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CONNEXA LIMITED / TWO DEGREES NETWORKS LIMITED AND TWO DEGREES MOBILE LIMITED

SUBMISSION BY 2DEGREES IN RESPONSE TO COMMERCE COMMISSION'S STATEMENT OF ISSUES

INTRODUCTION

1. 2degrees refers to the Commission's Statement of Issues (the **SOI**) released on 28 March 2023 in relation to the proposed acquisition by Connexa Limited of certain passive mobile infrastructure assets of Two Degrees Networks Limited and Two Degrees Mobile Limited (the **Proposed Acquisition**).

2. 2degrees understands that Connexa will be providing a full response to the Statement of Issues. 2degrees has reviewed a draft of the non-confidential version of Connexa's response, and supports the positions it puts forward. Rather than repeating the points made in Connexa's response, 2degrees limits its response below to specific areas it would like to highlight and areas where it has direct knowledge or perspective.

3. We set out below a summary of the key points from 2degrees' submission, and then attach as **Schedule A** 2degrees' fuller submissions on the issues raised in the SOI (using the Commission's headings and paragraph numbering as applicable).

SUMMARY OF KEY POINTS IN SUBMISSION BY 2DEGREES

4. **The proposed counterfactual put forward by the Commission, involving the sale of 2degrees' assets to a third-party, will likely lead to a materially less competitive outcome in downstream markets than the factual scenario.** 2degrees submits that the effect in downstream markets (that have a significant impact on consumer outcomes) would be more material and detrimental than any potential effect in the markets for the supply of passive infrastructure for uncommitted sites to primarily wholesale and sophisticated customers under the Proposed Acquisition. This is a result of the following:

   (a) [

   ]

   (b) [

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.]

(c) **<u>The factual scenario involves two independent TowerCos with incentives to co-locate, compared with the counterfactual involving Spark having a higher shareholding in Connexa and [</u>**

]. To the extent the Commission is concerned under the factual about vertical effects in downstream markets through any perceived influence Spark has over Connexa, under the counterfactual Spark would have a 30% shareholding in Connexa, compared with only a 17% shareholding under the factual. With this higher shareholding, there may be a greater potential for Spark to influence Connexa under the counterfactual (although for the reasons outlined below and in Connexa's submission 2degrees believes there is low risk of Spark in fact influencing Connexa under the factual or counterfactual). Similarly, under a counterfactual where [

]. This compares with the factual where there would be two independent TowerCos in Connexa and FortySouth with commercial incentives to prioritise co-location, in circumstances where greater co-location is beneficial commercially for participants in downstream markets.

5. **[**

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(a)

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6. **<u>The 5G upgrade for 2degrees will be [</u>** **].** Given that the 5G roll-out/upgrade is mainly about [ ], competition for it is primarily focused between 2degrees and the other MNOs rather than between the TowerCos. For this reason, 2degrees does not consider that there would be a material difference between the factual compared to the counterfactual in the level of competition between TowerCos for the roll out of passive infrastructure for 5G networks, especially in respect of passive infrastructure for uncommitted sites. However, as noted above, it is important for the Commission to bear in mind [ ].

7. **<u>With respect to the supply of uncommitted sites, Connexa and FortySouth will be constrained post-acquisition by the ability of MNOs to self-supply, contract with the other major TowerCo, or facilitate a new entrant TowerCo</u>.** Connexa covers this in detail in the draft submission 2degrees reviewed and 2degrees supports the positions put forward in that submission. In addition, 2degrees submits that self-supply by existing MNOs and new entrant MNOs is a simple, cost effective and readily executable alternative. Accordingly, 2degrees considers that the threat of self-supply is a very real competitive constraint on TowerCos. The best evidence that this is the case is 2degrees itself, which was able to enter the relevant markets from 2009 through a combination of self-supply in the main centres and entering a roaming arrangement with One NZ to gain nationwide coverage. Similarly [ ].

