



8 October 2013

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**SKY Network Television Limited – Continuous Disclosure Announcement**

SKY Television advises that the Commerce Commission notified SKY this morning that the Commission has completed its investigation into SKY's content and retail internet service provider (RSP) agreements. A copy of the Commission's media release, received this morning, is attached.

- **end**

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## Media Release

Issued 8 October 2013

Release No. 26

### Commerce Commission issues warning to Sky

The Commerce Commission has issued Sky Network Television Ltd (Sky) with a warning that it believes certain provisions in Sky's contracts with telecommunications retail service providers (RSPs) are likely to have previously breached section 27 of the Commerce Act 1986 (the Commerce Act).

The Commission issued Sky with a warning after its investigation found that currently those provisions are unlikely to have the effect of substantially lessening competition and are unlikely to cause harm in the future. However the Commission has put Sky on notice that it will continue to monitor Sky's contracts and conduct. It will take no further action at this time in relation to the historical breaches.

Commerce Commission Chairman Dr Mark Berry said the Commission had investigated Sky's contracts with RSPs thoroughly and says this was the most efficient course of action to take.

"We believe that Sky entered into historical agreements with RSPs that had the purpose, effect, or likely effect of substantially lessening competition."

"However due to market developments, the key commitments Sky has with RSPs are unlikely to continue to have the same effect. For example the new sports pay TV product from Coliseum and the recent exemption granted by Sky to Telecom to market this product." Dr Berry said.

"As a consequence, a warning letter and notice that we will continue monitoring Sky's contracts and conduct was the prudent course of action," Dr Berry said.

"However, if evidence is brought to the Commission's attention that competition is, or is likely to be substantially lessened, we will take the necessary enforcement action to remedy the situation and ensure that the long term interests of consumers are protected. In this respect we reserve the

right to draw the warning letter that has been sent to Sky, to the attention of a court in any subsequent proceedings against Sky.”

“A case like this could take several years to conclude, costing several million dollars and finish in an era that is likely to be vastly different to the one we lived in when this breach occurred,” said Dr Berry.

As part of the investigation, the Commission also concluded that Sky’s contracts with content providers were not likely to have breached the Commerce Act. There appeared to be sufficient content of all types available outside of Sky’s exclusive contracts to put together an appealing pay TV package. These contracts were similar in nature to other broadcaster contracts with content providers.

A detailed report outlining the Commission’s investigation and findings will be published shortly, once it has discussed confidentiality with relevant parties.

The Commission’s decision does not stop other parties from taking their own private action.

### **Background**

Under section 27 of the Commerce Act it is illegal to "enter into a contract or arrangement, or arrive at an understanding, containing a provision that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market."

Section 27 also prohibits giving effect to such a contract, arrangement or understanding. In other words, both entering into and giving effect to such an agreement is illegal.

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