

# Submission on 2degrees and Connexa clearance application

13 February 2023

C H ● R U S

## 2degrees and Connexa

### Summary

1. The Commission is considering the likely competition impacts of the acquisition by Connexa Limited (**Connexa**) of certain mobile telecommunications infrastructure assets from Two Degrees Networks Limited and Two Degrees Mobile Limited (**2Degrees**) (the **Proposed Acquisition**).
2. The Proposed Acquisition, together with other tower asset divestments, represent a new stage of maturity for mobile networks. While Chorus does not object to the Proposed Acquisition from a Commerce Act standpoint, it is important that the Commission considers how these recent transactions in the mobile sector could have broader implications for telecommunications market dynamics. Changes to the mobile market structure could jeopardise the success of the open access fibre regime by further incentivising mobile network operators (**MNOs**) to favour fixed-wireless access broadband (**FWA**) over fibre to the detriment of end-users.
3. The Commission has a core role as a telecommunications regulator to monitor market-altering activity occurring in highly dynamic telecommunications markets. We set out below some steps the telco branch could take to ensure that the interests of end-users remain protected.

### Context

4. In our submission on the proposed merger of 2degrees and Vocus we pointed out that New Zealand is an outlier among OECD countries with high uptake of FWA which is surprising given the widespread availability of superior quality fibre services at comparable prices.<sup>1</sup> In the year since making that submission the number of FWA connections has increased significantly both in absolute number (from 221,000 to 276,000), and per capita (from 4.5 FWA subscriptions per 100 people to 5.4).<sup>2</sup>
5. We reiterate our view that the three vertically integrated MNOs are taking opportunities created by the regulatory framework for open access fixed networks to maximise margin by pushing FWA service in preference to fibre broadband services. This is likely to have adverse outcomes for end-users if retail service providers (**RSPs**) relying on open access inputs cannot fairly compete thus entrenching the retail market dominance of the MNOs and restricting end-user's ability to access world-class fibre networks.
6. In this context we have considered what the Proposed Acquisition might mean for telecommunications markets in the medium-long term.

<sup>1</sup> Chorus: *Submission on Vocus and 2degrees merger clearance application*, 15 February 2022, paragraphs 4-8

<sup>2</sup> Commerce Commission: *Annual Telecommunications Monitoring Report 2020 Key facts*, 16 March 2021 – version 2, page 8; and Commerce Commission: *Annual Telecommunications Monitoring Report 2021 Key facts*, 17 March 2022, pages 9-10

## The proposed acquisition

7. The Proposed Acquisition, together with the two previous transactions in which the other established MNOs divested their tower assets, represent a new stage of maturity for mobile networks in New Zealand. All three mobile networks are now essentially ubiquitous and, as the parties say, coverage is not something over which providers compete.<sup>3</sup>
8. The tower asset divestments have given/ will give the MNOs access to significant cash to invest. They have also received a large public subsidy through the direct award of free spectrum.<sup>4</sup> How the MNOs choose to deploy this could be good or bad for consumers. There are some concerning signs, particularly for the retail fixed-line broadband market:
  - 8.1 MNOs exhibit a strong preference for customers to take FWA rather than fibre broadband particularly in the low-data use portion of the retail fixed line broadband market. This is evident from the pricing and prominence given to 4G FWA products on MNO websites relative to fibre equivalents.
  - 8.2 There is currently a significant difference in price between data delivered to a mobile handset vs data delivered to a fixed location over the same network (see for example the comparisons included in the **Appendix**). It appears clear that mobile users are cross-subsidising FWA.
9. There is potential for MNOs to use the money from tower asset divestments and free spectrum subsidy to invest in their networks to improve performance (including investments in 5G technology described in the clearance application)<sup>5</sup>. This could be good for consumers if a level playing field meant they would have equal opportunity to access world-class fixed fibre networks and improved mobile services. Alternatively, improved mobile network performance could, in the absence of a fit-for-purpose regulatory framework, drive the MNO 'own network' preference we see in the low data use portion of the market up the value chain to more premium products.
10. The success of the open access model is critical for retail telecommunications markets to remain competitive in the long term. Absent that success, it may not be sustainable for fixed only RSPs to compete with cross-subsidised FWA which would be to the detriment of end users.

## What the Commission can do

11. The Proposed Acquisition and other tower asset divestments are just the latest examples of market-altering activity occurring in highly dynamic telecommunications markets. All of this is proceeding in the absence of a clear framework for assessing relevant markets and competitive dynamics in the context of regulatory interventions.
12. Though likely not required for the purposes of assessing the competition effects of the Proposed Acquisition, we reiterate the importance of the telecommunications branch

<sup>3</sup> Merger parties: *Application for clearance*, 16 December 2022, paragraph 6.1

<sup>4</sup> See: NZ Government: *Kiwis to benefit from accelerated 5G roll-out*, 20 October 2022, available at: <https://www.beehive.govt.nz/release/kiwis-benefit-accelerated-5g-roll-out>

<sup>5</sup> Merger parties: *Application for clearance*, 16 December 2022, paragraphs 185-192

undertaking a comprehensive assessment of relevant wholesale and retail markets and competitive dynamics before proceeding with regulatory interventions.

