Flyway"** packs are, as the name suggests, smaller units that can be transported by plane, and deploy easily where space is limited for larger outside broadcast trucks/vans. Flyway packs perform **exactly** the same function as an outside broadcast truck/van. They contain all of the equipment required to film an event, but instead of a truck the kit is contained in portable containers. Given that size limitation, one flyway pack usually contains around four to six cameras. Multiple flyway packs can be used for a single event. NEP Group has over 80 fly-pack systems across four continents. OSB has one that's predominantly used to produce outside broadcasts for events in the South Pacific.

### *IP/remote broadcasting*

105.3 **"IP/streaming cameras"** send live feeds via the internet directly to screens or a remote production centre. For instance, in an example we've already given, NEP filmed a recent Tokyo IAAF athletic event using IP cameras that sent the live feed to NEP's production hub in Sydney. On a smaller scale, a range of New Zealand-based streaming companies film live events for streaming via a customer's website, such as *Kinetic* and *iFilm*. The latter was responsible for streaming the *Kathmandu Coast-to-Coast*, the latest *NZNBL* season and *Ford Ranger NZ Rural Games*.<sup>27</sup>

106 "Cameras" is a broad term for a range of devices of different quality and capability. OSB's cameras are all last-generation HD, whereas many of NEP's Australian-based units are equipped with the latest 4K cameras. NEP will bring that level of technology to New Zealand post-transaction in order to comply with its Best Industry Practice obligations in the 10-year supply agreement. In addition, NEP Group has a range of other types of cameras, such as cameras with an ultra-high frame rate for ultra-slow motion footage.

107 The right solution for a customer will depend on their budget and the equipment available to the market's incumbent suppliers. Before NEP's entry, that was limited to OSB and NZ Live's last-generation HD units which date back to the early-to-mid 2010s.

---

<sup>27</sup> <https://livestream.com/i-filmsport>

108 The proposed transaction and market definition does not include the “art” of live event production, which will remain in-house at Sky. That type of production includes the creative element provided by producers, directors and on-air talent, along with the overlaying graphics, scoreboards, camera selections and sound mixing. In addition to Sky, there are multiple other third-party providers of video production services, including global players like Whisper, Sunset + Vine and IMG. In winning the NZC rights, Spark Sport indicated it will use or contract its own production services to “[bring] a fresh look and feel to the coverage of cricket, including an engaging commentary team, world class decision review systems, team and individual analysis and on-screen graphics”.<sup>28</sup> Indeed Spark Sport ended up contracting with Whisper.

### **Appropriate timeframe for analysing the outside broadcasting services market**

109 The parties believe that competition in the outside broadcasting market for one-off internationally significant events and local sporting events (discussed at [142]-[154]) is best looked at over a 5-year time period to reflect:

109.1 that the major New Zealand sports rights are typically granted for 5-6 years,<sup>29</sup> which means that the market, in turn, demands sustainable and high-quality outside broadcasting services for at least that entire period (where, within that period, there will be a contestable bid market for sports broadcast rights);<sup>30</sup>

109.2 the high-fixed cost of outside broadcasting services mean that would-be competitors must build up sufficient scale to service broadcasters’ sporting broadcasts efficiently, just as we’ve observed with Gravity Media’s entry on the back of the NZC cricket rights; and

109.3 the yearlong lead-in time to build equipment and ship it to New Zealand means that local outfits cannot quickly scale up and down, unlike global players with flyway kits.

110 In the case of third-party events (discussed at [155]-[168]), a different timeframe may be used (such as two years) given many of those contracts will be of a more limited duration. So long as one keeps in mind that OSB’s investment decisions are solely linked to serving local sporting events.

---

<sup>28</sup> <https://www.sparknz.co.nz/news/Spark-expands-sport-offering-securing-New-Zealand-Cricket-rights/>

<sup>29</sup> For example, Spark’s existing contract for domestic cricket is six years and Sky’s current SANZAAR contract is for five years.

<sup>30</sup> Schedule G contains a confidential list of major local sports rights and when they expire.

