

CONNEXA RESPONSE TO ANONYMOUS SUBMISSION ON CONNEXA AND 2DEGREES STATEMENT OF ISSUES

1 Connexa is responding to the anonymous submission (**Submission**) on the Commerce Commission's (**Commission**) Statement of Issues (**SOI**) regarding Connexa's application to acquire certain passive mobile telecommunications infrastructure assets of Two Degrees Networks Limited and Two Degrees Mobile Limited (**Proposed Transaction**), 16 December 2022 (**Clearance Application**).

2 Connexa does not consider the Submission raises any concerns that can form the basis of any relevant theory of harm for the following reasons.

The Proposed Transaction would not result in any lessening of competition¹

3 The Submission does not provide any evidence in relation to the concerns raised in the SOI (particularly, in relation to competition to supply Uncommitted Sites).² The reasons the Proposed Transaction will not result in any lessening of competition are set out in Connexa's submission on the SOI.

The Proposed Transaction relates only to the sale of 2degrees' passive infrastructure assets³

4 2degrees will retain ownership of its active equipment, including spectrum (noting also that Spark did not sell spectrum or active infrastructure to Connexa⁴). Accordingly, Connexa is not acquiring any enhanced position for spectrum ownership from the Proposed Transaction, and the discussion in the Submission regarding the shift to MVNOs is not relevant.⁵ There is no difference between the factual and counterfactual in terms of active equipment, including spectrum.

Other investments are unaffected by the Proposed Transaction⁶

5 In both the factual and the counterfactual, OTPP will have an ownership interest in Connexa,⁷ as well as:

5.1 having an (indirect) ownership interest in Dense Air, which was explained in the Clearance Application. **[REDACTED]** and

5.2 owning a very small amount of Google parent Alphabet's publicly listed shares (materially less than 1%). This is a mere financial investment, with no influence over governance or competitive strategy.

6 The Proposed Transaction does not change OTPP's relationship with Dense Air or Google, so cannot affect their ability to jointly offer services.

¹ See the Submission, page 18.

² There is only an unsubstantiated reference to a "duopolistic" TowerCo on page 18.

³ See the Submission from page 4.

⁴ Spark has a spectrum swap agreement with Dense Air, for which Connexa assumes the terms are agreed and thus that it cannot be affected by the Proposed Transaction.

⁵ Even on the definitions used in the Submission itself the Proposed Transaction would not turn any MNO into a MVNO.

⁶ See the Submission at page 12 and 15-16.

⁷ Albeit OTPP's shareholding in Connexa will increase to 83% following the Proposed Transaction.

- 7 Dense Air is operated by its own management team with the CEO based in the US, with minimal OTPP involvement.⁸ In addition to the evidence in the Clearance Application: [REDACTED]⁹ [REDACTED] Alphabet is a partner of OTPP in SIP, but this single joint investment clearly does not result in OTPP and Alphabet or Google being associates more generally.
- 8 It is not currently practical for Connexa and Dense Air to combine their offerings. Any relationship between Dense Air and Connexa would be an arm's-length commercial relationship.
- 9 OTPP is not associated (for Commerce Act purposes) with Google or Alphabet, nor is Connexa or Dense Air. Any relationship between Dense Air and/or Connexa on the one hand, and Alphabet/Google on the other, would by necessity be an arm's-length third party commercial relationship.¹⁰
- 10 In any event, it is not clear how Connexa's services could be bundled with those offered by Google, if the latter are "mainly through partnerships, investments, and technology licensing".¹¹ Further, there is no obvious commercial opportunity e.g. at least some of the services appear to be aimed at a different set of customers to Connexa's (e.g. one of the Google services is described as a MVNO). Finally, some of the Google services do not appear to be offered in New Zealand (e.g. Google Fi¹² and Google Fibre¹³), while Google Station appears to have been discontinued.¹⁴
- 11 Even if Connexa and Dense Air's offerings were bundled, there would be no risk of foreclosure (in fact, the effect would more likely be pro-competitive) as no party has market power:
- 11.1 the reasons Connexa will not have market power following the Proposed Transaction are set out in Connexa's submission on the SOI¹⁵ and the Clearance Application,
- 11.2 Dense Air provides wireless access services (to MNOs, ISP, enterprise private networks and municipal users) through the provision of shared small cell active network infrastructure. Services similar to Dense Air's are self-supplied by MNOs (e.g. where they deploy their own active network equipment), offered by wholesale wireless service providers, and through active sharing solutions, and
- 11.3 there is no suggestion Google has market power in New Zealand in relation to the specific services identified in the Submission for which there would be overlapping customers with Connexa (and which are offered in New Zealand).

⁸ At paragraph 37.

⁹ Ibid.

¹⁰ Which would be subject to the Commerce Act.

¹¹ Page 16.

¹² <https://support.google.com/fi/thread/202094511/is-google-fi-available-in-new-zealand?hl=en#:~:text=%22Fi's%20Terms%20of%20Service%20require,any%20given%2090%20day%20period.>

¹³ <https://support.google.com/fiber/answer/2657216?hl=en#:~:text=Google%20Fiber%20is%20only%20available,and%20schedule%20an%20installation%20appointment.>

¹⁴ [https://techcrunch.com/2020/02/17/google-ends-its-free-wi-fi-program-station/.](https://techcrunch.com/2020/02/17/google-ends-its-free-wi-fi-program-station/)

¹⁵ See in particular from paragraph 4.