

FURTHER SUBMISSION OF 2DEGREES TO THE COMMERCE COMMISSION REGARDING THE CLEARANCE APPLICATION BY ONE NZ RELATING TO THE PROPOSED ACQUISITION OF SPECTRUM FROM DENSE AIR

Dated 27 February 2024

1. INTRODUCTION

1.1 2degrees refers to:

- (a) The Commerce Commission’s (**NZCC’s**) Statement of Issues dated 2 February 2024 (the **SOI**) regarding the clearance application by One NZ relating to the proposed acquisition of spectrum from Dense Air (the **Proposed Acquisition**);
- (b) The preliminary cross submission by One NZ dated 18 December 2023 in response to 2degrees’ submission (the **One NZ Cross Submission**); and
- (c) 2degrees’ submission to the NZCC of 8 December 2023 in response to the NZCC’s Statement of Preliminary Issues (the **2degrees Submission** and the **SOPI**).

1.2 2degrees wishes to thank the NZCC for its work on the SOI to date, and for the opportunity to make a further submission.

1.3 2degrees sets out its further submission on the NZCC’s SOI below. In summary, 2degrees is broadly supportive of the NZCC’s preliminary views on the Proposed Acquisition as set out in the SOI. Despite suggestions to the contrary by One NZ¹, this is not a case of “sour grapes” by 2degrees. Instead the concerns expressed by 2degrees to the NZCC regarding the Proposed Acquisition are rather about harm to consumers and competition in the various telecommunications markets – in particular how the Proposed Acquisition if allowed to proceed will lead to the entrenching of the position of Spark and One NZ at the expense of third party challengers like 2degrees.

1.4 This further submission is not meant to be exhaustive. Our concerns have already been set out in the 2degrees Submission on the SOPI - those concerns have not changed. 2degrees is also responding separately to the NZCC’s request for information (the **RFI**). We focus our comments below on a few key areas in the SOI – namely market definition, the counterfactual, no viable alternatives, and consumer harm.

1.5 In addition, we note that One NZ has stated in the One NZ Cross Submission that it will provide a detailed response to the 2degrees Submission. That detailed response has not yet been made available to 2degrees. Once 2degrees has had an opportunity to review that response from One NZ, we may provide the NZCC with a cross-submission in response.

¹ Refer to <https://www.nzherald.co.nz/business/not-enough-spectrum-to-compete-2degrees-fires-shots-as-commerce-commission-weighs-one-nz-dense-air-deal/SSNGLFSM5VDGTF3XM5WIS22CSQ/>.

2. MARKET DEFINITION

2.1 2degrees does not take issue with the Commission’s preliminary view on market definition as set out in [43-44] of the SOI. Ultimately 2degrees does not consider it is necessary to reach a definitive final view on market definition, provided the relevant competitive effects from the Proposed Acquisition can be isolated/assessed.²

3. COUNTERFACTUAL

3.1 We agree with [102] of the SOI that a likely counterfactual is 2degrees acquiring all (or at least some) of Dense Air’s 2600 spectrum for the reasons set out in [115] of the SOI. **[Redacted**

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4. NO VIABLE ALTERNATIVES

4.1 2degrees reiterates the points made at [11] of the 2degrees Submission that 2degrees has limited alternatives to the Dense Air 2600 spectrum in the short-medium term, in particular that **[Redacted**

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5. CONSUMER HARM

5.1 2degrees remains of the view as set out in [2.10] of the 2degrees Submission that in the factual with the Proposed Acquisition consumers will **[Redacted**

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5.2 The following table shows **[Redacted**

]:

(a) **[Redacted**]

² For completeness, 2degrees does not consider that the statement in the 2degrees Submission that **[Redacted**

](as per [63] of the SOI). Rather **[Redacted**

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(b) [Redacted]

(c) [Redacted]

	[Redacted]	[Redacted]	[Redacted]
	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

6. MISCELLANEOUS

6.1 As requested by the Commission at [14] of the SOI, 2degrees has provided separate public and confidential versions of this submission. The information shaded in blue and contained in square brackets in the confidential version has been redacted on confidentiality grounds from the public version.