- 111 That all said, the parties consider the proposed transaction to be procompetitive under any assessed timeframe.
- 112 We say that because, from day one, the OSB assets will be in the hands of a company that is significantly better equipped to deal with the market's needs than Sky, [].
- 113 Given that decision:
- 113.1 there is no difference between the factual and counterfactual when Sky's []; and
- 113.2 there is no substantial difference between the factual and counterfactual between now and [], because over that period:
- (a) Sky would need to []; and
  - (b) that reality would virtually extinguish any *limited* potential competition between OSB and NEP.
- (We describe that dynamic in more detail across the following sections).
- 114 Rather, the parties' firm view is that the proposed transaction is procompetitive and will enable the world's leading technical production company to expand in the New Zealand in an expedient fashion, granting it sufficient scale to immediately bring the latest high-quality equipment to the New Zealand market for the benefit of companies competing for sports rights and consumers of live sport content.
- 115 The next section describes those efficiencies. In doing so, the parties do not consider a detailed quantitative analysis is necessary, or efficient, because the proposed transaction will not SLC in any event. The description below is, rather, to support the parties' view that this deal is procompetitive (which is, of course, not required under the Commerce Act clearance regime).

#### **Efficiencies from the proposed transaction**

- 116 As the Commission's merger and acquisition guidelines record, transaction-specific efficiencies in the form of variable cost savings and product enhancements are relevant to the competitive landscape. Indeed, the Commission recognises that:

*"Variable cost savings are relevant because if everything else is equal, the lower a firm's marginal costs – which largely depend on variable cost – the lower the firm's profit-maximising price. Even a monopoly that experiences a decrease in its marginal costs will have an incentive to lower its price ... As a consequence, if a merger reduces a firm's marginal*

*cost, customers may not be materially adversely affected by the merger.*

...

...

*"**Product enhancements** can include things such as product quality improvements, additional product features, and increased network efficiencies. Even where [a] merger results in prices being higher than they would have been, the benefit to customers (as measured by their willingness to pay) from these product enhancements may outweigh the high prices arising from the merger such that demand overall increases compared to the situation without the merger"*

- 117 Here, the proposed transaction will result in both variable cost savings and significant product enhancements to the benefit of the market as a whole.
- 118 Those efficiencies will be felt across the relevant market, including significant sections of it that OSB and NEP do not compete for. For instance, Sky is willing to outsource its own outside broadcasting needs to NEP, knowing that it will receive a higher quality product – including security of supply – compared to a counterfactual where [].

***Variable cost savings***

- 119 NEP has the ability to "variabilise" costs that would be fixed if they were incurred by Sky/OSB, or another local provider. NEP can do that by creating flexibility in its costs by using its global network of production hubs and flyway kits to scale up the existing OSB assets to meet local demand.
- 120 Outsourcing outside broadcast services has been the global trend for over 20 years, as sports broadcasters free up capital and remove under-performing assets from their balance sheet. Unlike broadcasters, companies like NEP can service multiple customers and in so doing amortise their costs over a broader base to generate cost savings across, for example, travel and accommodation.
- 121 That variable flexibility is not available to Sky in the counterfactual, as Sky does not have overseas resources to dip into and [].
- 122 That reality means that NEP's costs to produce the next event (i.e., its marginal costs) are significantly lower than Sky's. Those immediate cost savings brought about by the proposed transaction are a procompetitive benefit of the deal.
- 123 NEP's lower marginal costs reflect why sports networks around the world have chosen to "deverticalise" and purchase outside broadcasting services from third-

party global players. As far as the parties are aware, SuperSport South Africa is the only major broadcaster to buck that trend.

***Product enhancements***

- 124 The expectation that NEP will become a significant New Zealand outside broadcast services provider in both the factual and counterfactual, brings with it significant product enhancements for consumers.
- 125 NEP is a specialist, committed, outside broadcast services provider that will bring the highest-quality cameras and production technology to New Zealand. [ ].
- 126 With the proposed transaction and long-term supply agreement with Sky, NEP will secure enough of Sky's outside broadcasting work to further invest in New Zealand. Doing so will enable NEP to make the necessary investment to upgrade the OSB assets and bring the latest 4K technology to New Zealand.
- 127 The parties expect that, with those product enhancements, there will be an increase in sport watchers over time. And, with that increase, the value of rights could well increase which will enable sporting bodies to broadcast and stream more live sport, in turn, increasing demand for outside broadcasting services. The value of high quality sports broadcasts was reflected in NEP's award for its work filming the 2019 Cricket World Cup.
- 128 By comparison, in the counterfactual, without securing Sky's outside broadcasting work as Sky continues to [ ], NEP's investment into the market will cost more and take longer. NEP will not be incentivised to invest in bulk, but instead will slowly drip-feed innovations and 4K broadcasts to the New Zealand market as [ ]. The corollary of that, of course, is that [ ].