8. **<u>Passive infrastructure is unlikely to be a barrier for a potential new entrant in downstream markets which would also be able to explore alternative options such as MoRAN or MVNO arrangements.</u>** A new entrant MNO would have at least the same options that 2degrees had when it was established in 2009, and the supply of passive infrastructure is unlikely to be a significant barrier to entry relative to the other requirements and complexities in establishing the operations of an MNO. Unlike 2degrees in 2009, which only had the option of going onto Spark and Vodafone NZ's passive infrastructure and ultimately pursued (initially) a primarily self-supply roll-out strategy, Connexa and FortySouth would be incentivised to support a new entrant and facilitate potentially greater co-location on their passive infrastructure at what would likely be a lower upfront capital requirement for the new entrant MNO. Given 2degrees' example of establishing a new entrant MNO, it is unlikely that three as opposed to two independent TowerCo's would be required if a business case was able to be developed for a fourth MNO in New Zealand. Furthermore, a potential new entrant would not be reliant on Connexa or FortySouth as it would not necessarily need access to a full national network – it would be more likely to focus initially on urban areas with population density, where self-supply lightpoles could easily be deployed in addition to exploring other options (e.g. it could enter MoRAN arrangements with another MNO; or launch as an MVNO,

where no new passive infrastructure is required). New complementary technologies are also developing which could be used in future in local areas as an alternative to having to access passive infrastructure for mobile services in those areas, as per the recent separate announcements by One NZ and 2degrees regarding the use of satellite services to deliver better emergency coverage.[1]

9. **<u>Non-discrimination clauses in the MISAs are pro-competitive and serve to protect MNOs (including 2degrees) from being unfairly disadvantaged.</u>** [

] Accordingly, there is unlikely to be any difference between the factual and counterfactual in respect of the MISA terms, and therefore no increased ability under the counterfactual for any alternative TowerCo owning 2degrees' assets to compete, compared with Connexa. In any event, the non-discrimination clauses in the draft MISA with Connexa have no practical impact on:

(a) [

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(b) Connexa's incentives to compete with FortySouth to offer hosting services to third parties and try to ensure it does not lose uncommitted sites to FortySouth; or

(c) A third party MNO's ability to receive *as good* a service from Connexa as 2degrees and Spark.

10. **<u>There is no increased risk of coordinated effects in passive infrastructure markets.</u>** From 2degrees' perspective, there is no increased risk of coordination between Connexa and FortySouth under the factual, given competition for supply of MISAs has already taken place through a highly competitive process, competition for uncommitted sites between Connexa and FortySouth is likely to be extremely competitive, there is the countervailing power of MNOs like 2degrees, and there are the provisions of the Commerce Act 1986 prohibiting restrictive trade practices. In addition, the draft MISA between Connexa and 2degrees has [

].

Any MISA that 2degrees entered into with another TowerCo would have similar [

]. So there should be no difference in the risk of coordination under the factual compared with the counterfactual.

11. **<u>The MISA wording protects 2degrees from being vertically foreclosed in downstream telecommunications markets.</u>** The risk of 2degrees being foreclosed from competing in any downstream market is something that 2degrees has carefully considered and taken steps to avoid under the draft MISA with Connexa. As a matter of commercial imperative, 2degrees [

]. Protections for 2degrees in the draft MISA

[1] Refer on the satellite option to the article in Resellers News of 3 April 2023: "One NZ teams with Musk's Starlink for total coverage, 2degrees goes with Lynk - Reseller News". Refer also to NZ Herald article from 3 April 2023: "Vodafone marks first day as One NZ by revealing 'cell tower in the sky' partnership with Elon Musk's Starlink - NZ Herald"; and Radio NZ article "One NZ and 2degrees sign up with satellite providers | RNZ News".

which give 2degrees comfort in this regard include [

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12. **<u>The transaction reduces potential vertical effects as, if Connexa failed to meet its contractual obligations in the MISA due to actions by Entelar, Connexa would be in breach of the MISA to 2degrees</u>.** [

] Connexa uses Entelar as a contractor to build and maintain passive infrastructure, which means that under the Proposed Acquisition the risk of vertical effects is reduced due to the [ ]. Connexa owes contractual obligations to 2degrees under the draft MISA to [

]. If Connexa failed to meet these contractual obligations due to actions by Entelar, Connexa would be in breach of the MISA to 2degrees – given that Connexa is liable for [

] Accordingly there is no practical ability for Spark to seek to foreclose 2degrees through its ownership of Entelar, and this is an improvement for 2degrees relative to the current position today and potentially the counterfactual.

CONFIDENTIALITY

13. Confidential and public versions of this submission have been provided to the Commission. 2degrees requests that the Commission treat as confidential the information set out in the confidential version of this submission that is highlighted in blue shading in square brackets. This is on the basis that disclosure of this information would be likely to prejudice unreasonably the commercial position of 2degrees as the party providing the information.

