

# Submission on One NZ and Dense Air clearance application

19 February 2024

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## Introduction and Summary

1. The Commission is considering the likely competition impacts of the acquisition by One New Zealand Limited (**One NZ**) of 100% of the shares in Dense Air New Zealand Limited (**Dense Air**) (the **Proposed Transaction**).
2. Chorus does not express a view on whether the Commission should grant clearance for the Proposed Transaction.
3. Rather, we comment on the relevant market in which the competitive effects of the Proposed Transaction should be considered. In summary, we **recommend**:
  - 3.1. That retail wireless broadband services (fixed wireless access or **FWA**) are included in the same market as retail fixed-line and satellite services; and
  - 3.2. The Commission should consider further analysis of geographic markets if there is sufficient time. This could involve using information obtained as part of other Commission reviews.<sup>1</sup>

## Market definition

4. In its 2 February 2024 Statement of Issues, the Commission invited submissions and further information on the markets relating to the retail supply of FWA, including on:<sup>2</sup>
  - 4.1. The substitutability between retail wireless broadband services and fixed-line (fibre or copper) or satellite broadband services;
  - 4.2. Whether the substitutability of types of broadband services is different for business versus residential customers;
  - 4.3. How the pricing of alternative types of broadband impacts on the pricing of wireless broadband services in each of fibre and non-fibre areas; and
  - 4.4. The extent to which the substitutability of broadband services varies between fibre and non-fibre areas.
5. In its submission on the Statement of Preliminary Issues, 2degrees submitted that for the purpose of the Proposed Transaction, a separate market for FWA services should be defined to isolate the competitive effects of the Proposed Transaction.<sup>3</sup> The Commission has not decided whether retail FWA services are supplied within a broad product market (broadband services including FWA, fixed-line and satellite) or in a narrow market (FWA services).<sup>4</sup>

## Retail FWA is in the same market as retail fixed-line and satellite services

6. We disagree with 2degrees' suggestion that a retail FWA market should be considered separately from other retail broadband services:

<sup>1</sup> For example the [Fibre Deregulation Review](#) and [Rural Connectivity Study](#).

<sup>2</sup> Commerce Commission *Statement of Issues – One NZ/Dense Air* (2 February 2024) (**SOI**) at [68].

<sup>3</sup> SOI at [39] and [63] and 2degrees *Submission in response to Statement of Preliminary Issues* (8 December 2023) at [10.1].

<sup>4</sup> SOI at [66].

- 6.1. **There is evidence of substitutability between retail FWA, fixed-line and satellite services.** Mobile network operators (**MNOs**) have stated that there is some substitutability between the technologies for at least some consumers, for example One NZ<sup>5</sup> and 2degrees.<sup>6</sup> This appears to be primarily focussed on low-cost, low usage/speed end-users which are typically end-users on copper fixed-line services (voice and broadband).

However, there is also evidence of substitutability with some fibre services. The Commission has previously observed that some MNOs choose to serve low speed customers with fibre and FWA<sup>7</sup> and that fixed wireless services provide similar functionality and features as a fixed-line broadband service at similar prices.<sup>8</sup>

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- 6.2. **FWA can provide comparable speeds to low-speed fixed line services.** Download speeds for 4G FWA and fixed-line services can be similar, although only for low-speed plans. The recent MBNZ Spring report noted that 4G FWA “can offer higher download speeds than ADSL, and on average similar speeds to VDSL”.<sup>9</sup> Similar results hold for upload speed, however latency for 4G FWA is higher than both ADSL and VDSL. Fibre 50 and Home Fibre Starter were not reported in the MBNZ Spring Report, while the download speeds may be similar to 4G FWA, the upload speeds and latency would likely be incomparable.

To be clear, 4G FWA does not currently provide similar functionality to higher-speed plans. This is evident in the MBNZ Spring report with the Commission noting “4G Fixed Wireless should not necessarily be preferred to Fibre on performance grounds”.<sup>10</sup> Fibre 300 and Fibre Max have consistently outperformed 4G FWA with:

- Lower disconnection rates;
- Higher, and more consistent, download speeds;
- Higher upload speeds;
- Materially lower latency; and
- Generally better performance across commonly used applications.