***NEP's incentives***

- 129 The parties acknowledge that one might ask why, as a significant outside broadcast services provider in New Zealand, NEP would invest in OSB and not instead make minimal investment in the assets – [ ].
- 130 Notwithstanding NEP and Sky's different financial positions, NEP's incentives to invest in outside broadcasting equipment is a function of:
- 130.1 the new competition it faces from Gravity Media's entry into New Zealand and the constant threat of new entry from other global outside broadcast providers;
- 130.2 its contractual obligation to Sky to provide services in accordance with Best Industry Practice under the 10-year supply agreement; and



130.3 NEP's wider commercial wish to be a high-quality technical production services provider on the world-stage, of which New Zealand provides a highly visible exemplar with broadcasts of local All Blacks encounters and the like.

131 To win technical production rights to highly valuable internationally significant events, like the Olympics or Rugby World Cup, NEP must have a proven track record of producing high-quality outside broadcasts the world over. If it does not, then it will lose out to other global outside broadcasting providers like Gravity Media.

132 NEP would not jeopardise its brand, reputation and business model for the sake of avoiding New Zealand investment by filming local sport with antiquated equipment. The fact is, OSB [] and NEP has the ability, incentive and contractual obligation to make that happen.

### **Competition in the outside broadcasting market**

133 As discussed above, the outside broadcasting market contains differentiated options depending on:

133.1 the quality (4K, HD etc.) of the desired broadcast;

133.2 the size of the event in question; and/or

133.3 whether Sky wishes to compete for the event in question's broadcasting rights, given Sky's lack of incentive to offer OSB's services where that's the case.

134 To understand the proposed transaction's effect on competition in the market, while taking into account the options above, the parties think it useful to assess four different types of events:

134.1 4K events;

134.2 large one-off internationally significant sporting events;

134.3 local sport events, like All Blacks' tests, New Zealand cricket, Mitre 10 Cup, Super Rugby and the ANZ Premiership; and

134.4 other (non-4K) third-party events.

135 It is important to note, though, that each type of event is not a market in-and-of itself. Instead, as we said earlier, events merge into one another with blurred boundaries between them. It is, accordingly, appropriate to view the New Zealand outside broadcasting market as one with a range of participants selling differentiated offerings.

136 We discuss each event type in turn.

**4K events**

137 4K (often referred to as ultra-high definition) is the latest broadcasting technology. Before 4K there was HD (high definition) and, before that, SD (standard definition).

138 The proposed transaction will have no effect on events filmed in 4K.

139 Sky has [].

140 That fact alone brings any competitive effect of the transaction toward nil, given that the parties expect New Zealand's major local sports (rugby, cricket etc.) to be broadcast in 4K over the next two years. With that latest camera technology also available to other buyers of outside technical production services.

141 In support of that view, the parties note that:

141.1 Kordia's Digital Terrestrial Technology (DTT) infrastructure is capable of broadcasting in 4K and, indeed, the state-owned enterprise is pushing broadcasters to offer that latest broadcasting technology;<sup>31</sup>

141.2 Optus, New Zealand and Australia's leading satellite television infrastructure provider, has announced the launch of a new satellite that will bring 4K satellite broadcast to New Zealand;<sup>32</sup>

141.3 Chorus' fibre network can support 4K streaming,<sup>33</sup> with the company also trialling a direct 4K broadcasting service to sit alongside its broadband network;<sup>34</sup>

141.4 New Zealand's 5G rollout will enable the country's telcos to offer 4K broadcasts on their networks,<sup>35</sup> and

141.5 end-consumers have the televisions to watch 4K broadcasts, for instance, in 2018 75% of Samsung TVs sold in New Zealand were UHD (i.e, 4K capable).<sup>36</sup>

---

<sup>31</sup> <https://www.kordia.co.nz/news-and-views/kordia-completes-first-live-4k-tv-broadcast>.

<sup>32</sup> [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=12181019](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12181019)  
<http://www.content-technology.com/asiapacificnews/?p=21644>.