14. 2degrees requests that it be notified if a request is made to the Commission under the Official Information Act 1982 for release of the information for which confidentiality is claimed, and that the Commission obtains 2degrees' views on the request before any disclosure to third parties takes place.

15. Attached to this submission is **Schedule B** setting out the pieces of information over which confidentiality is claimed and the reasons why (as requested in footnote 3 of the SOI).

SCHEDULE A

SUBMISSION OF 2DEGREES IN RESPONSE TO ISSUES OF CONCERN IN STATEMENT OF ISSUES

For ease of cross referencing, in the submission below we use the Commission's headings, and paragraph numbering (in the left margin).

THE RELEVANT MARKETS

[30] 2degrees is content with the Commission's approach to market definition.

WITH AND WITHOUT SCENARIOS

The counterfactual

[35-38] The Commission has stated at [38] of the SOI that it currently considers that, absent the Proposed Acquisition, 2degrees' assets are likely to be sold to a third-party which would own and operate those assets as a third TowerCo in the relevant passive infrastructure markets, in competition with Connexa and FortySouth.

In 2degrees' view, this proposed counterfactual will likely lead to a materially less competitive outcome in downstream markets than the factual scenario. 2degrees submits that the effect in downstream markets (that have a significant impact on consumer outcomes) would be more material and detrimental than any potential effect in the markets for the supply of passive infrastructure for uncommitted sites to primarily wholesale and sophisticated customers under the Proposed Acquisition. This is a result of the following factors:

(a) The rationale for 2degrees selling its mobile passive infrastructure assets to Connexa is set out at para. 45 of the clearance application. A vital element of that rationale is [

].

Para. 189.2 of the clearance application refers to [

];

(b) In particular, an important use of the sale funds and improved financial position for 2degrees from the Proposed Acquisition process is [

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]

(c) The **attached** slide shows 2degrees' actual and forecast 5G roll-out [

.] This slide shows that [

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(i)

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(ii)

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(d) As noted at para. 110 of the clearance application, the counterfactual scenarios in the absence of the Proposed Acquisition involve 2degrees either [

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(e)

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(i)

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(f) In addition, the factual scenario involves two independent TowerCos with incentives to co-locate, compared with the counterfactual involving Spark having a higher shareholding in Connexa and [ ]. To the extent the Commission is concerned under the factual about vertical effects in downstream markets through any perceived influence Spark has over Connexa, under the counterfactual Spark would have a 30% shareholding in Connexa, compared with only a 17% shareholding under the factual. With this higher shareholding, there may be a greater potential for Spark to influence Connexa (although for the reasons outlined below and in Connexa's submission 2degrees believes there is low risk of Spark in fact influencing Connexa under the factual or counterfactual). Similarly, under a counterfactual where [ ]. This compares with the factual where there would be two independent TowerCos in Connexa and FortySouth with commercial incentives to prioritise co-location, in circumstances where greater co-location is beneficial commercially for participants in downstream markets.

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One of the key findings in the Commission's Mobile Market Study of 26 September 2019[2] is that 2degrees' competitive constraint on Spark and One NZ has had significant positive impacts in retail competition (refer to [5.3]-[5.6]). The Study refers to a TUANZ submission that "*the continuing presence and expansion of 2degrees in the mobile market is critical*", and the Commission itself concurred that "*2degrees has been important in the development of an increasingly competitive mobile market*" (refer to [3.14] of the Study). 2degrees' [

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[39-40] 2degrees agrees that, in connection with any third party's acquisition of 2degrees' passive infrastructure assets in the counterfactual, 2degrees and the third party purchaser would likely enter into a long term passive infrastructure agreement such

[2] Refer to "[Mobile-Market-Study-Findings-report-26-September-2019.PDF (comcom.govt.nz)]".

as the MISA. Any MISA reached in the counterfactual would include commitments for 2degrees to acquire a proportion of its future site needs from that third party to give both 2degrees and the purchaser security over supply of passive infrastructure assets going forward.

2degrees negotiated the draft MISA with Connexa in highly competitive circumstances. The commitments in the draft MISA for [ ]. Given this competitive tension (and the other options available to 2degrees such as self-supply), 2degrees does not consider that this will result in it being subject to uncompetitive terms of supply from the TowerCos for the balance of its passive infrastructure needs under the factual scenario.