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]. MNOs have publicly stated their expectation that 5G FWA will help increase the number of FWA customers with additional capacity<sup>11</sup> and speeds.<sup>12</sup>

<sup>5</sup> One NZ/Dense Air Section 66 – Notice seeking clearance (2 November 2023) (**Clearance application**) at [16.1] – [16.3].

<sup>6</sup> 2degrees Submission in response to Statement of Preliminary Issues (8 December 2023) at [10.3](b)(i).

<sup>7</sup> Commerce Commission 2022 Annual Telecommunications Monitoring Report (15 June 2023) at p 34.

<sup>8</sup> Commerce Commission Mobile Market Study – Findings (26 September 2019) at [2.20] and Commerce Commission Review of Designated and Specified Services under Schedule 1 of Telecommunications Act 2001 (5 July 2016) at [A23] – [A24], noting that in 2016 the Commission considered it was too early to comment on the competitive constraint FWA provided on Chorus’ wholesale access services at [99].

<sup>9</sup> Commerce Commission Measuring Broadband New Zealand Spring Report (January 2024) at p 7.

<sup>10</sup> Commerce Commission Measuring Broadband New Zealand Spring Report (January 2024) at p 7.

<sup>11</sup> See for example, Spark, **Investor Strategy Update** (16 September 2020) at p 18.

<sup>12</sup> For example, Spark, **FY24-26 Strategy** (5 April 2023) at p 17.

- 6.3. **Low-speed fixed-line services and FWA services are similarly priced.** Home Fibre Starter, which has a retail price cap of \$60,<sup>13</sup> helps retail service providers (**RSPs**) compete for price sensitive end-users and compares favourably to retail prices for 4G FWA which are approximately \$60<sup>14</sup> with no data cap and ADSL retail prices in excess of \$60.<sup>15</sup> However, Fibre 300 and Fibre Max are generally priced higher.<sup>16</sup>
- 6.4. **The Commission previously considered FWA in the same market as fixed-lines services.** The Commission has previously concluded that FWA broadband services should as a matter of fact and commercial commonsense be included with in a broader residential broadband market.<sup>17</sup>

## The Commission should consider further analysis of geographic markets

7. We disagree with One NZ that competition issues should be considered in a single, national geography.<sup>18</sup> Broadband pricing does vary across different geographies, including FWA pricing,<sup>19</sup> as does the coverage of alternative broadband networks. This suggests that competition issues will vary across New Zealand. We have observed a high level of competition within fibre areas and variations in the level of competition *within* fibre areas.
8. We recommend the Commission consider using data from other reviews, such as the Rural Connectivity Study, to analyse geographic markets. The Commission has proposed considering competition issues in the market for retail supply of broadband services in fibre and non-fibre areas.<sup>20</sup> Analysis should consider the coverage of multiple broadband networks, including cable, FWA and WISP wireless,<sup>21</sup> which also influence competition effects. However, these alternative networks and service availability do not necessarily align neatly with the fibre/non-fibre areas. Importantly, the Commission needs to ensure that it considers a forward-looking definition of fibre availability so that it covers actual and future coverage from all providers, not just historical UFB boundaries.

<sup>13</sup> Commerce Commission 2022 Annual Telecommunications Monitoring Report (15 June 2023) at p 54.

<sup>14</sup> Commerce Commission 2022 Annual Telecommunications Monitoring Report (15 June 2023) at Table 6.

<sup>15</sup> Based on a Broadband Compare search as at 14 February 2024.

<sup>16</sup> Commerce Commission 2022 Annual Telecommunications Monitoring Report (15 June 2023) at Table 5.

<sup>17</sup> Commerce Commission Spark New Zealand Trading Limited and Craig Wireless New Zealand Spectrum Operations Limited and Woosh Wireless Holdings Limited Determination [2016] NZCC 7 (23 March 2016) at [55].

<sup>18</sup> Clearance application at [16.4].

<sup>19</sup> Commerce Commission 2022 Annual Telecommunications Monitoring Report (15 June 2023) at Table 17.

<sup>20</sup> SOI at [43].

<sup>21</sup> Commerce Commission 2022 Annual Telecommunications Monitoring Report (15 June 2023), page 72.