<sup>33</sup> <https://company.chorus.co.nz/fibre-now-connection-choice-kiwis>

<sup>34</sup> <https://www.stuff.co.nz/business/102583907/chorus-trialling-a-direct-broadcasting-service-over-its-fibre-network>

<sup>35</sup> <https://www.newsroom.co.nz/new-zealand-22nd-country-to-launch-5g-network>

<sup>36</sup> <https://www.kordia.co.nz/news-and-views/kordia-completes-first-live-4k-tv-broadcast>.

***One-off internationally significant events***

- 142 One-off internationally significant events are those large “once in a generation” events filmed in New Zealand over a condensed timeframe and attract significant global audiences. For instance, the Commonwealth Games; Rugby and Cricket World Cups; and the America’s Cup.
- 143 The worldwide popularity of these sorts of events necessitate high-quality outside broadcasting services, now inevitably in 4K, which brings bids from international outside broadcast services providers from around the world who fly in equipment as required. Indeed, NEP hosted the 2015 Cricket World Cup and neither NEP nor OSB are filming next year’s America’s Cup in Auckland for TVNZ (that event is being filmed by Circle-o Broadcast Productions).
- 144 Circle-o is a joint venture between Austrian production company, West4Media, and German equipment manufacturer, Riedel Communications. The JV is a move away from both companies’ “traditional” trading areas to secure the rights to film the technologically-complex America’s Cup.<sup>37</sup> Circle-o demonstrates the low barriers for well-resourced companies to enter the global pool of outside technical production providers.
- 145 [].
- 146 Moreover, internationally significant events are uncommon in New Zealand.
- 147 For those reasons, the proposed transaction will have no effect on competition for large internationally significant events that are held in New Zealand.

***Local sporting events (in HD)***

- 148 Local sporting events are those that are filmed in New Zealand which Sky competes to acquire the ground access rights for, such as New Zealand cricket (both domestic and international), All Blacks’ tests, Mitre 10 rugby, Super Rugby and the ANZ Premiership.
- 149 The relevant sporting bodies of those events, like SANZAAR, New Zealand Rugby and New Zealand Cricket, tender the “full package of rights” needed for broadcasters to film the events and then air them on television and streaming devices. Typically, those rights are in three to five year blocks and bids are made “upfront” by sport networks, like Sky and Spark, which take on the costs/risk of non-delivery if they cannot meet their broadcasting obligations.

---

<sup>37</sup> The America’s Cup, for instance, requires remote cameras, aerial camera systems and tracking technologies all on a global circuit.

- 150 The parties anticipate that many upcoming future sports rights will demand 4K broadcasts which OSB could not fulfil in the counterfactual with its HD assets. The proposed transaction, accordingly, has no effect on those events.
- 151 And, to the extent that some local sporting events continue to seek HD broadcasts, the proposed transaction will not substantially lessen competition for those customers because:
- 151.1 [];
- 151.2 the upfront nature of sports rights means that Sky is not incentivised to commit OSB's services to sports rights' competitors where Sky is competing for the same rights; and
- 151.3 there will continue to be strong competition to broadcast local sporting events from Gravity Media and other global outside broadcast providers that can quickly and easy enter New Zealand to film local events using flyway systems.
- 152 On the latter point, we note that local sporting events are increasingly produced by multinational production companies, like Sunset + Vine and Whisper. With those companies able to use their global resources and considerable countervailing power to bring high quality outside technical production services to New Zealand.
- 153 Gravity Media's recent entry to service Spark Sport's domestic cricket rights with Whisper plainly demonstrates that dynamic. Circle-o's upcoming America's Cup broadcast is another such example.
- 154 Moreover, the parties note that there are a number of other global outside technical production companies that could enter New Zealand just like Gravity and Circle-o have done. Notable examples include:
- 154.1 Euro Media Group, which is the second largest OB company in the world;
- 154.2 Zoom, which is based in India and is well versed in providing OB services in respect of cricket and other sports (and works with production companies including Whisper); and
- 154.3 Telegenic, another UK-based outside broadcasting company with an international presence.
- 155 The fact is globalisation of outside technical production services has given New Zealand sports broadcasters more market choice than ever before. And the sale of OSB's six aging HD units to NEP is not more than a blip on the global radar.