2degrees expects that the terms of any MISA it entered into with a third party purchaser in the counterfactual would likely be similar to the terms of the draft MISA between 2degrees and Connexa that would exist in the factual. 2degrees has sought to include a number of protections in the draft Connexa MISA (such as [ ]) in order to protect its position as a material customer of Connexa and ensure it is not foreclosed from competing in downstream markets. This reflects the fact that, without those protections, [ ] 2degrees would therefore want all of these protections in place in a MISA with any other TowerCo, and would expect that any other MNO would want the same protections (especially a smaller MNO).

Accordingly there is unlikely to be a material difference between 2degrees' draft MISA with Connexa in the factual and a MISA entered into with another TowerCo operator in the counterfactual.

The differences between the factual and counterfactual

[44] In terms of the differences between the factual and counterfactual, 2degrees refers to the points made above in response to [35-38] of the SOI.

Regarding [44.2], 2degrees agrees that there would be less co-location by Spark and 2degrees on the passive infrastructure of Connexa in the Commission's counterfactual compared with the factual, as 2degrees would have committed to acquiring a proportion of its future site needs from the third party purchaser of 2degrees' passive infrastructure assets under a MISA with that purchaser (instead of under a MISA with Connexa). One of the key synergies from the Proposed Acquisition is the potential for co-location on existing (and new) poles.

Greater co-location is beneficial commercially for participants in downstream markets on the basis that:

(a) It brings consolidation opportunities for operating costs;

(b) The draft MISA contains [ ];

(c) It leads to ongoing operating efficiencies in deployment of co-located sites; and

(d) Larger structures are more efficient to engineer to provide structural "headroom", allowing for efficient co-location of additional parties in the future.

In relation to [44.3], 2degrees does not agree that Spark's shareholding in, and directors on the Board of, Connexa essentially extends under the factual to the passive infrastructure assets relied on by 2degrees to compete with Spark – if by this, the Commission is referring to Spark being able to influence Connexa in relation to decisions connected with the passive infrastructure assets relied on by 2degrees. While it is correct that under the factual Spark will have a 17% shareholding in Connexa, Spark will not have any ability to participate in Connexa's commercial decisions relating to 2degrees – as expanded on below in the vertical effects section of this submission.

As stated above, it is also worth noting that, to the extent the Commission is concerned under the factual about vertical effects in downstream markets through any perceived influence Spark has over Connexa, under the counterfactual Spark would have a 30% shareholding in Connexa, compared with only a 17% shareholding under the factual. With this greater shareholding under the counterfactual, there may be more potential for Spark to influence Connexa under the counterfactual compared with the factual. Similarly, under a counterfactual where [ ]. This compares with the factual where there would be two more independent TowerCos with commercial incentives to co-locate in Connexa and FortySouth and the benefits that co-location involves.

This factual scenario is a more competitive scenario than the situation just 12 months ago, where there were three vertically integrated MNOs subject to the Standard Terms Determination with less commercial incentive to offer any more to new entrant MNOs or non-MNOs than the minimum legally required.

UNILATERAL EFFECTS IN PASSIVE INFRASTRUCTURE MARKETS

[50] Connexa [ ] Under the draft MISA with Connexa, [ ].

Would pricing outcomes be different with three TowerCos compared with two?

[51-52] 2degrees considers that the pricing outcomes in a market with two large scale TowerCos (the factual) would be materially the same as a market with three large scale TowerCos (the counterfactual). The two TowerCos will still be constrained for uncommitted sites under the factual scenario post-acquisition, on the basis that:

(a) The MNO / new entrant MNO will have the ability to self-supply, given:

(i) The availability of contractors;

(ii) The existence of the “network operator” access regime under the Telecommunications Act 2001 which enables the placement of equipment in the road reserve (refer to paras. 67-71 of the clearance application); and

(iii) The availability of low cost lightpole solutions (refer to paras. 222, 253+ of the clearance application).