13. A well-developed competition framework is essential for all of the Commission's telecommunications regulatory decisions, especially for the last 13% of New Zealand not currently covered by fibre. MNOs have received free spectrum, capacity subsidies<sup>6</sup> and have significant cash as a result of tower asset divestments, yet in non-fibre areas the regulatory framework still deems an obligation to support 9.6kbps dial-up internet and fax service over aging copper to be sufficient.<sup>7</sup>

## Considering retail market concentration





14. Over the past five years there has been a great deal of focus on setting up the framework to regulate wholesale only, open access fibre networks under Part 6 of the Telecommunications Act. In that time the market share of the top three RSPs has remained static at around 80%.<sup>8</sup> To achieve the best outcomes for end-users, and ensure the success of the Part 6 framework, the Commission should consider the impact on retail market concentration when making decisions about the wholesale regulation.
15. In our submission on the 2degrees and Vocus merger we suggested a number of ways the Commission could enhance the competitiveness of retail broadband markets and ensure the success of the open-access model. We reiterate:
  - 15.1 Marketing and retail service quality regulation must ensure RSPs give consumers clear, accurate and complete information about their broadband choices. This is especially important where the largest RSPs also operate mobile networks and have strong incentives to keep customers on those mobile networks
  - 15.2 The non-discrimination rules applying to open-access networks must be applied acknowledging that MNOs may use their status as wholesale customers to impede competition with their own networks.
  - 15.3 Business line restrictions may create barriers to entry for new RSPs and exemption processes may be too cumbersome in highly dynamic telecommunications markets.

<sup>6</sup> See: NZ Government: *Homes, businesses to benefit from upgrade to rural broadband*, 23 February 2022, available at: <https://www.beehive.govt.nz/release/homes-businesses-benefit-upgrade-rural-broadband>

<sup>7</sup> *Telecommunications Service Obligations (TSO) Deed for Local Residential Telephone Service*, Schedule 1, paragraphs 4-5 and 11.1, available at: <https://www.mbie.govt.nz/assets/telecommunications-service-obligations-tso-deed-for-local-residential-telephone-services.pdf>

<sup>8</sup> See Commerce Commission's *Annual Telecommunications Monitoring Reports* between 2018 and 2021, available at: <https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/annual-telecommunications-market-monitoring-report>

## APPENDIX – Sample comparison of Mobile and FWA data pricing

MNO	Plan	Data cap	If data caps exceeded	Cost	Tethering/ Hot-spotting	Other
	<b>Mobile</b> "Endless Data Plan"	40GB	Speed reduces to maximum 1.2Mbps	• \$69.99/month	Not permitted	• Includes half price Spotify
	<b>FWA</b> Everyday Wireless 4G	No data-cap but "fair use" policy applies	N/A	• \$60.00/month	Allowed	• Can be upgraded for \$5/month to include Standard Netflix and McAfee Security.
	<b>Mobile</b> Endless data	40GB	Speed reduces to maximum 1.2Mbps	• \$70.00/month	Allowed	• Unlimited calls and texts to NZ and Aus
	<b>FWA</b> Unlimited	No data-cap but "fair use" policy applies	N/A	• \$55.00/month • Currently offering two months free on 12 month contract • \$10/month discount if on \$26/month or higher mobile plan	Allowed	
	<b>Mobile</b> Mobile "Medium"	12GB	Speed reduces to maximum 1.2Mbps	• \$60.00/month	Allowed	• Unlimited calling and texts to NZ and Aus • 250 mins + 50 txts to 20 other countries
	<b>FWA</b> "Unlimited" 4G	No data-cap but "fair use" policy applies	N/A	• \$65.00/month • \$10/month discount for Vodafone on account mobile customers.	Allowed	• Includes Mesh WiFi
	<b>Mobile</b> 15G Carryover	15GB	\$0.50 per MB	• \$60/month	Allowed	• One hour per day of "free" data, up to 40Gb (then slows). • Unlimited calling and texts to NZ and Aus.
	<b>FWA</b> 300GB Wireless 4G	300GB	N/A	• \$65/month • (currently \$45/month for first 12 months) • \$10/month discount for 2Degrees on account mobile customers.	Allowed	

**Notes to table**

- This is a desk based market survey conducted using information on mobile network operator websites (current as at 13 February 2023).
- The comparison focusses on 4G FWA plans. While 5G plans are available, coverage is not yet widespread.
- Analysis is centred around the \$60 price point (including GST). Retail prices do not always align with this, but all the examples listed are within \$10 of this.
- Specials and discounts have been excluded from the price comparison but are mentioned in the pricing notes.