**Third-party events**

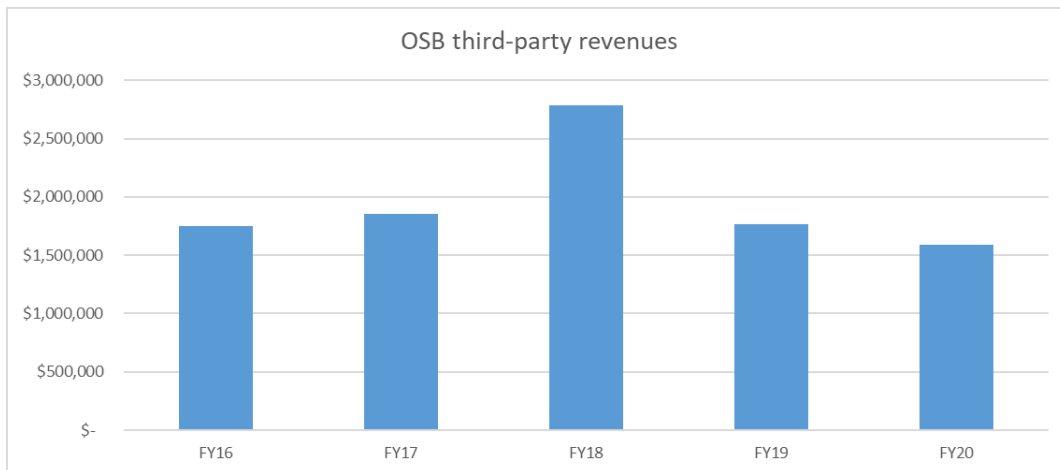
156 OSB provides limited third-party outside broadcasting services where it is not using OSB’s assets to film local sporting events. Similarly, NEP provides outside broadcasting services to third-parties where it has capacity to do so.

157 We refer to these events as “third-party events”.

158 In the past OSB has filmed Les Mills training videos, live finales of TVNZ and MediaWorks’ television shows, like *Dancing With The Stars* and *The Block* and independent one-off sports like the *NZ Mountain Bike Champs* and *Kathmandu Coast-to-Coast* and corporate galas.

159 Those events typically require one to eight cameras depending on the event.

160 OSB’s revenue from third-party clients has been relatively constant over the last five financial years (July 2015 to June 2020). That stability reflects the long-term nature of Sky’s sports rights and, therefore, reasonably constant capacity for third-party services. The spike in revenue in FY2018 reflects some large one-off contracts<sup>38</sup> interestingly at a time when NEP was already in the market.



161 The ad-hoc nature of OSB’s third-party work is reflected in the long-tail of clients it has worked with over the three-and-a-half years to December 2019. NEP’s equivalent table for the period April 2018 to June 2020 follows.

Third-party client	Total spent over 3.5 years	Number of transactions

<sup>38</sup> [].





164.1 [ ];<sup>39</sup> and

164.2 there will continue to be strong competition to broadcast third-party events from global entrants, local New Zealand outside broadcasters and the ability for local new entry.

165 We expand on the latter point now.

166 Post-transaction, third-parties seeking non-4K broadcasts could turn to:

166.1 Gravity Media, Circle-o productions and other potential global entrants like Zoom, Euro Media Group and Telegenic that are in the country filming local New Zealand sporting events or on a standalone basis. (Or third parties could contract with Sunset + Vine, and the like, to bring those global outside technical production companies to our shores).

166.2 local outside broadcasting asset holders:

- (a) *TAB New Zealand* which has recently invested in four new HD OB trucks that could be leased to a range of local production companies to service third-party events;<sup>40</sup>
- (b) *Image NZ* which owns an outside broadcast truck, outside broadcast sprinter van, and flyway kits. The parties understand that Image NZ was selected to film TVNZ's *Dancing with the Stars* before that broadcast was cancelled due to Covid-19.<sup>41</sup>
- (c) *Whitebait Media* owns an outside broadcast truck with 3-10 HD Sony cameras. Jason Gunn is a director and the company currently films and produces *What Now* for TVNZ.<sup>42</sup>
- (d) *Kiwi Outside Broadcast* which owns an outside broadcast truck and five HD Sony cameras. Kiwi Outside Broadcast advertise that "we are much smaller and more agile than the big OB Vans [owned by Sky] ... our daily rate is far more affordable".<sup>43</sup>
- (e) *Multicam Television* owns an outside broadcast van with six HD cameras. Mutlicam Television advertises itself as providing "industry

---

<sup>39</sup> [ ].