2degrees intends to retain the ability to self-supply following the Proposed Acquisition, and is prepared to do so if it is unhappy with the service levels of the incumbent TowerCos (as expanded on below);

(b) There will still remain two national providers of wholesale passive infrastructure (i.e. Connexa and FortySouth) for MNOs to enter into MISAs with for BTS sites, as well as smaller and new entrant alternatives. In the very limited number of local areas where there is no close FortySouth option available, 2degrees (or another customer) could essentially sponsor a new BTS site from FortySouth. MNOs like 2degrees will have incentives to “test the market” with FortySouth or another third party TowerCo, and will have countervailing power in this situation, given this is a key source of additional revenue for the TowerCos;

(c) The MNO / new entrant MNO will also have the ability to co-locate on an existing site. While historically co-location has been less common, this is changing in 2degrees’ experience already with two independent non-vertically integrated TowerCo’s present in the wholesale markets. This reflects the fact that the two independent TowerCos’ overall incentives are more commercially focused with respect to the provision of passive infrastructure services than was the case when they were vertically integrated with MNOs. Given the provision of passive infrastructure services is the exclusive focus of Connexa and FortySouth, this is likely to lead to higher rates of co-location, and neither TowerCo has an incentive to prevent competitors from co-locating on their towers (as they may have had previously when they were vertically integrated with MNOs). In fact, both TowerCos will be incentivised to encourage co-location as this increases their operating leverage given the sunk costs in the fixed infrastructure. More co-location should also lead to a [ ]

(d) If it made commercial sense to do so, 2degrees has [ ]

[53] The 5G upgrade for 2degrees will be [ ]. Given that the 5G roll-out/upgrade is mainly about [ ], competition for it is primarily focused between 2degrees and the other MNOs rather than between the TowerCos. For this reason, 2degrees does not consider that there would be a material difference between the factual compared to the counterfactual in the level of competition between TowerCos for the roll out of

passive infrastructure for 5G networks, especially in respect of passive infrastructure for uncommitted sites.

However, as noted above in the discussion regarding the counterfactual, it is important for the Commission to bear in mind [ ].

[54] 2degrees considers that the non-discrimination clauses included in MISAs are pro-competitive and intended to provide 2degrees with certainty that it will get at least the same level of quality and service as other TowerCo customers. The non-discrimination clauses in the draft MISA with Connexa also [ ] (as expanded on below). 2degrees considered it was important to include non-discrimination clauses in the draft MISA with Connexa to [ ]

Reduction in competition for uncommitted sites

[55] While it is correct that under the factual scenario there would be no existing large scale <u>national</u> alternatives to the merged entity for uncommitted sites other than FortySouth or self-supply, it is important to note that it is not necessarily a requirement for existing MNOs and non-MNO customers to have large scale national alternatives for uncommitted sites. In particular:

(a) For existing MNOs, given there are already MISAs in place with TowerCos regarding committed sites which comprise a national network, their requirements in relation to uncommitted sites are likely to be for specific local areas (e.g. to address specific capacity and coverage issues);

(b) Similarly, a new entrant MNO does not necessarily need access to a full national network – instead they are more likely to focus initially on urban areas with population density, where lightpoles can be easily deployed. A good example of this in practice is 2degrees' own experience as a new entrant. 2degrees only built at launch in Auckland, Wellington, Christchurch and Queenstown, and relied on a roaming service with One NZ to gain nationwide coverage in other areas. New entrants also have other options available to them (described further below);

(c) Non-MNO customers only host equipment on a limited number of MNOs' sites, have significantly lower requirements for space and are able to find suitable alternative providers for the majority of their needs (paras. 10.4 and 155 of the clearance application). 2degrees currently has only [ ] non-MNO tenants, across only [ ] of its network (refer to para. 261 of the clearance application). In 2degrees' experience, non-MNO customers are not heavily reliant on TowerCos for their sites. So, again non-MNO customers will not need access to passive infrastructure sites on a national basis;

(d) As a result, it will not be necessary for MNOs and non-MNOs to have access on a national basis. This increases the feasibility of self-supply in particular local areas (expanded on below) and/or facilitating a new entrant TowerCo based on uncommitted site volumes.

[56-58] 2degrees forecasts that [

]

2degrees therefore agrees with the Commission's statement in [58] that a new entrant TowerCo could be assisted to enter based on uncommitted site volumes. This would provide another source of constraint on Connexa and FortySouth post-acquisition, in addition to the option of self-supply by MNOs.

Self-supply appears unlikely in response to a SSNIP

[59-61] 2degrees does not agree that self-supply appears unlikely in response to a SSNIP, and believes it remains a credible option that it will consider taking up for uncommitted sites if it is not satisfied with the passive infrastructure services being offered by Connexa and FortySouth.