<sup>40</sup> <https://www.tabnz.org/vision-capture-promo-campaign-now-live>.

<sup>41</sup> <http://imagenz.com/>.

<sup>42</sup> <https://www.whitebaitmedia.com/facilities/>.

<sup>43</sup> <https://www.kiwiob.tv/>.



leading equipment and expertise to broadcasters all over New Zealand for complex sports and event coverage where one camera isn't enough".<sup>44</sup> Mutlicam Television has broadcast a number of live events including: the 2018 Christchurch Earthquake memorial service; Campbell Live; and NZNBL basketball.

- (f) *Volt Media* has an in-house production team, camera operators and editors and advertises itself as an "award winning full-service video production company, based in Auckland but operating nationwide ... with a diverse range of clients from large to small, we cater for all budgets and pride ourselves on our technical expertise and ability to deliver no matter the size of the project".<sup>45</sup>
- (g) *ShowVision* a broadcasting company that specifically focuses on video coverage, including: small & corporate camera rigs; media production; live TV production; and live event coverage.<sup>46</sup>

#### 166.3 local IP broadcasters:

- (a) *iFilm*, with its 13 locations around the country, has provided internet broadcasting services for: New Zealand Hockey; NZNBL basketball; *Ford Ranger NZ Rural Games*; *Kathmandu Coast-to-Coast*; *World School Rugby Sevens*; and the *Anchor AIMS Games*.<sup>47</sup>
- (b) *Kinetic Media* uses IP-cameras to broadcast and stream live events direct to customers' websites. Kinetic Media has been the broadcast partner for the *New Zealand Winter Games* for a number of years and advertises itself as having "pioneered" 4G triathlon coverage in New Zealand.<sup>48</sup>
- (c) *Digital Masters* which has provided live internet video streams for the All Blacks, Les Mills and New Zealand Water polo.<sup>49</sup> Similarly, *The Stream Shop* has broadcast sports and events for Touch NZ, Swimming NZ, Hockey NZ, Tennis New Zealand and Athletics New Zealand.<sup>50</sup>

---

<sup>44</sup> <https://www.multicam.co.nz/>.

<sup>45</sup> <https://www.voltmedia.co.nz/>.

<sup>46</sup> [https://www.facebook.com/pg/ShowVision/about/?ref=page\\_internal](https://www.facebook.com/pg/ShowVision/about/?ref=page_internal).

<sup>47</sup> <http://www.i-film.co.nz/>; <https://livestream.com/i-filmsport>.

<sup>48</sup> <http://www.kineticmedia.co.nz/>.

<sup>49</sup> <https://www.digitalmasters.co.nz/video-production-services/live-streaming>.

<sup>50</sup> <https://thestreamshop.live/customers/sport/>.

- (d) Other New Zealand IP broadcasters include: *E-cast*;<sup>51</sup> *JX Live*;<sup>52</sup> *Slipstream*;<sup>53</sup> *Streamliner Productions*;<sup>54</sup> *Vidcom*;<sup>55</sup> and *Live View*.<sup>56</sup>

167 Moreover, the range of smaller outside broadcasters in New Zealand illustrate the low entry barriers for smaller outside technical production companies to service the “third party” subset of the market.

168 Unlike the requirements to build large outside production units to meet Sky’s local sport demands, a smaller “third-party”-focused new entrant would just require:

168.1 three to ten off-the-shelf HD cameras (which will become even cheaper given they are outdated technology);

168.2 a sprinter van/truck or flyway kit; and

168.3 related production equipment.

(With that equipment typically manned by independent contractors on an event-by-event basis).

169 Indeed large third-party customers like TVNZ and Discovery-owned Mediaworks could credibly threaten to buy that equipment themselves in the face of any hypothetical attempt by NEP, post-merger, to increase the price of outside technical production services for these small ad hoc events. Indeed, TVNZ once had its own in-house outside broadcasting units.

#### **CLEARANCE CONCLUSION**

170 In summary, the parties submit that the proposed transaction will not substantially lessen competition in New Zealand’s outside technical production market because:

170.1 [];

170.2 between now and then, any theoretical competition between NEP and OSB would be virtually extinguished by the fact that [];

---

<sup>51</sup> <https://www.e-cast.co.nz/>.

<sup>52</sup> <http://jxlive.tv/about-us/about-jx-live/>.

<sup>53</sup> <http://www.slipstream.co.nz/>.

<sup>54</sup> <https://www.streamliner.co.nz/live-streaming-services>.

<sup>55</sup> <https://www.vidcom.com/broadcasting-and-recording/live-streaming.html>.

<sup>56</sup> <https://www.liveview.co.nz/services>.

170.3 OSB's assets cannot broadcast in 4K, which will be the predominant broadcasting quality sought by customers in the coming years; and

170.4 a range of global and local alternatives will continue to exist and constrain NEP's market pricing, as they do today.

171 On that basis, the parties consider clearance appropriate under s66(1) of the Commerce Act.

**DECLARATION (NEP)**

I, \_\_\_\_\_, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

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

I undertake to advise the Commission immediately of any material change in 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:**

\_\_\_\_\_

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

**Date:** \_\_\_\_\_

**DECLARATION (SKY)**

I, \_\_\_\_\_, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

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

I undertake to advise the Commission immediately of any material change in 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:**

\_\_\_\_\_

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

**Date:** \_\_\_\_\_

## **CONFIDENTIALITY**

- 1 The parties seek confidentiality over the information in this application that is contained within square brackets and highlighted yellow, blue and/or magenta (Confidential Information).
- 2 The parties' high-level reasons for seeking confidentiality are set out in **Schedule I**.
- 3 The parties ask that the Commission notify it of any requests for Confidential Information made under the Official Information Act 1982. The parties respectively asks that, in those circumstances, the Commission provide them with an opportunity to submit their views, either collectively or individually as the case may require, on why the information should not be disclosed.
- 4 For the purposes of s9(2)(b) of the OIA, the parties consider that the Confidential Information is:
  - 4.1 commercially sensitive and valuable information which is confidential to it;  
and
  - 4.2 disclosure of the Confidential Information would be likely to unreasonably prejudice either parties commercial position.

## **SCHEDULE A: HEADS OF AGREEMENT**

[].

## **SCHEDULE B: SALES AND PURCHASE AGREEMENT**

[].



**SCHEDULE C: SKY/NEP SUPPLY AGREEMENT**

[]

**SCHEDULE D: SKY INTERNAL DOCUMENTS**

[]

**SCHEDULE E: SKY RESPONSE TO NZCC PRE-FILING RFI**

□

## **SCHEDULE F: NEP'S RESPONSE TO NZCC PRE-FILING RFI**

This schedule contains NEP's responses to the Commerce Commission's 21 August pre-filing questions.

### **Documents (NZCC Question 2)**

- 1 [].
- 2 [].
- 3 [].
- 4 [].
- 5 [].
- 6 [].
- 7 [].

### **Financial Statements and management accounts (NZCC Question 3)**

- 1 [].
- 2 [].
- 3 [].

### **Market definition (NZCC Question 4)**

- 1 This is not a case to which conventional market definition principles can be rigorously applied. The market boundaries are unclear, as outlined in the application.
- 2 The utility of market definition here is to organise the material in a way that reveals the competition issues in play in this dynamic sector.
- 3 A focus on the assets the subject of this acquisition leads to the identification of a national market for the provision of outside technical production services. This market is unduly narrow, as evidenced by the competition that NEP has already experienced from international technical production service companies (such as Whisper).
- 4 Even measured against the narrow market for outside technical production services, there is no likely substantial lessening of competition.

5 The most informative way to assess the competition effects in this case is to undertake an assessment of the various market segments in which both NEP and Sky currently operate. For this reason, the application provides analysis of:

5.1 4K events;

5.2 One-off internationally significant events;

5.3 Local sporting events; and

5.4 Third-party events.

6 An analysis of each of these segments reveals no likely substantial lessening of competition.

**Competition analysis (NZCC Question 5)**

1 The context of the competition assessment in this case must be undertaken in the setting of the counterfactual, as set out in the application.

2 To the extent that there has, in theory, been competition between Sky and NEP, it is confined to the third-party events segment and that has been limited. As set out in the application, NEP will face significant competition in all segments from a significant array of international and local competitors.