As an initial point, [

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In any event, 2degrees' own experience is that it is certainly practical for an MNO (including a new MNO if one were to emerge) to enter/access the relevant wholesale passive infrastructure markets through self-supply of passive tower infrastructure and/or by contracting with two existing TowerCos for access to their tower infrastructure – as will be the case under the factual with the Proposed Acquisition. This was exactly the situation when 2degrees came in as a new entrant in 2009, and self-supplied its own passive infrastructure network in the main centres (noting that 2degrees, in addition to self-supply, also entered into a roaming arrangement with One NZ to gain nationwide coverage at that time). While 2degrees does no roaming now, there will be other options available like MoRAN arrangements (as noted below).

2degrees has been able to develop its own passive infrastructure tower network on a cost effective basis:

(a) 2degrees' passive tower infrastructure is [
] – lightpoles make up around [ ] of the total portfolio [
]

(b) 2degrees considers that its [ ] provides several advantages. It has stated [
:

.]

(c) 2degrees has purposefully [

:

]

(d) [

]

2degrees also disagrees with the suggestion at [60] that MNOs may, in managing a small-scale operation of self-supplied passive infrastructure, face comparatively or disproportionately high overhead costs. The costs of operating a site are largely fixed, and therefore small-scale operators are not disadvantaged by economies of scale – as 2degrees has found in practice. In self-supply, the majority of engineering and civil work is outsourced to third party contractors so small scale operators are not disadvantaged by higher overhead costs. For example, despite the size of 2degrees' operation, it only has a small team managing its passive infrastructure (around [ ] people). Contractors offer a fully outsourced turnkey model for customers. For these reasons, the cost of self-supply of a limited number of uncommitted sites will not run contrary to the reasons for 2degrees selling its passive infrastructure assets.

Reduction in competition due to non-discrimination clauses

[62-63] 2degrees does not agree that the non-discrimination clauses in the MISAs with Connexa will dampen incentives for Connexa to compete for new customers on price, and/or for Spark and 2degrees to seek out competitive quotes from other TowerCos. This is because:

(a) Under the draft MISA, [

;

(b)

] this of course does not restrict in any way FortySouth's ability to offer better terms to 2degrees in order to encourage it to obtain the balance of its passive infrastructure requirements for uncommitted sites from FortySouth. There is an incentive on FortySouth to do this given that its revenues will be increased by contracting with as many MNOs as possible;

(c) Conversely there will be an incentive on Connexa to offer the best terms possible to 2degrees and other MNOs contracting with it for uncommitted sites to reduce the risk of them going to FortySouth, another new entrant TowerCo provider, or self-supply;

(d) So 2degrees expects that there will be strong competition between Connexa and FortySouth (and any other TowerCo) for the supply of uncommitted sites to MNOs and non MNOs.

[63] 2degrees also disagrees that in the counterfactual the TowerCo that owns 2degrees' assets may be freer to compete than Connexa would be under the factual. The MISA that 2degrees would look to enter into with that other TowerCo would have the same key provisions that are contained in the draft MISA with Connexa. [ ] So there would be no difference between the factual and counterfactual in this respect. Connexa will be just as free to compete under the factual as any third party TowerCo purchaser of 2degrees' passive infrastructure assets under the counterfactual.

Reducing competition to entry for new entrants in downstream telecommunication markets

[65] 2degrees agrees with the Commission that telecommunications markets are currently characterised by high levels of innovation and expansion, and all MNOs in New Zealand continue to make significant investments in their networks to improve their offerings. Regarding the Commission's point that "*other jurisdictions have found that other network types could become more common in the next ten years*", the Ofcom report cited here refers to the provision of private networks. Private networks already exist in New Zealand, and 2degrees anticipates these (and other) network types will likely become more common over the next few years.

[66] For the reasons stated above in response to [55] of the SOI, in 2degrees' view new entry (whether by an MNO or non-MNO) will not necessarily require access to a national network of passive infrastructure in the future.

In addition, a new entrant MNO has alternative options apart from dealing with TowerCos – e.g. it could enter MoRAN arrangements with another MNO under which everything in the RAN (antenna, tower, site, power) except the radio carriers would be shared between the MNOs involved; or it could enter as an MVNO.