3 []:

3.1 [];

3.2 []; and

3.3 [].

4 [].

5 [].

6 [].

7 [].

8 [].

9 Entry barriers to this market are low, as described in the application. Significant recent evidence on point includes the entry of Whisper and Gravity Media to New Zealand via the Spark contract relating to domestic cricket.

- 10 Flyway packs perform the exact same function as an OB truck/van, as set out in the application.

**Contact details (NZCC Question 6)**

- 1 To the extent possible, contact details are provided in **Schedule H** of the application.
- 2 [].

**Factual (NZCC Question 7)**

- 1 []
- 2 [].

**Further details on NEP (NZCC Question 8)**

- 1 NEP entered the New Zealand market via the acquisition of NZ Live in 2018. []:
  - 1.1 [];
  - 1.2 []; and
  - 1.3 [].
- 2 [].
- 3 [].
- 4 [].
- 5 [].

**Vocational training (NZCC Question 9)**

- 1 See application.

**Efficiency arguments (NZCC Question 10)**

- 1 See application.

**Timeframe for the competition assessment (NZCC Question 11)**

- 1 As discussed in the application.
- 2 In the case of market segments where there are medium to long-term contracts in play (such as for live sporting events), it is convenient to organise the information in terms of 5-6 year blocks. In this setting the holders of the broadcast rights have the opportunity to pursue competitive tender processes each time they enter into contracts for technical production services.

- 3 In other market segments where short-term contracts may be in play (such as for third-party events), a 2 year timeframe could be used.
- 4 It will not ultimately matter which timeframe is used, because in all cases the competition analysis demonstrates that the holders of the broadcast rights will have the same, or better, competitive options compared to the counterfactual.

## **SCHEDULE G: UPCOMING SPORTS RIGHTS**

The table below sets out the main New Zealand sports rights and when the current contract (as it presently stands) ends.

[].



## **SCHEDULE H: CONTACTS LIST**

The table below sets out the contact details for the main third parties referenced in the application. [].

## **SCHEDULE I: CONFIDENTIALITY SCHEDULE**

- 1 The parties seek [yellow] confidentially (that is, material that is confidential to the parties as against third parties) for the following reasons.
  - 1.1 The material is specific, non-publicly available, and commercially sensitive information about the age/capabilities of the OSB equipment. See: [4]; [14]; [19.2]; [58]; [113]; [128]; [132]; [145]; [170.1].
  - 1.2 The material is confidential detail of the Sky/NEP transaction. See: [3]; [29]; Schedule A; Schedule B; Schedule C.
  - 1.3 The material is (or directly alludes to) the parties' candid, confidential and commercially sensitive views on the counterfactual that are only published because of the Commission's merger guidelines. See: [11]; [13]; [19.1]; [52]; [61]; [62]; [79]-[88] (and related fns); [112]; [118]; [121]; [125]; [129]; [139]; [151.1]; [164.1]; n39; [170.2].
  - 1.4 The material is confidential and commercially sensitive Sky and NEP information about future sports rights. See: Schedule G.
  - 1.5 The material contains details of the parties confidential contact lists. See: Schedule H and private details of third party staff.
- 2 Sky seeks [blue] confidentiality (that is, material that is confidential to Sky as against third parties) for the following reasons.
  - 2.1 The material is Sky's confidential investment calculation. See: [10]; [62].
  - 2.2 The material is confidential and commercially sensitive information about Sky's (OSB's) third party clients. See: [161 (table)].
  - 2.3 The material is confidential and commercially sensitive information that Sky holds about third-parties. See: n21.
  - 2.4 The material is confidential and commercially sensitive internal Sky documents. See: Schedule D.
  - 2.5 The material is confidential and commerciality sensitive information in response to the Commission staff's pre-filing RFI. See: Schedule E.
- 3 NEP seeks [magenta] confidentiality (that is, material that is confidential to NEP as against third parties) for the following reasons.

- 3.1 The material is confidential and commercially sensitive information about NEP's third party clients and earnings profile. See: [39]; [99]; [161 (table)]; [162].
- 3.2 The material is confidential and commercially sensitive information that NEP holds about third-parties. See: [65].
- 3.3 The material is confidential and commerciality sensitive information in response to the Commission staff's pre-filing RFI. See: Schedule F (where marked).