New complementary technologies are also developing which could be used in future, as per the recent separate announcements by One NZ and 2degrees regarding the use of satellite services to deliver better emergency coverage. As noted in an article dated 3 April 2023 from New Zealand Reseller News:[3]

> "Mobile telcos are targeting satellite services to eliminate blackspots and deliver better emergency coverage.

[3] Refer to: "One NZ teams with Musk's Starlink for total coverage, 2degrees goes with Lynk - Reseller News". Refer also to NZ Herald article from 3 April 2023: "Vodafone marks first day as One NZ by revealing 'cell tower in the sky' partnership with Elon Musk's Starlink - NZ Herald"; and Radio NZ Article "One NZ and 2degrees sign up with satellite providers | RNZ News".

> Telco One New Zealand today launched a collaboration with Elon Musk's Starlink service to provide total country-wide mobile coverage.
>
> From late 2024, One New Zealand's network will work with SpaceX's constellation of Starlink satellites in low Earth orbit to deliver "direct to cell" mobile coverage to the telco's customers across the country out to territorial limit.
>
> "This means the immediate communication issues experienced after Cyclone Gabrielle will be confined to history," said Jason Paris, CEO of One NZ, which was formerly known as Vodafone NZ.
>
> "It will give our customers more freedom with 100 per cent coverage across the country and means New Zealanders and New Zealand businesses are safer with us.
>
> Meanwhile, 2degrees has teamed with US-based Lynk to trial a similar capability."

While satellite is not yet a replacement for core mobile services on a national basis, and it is necessary to be an MNO to deal with satellite operators today from a satellite to cell perspective, satellite is a complementary option in particular local areas to having to access passive infrastructure for mobile services.

So 2degrees does not consider that the Proposed Acquisition will result in conditions of entry to downstream markets becoming materially less competitive compared with the counterfactual.

COORDINATED EFFECTS IN PASSIVE INFRASTRUCTURE SERVICES MARKETS

[68-73] 2degrees does not consider that there is an increased risk of coordination between Connexa and FortySouth under the factual, given competition for supply of MISAs has already taken place through a highly competitive process, competition for uncommitted sites between Connexa and FortySouth is likely to be extremely competitive, there is the countervailing power of MNOs like 2degrees, and there are the provisions of the Commerce Act prohibiting restrictive trade practices.

In addition, the draft MISA between Connexa and 2degrees has [ ].

Any MISA that 2degrees entered into with another TowerCo would have similar [ ]. So there should be no difference in the risk of coordination under the factual compared with the counterfactual.

In any event, while the pricing and volume of services provided by the TowerCos under a MISA will be confidential in both the factual and the counterfactual, other information (such as site location and site type) will be publicly available and this will not change between the factual and counterfactual.

[74] 2degrees refers to its submission above in response to [62-63] of the SOI on this point.

VERTICAL EFFECTS IN DOWNSTREAM TELECOMMUNICATIONS MARKETS

[76-87] The risk of 2degrees being foreclosed from competing in any downstream market is something that 2degrees has carefully considered and taken steps to avoid under the draft MISA with Connexa. As a matter of commercial imperative, 2degrees [ ]. 2degrees considers that the following protections in the MISA exist to ensure it will not be foreclosed from competing:

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In terms of additional protections from foreclosure available to 2degrees:

(a) It would not make commercial sense for Connexa, or Spark as a minority shareholder in Connexa, to foreclose a significant customer of Connexa like 2degrees. Such foreclosure would lead to reduced revenue for Connexa due to loss of business from 2degrees. This would be despite the fact that, in the event of any attempted foreclosure, 2degrees would be able to seek to obtain alternative passive infrastructure services (either from FortySouth, another smaller TowerCo, or through self-supply). As such, there would be no benefit to Spark in foreclosing 2degrees' access to passive infrastructure, and indeed potential financial detriment. Instead, Connexa will be incentivised to improve returns for its shareholders, including by doing as much business with 2degrees as possible;

(b) 2degrees also notes that following the Proposed Acquisition Spark would only have a 17% shareholding in Connexa. Spark cannot control decisionmaking at Connexa, and will not be involved in decisions that relate to other MNOs like 2degrees. This provides an additional level of comfort regarding the absence of foreclosure risk, in conjunction with the draft MISA protections referred to above.

In relation to Entelar, in 2degrees' view the Proposed Acquisition reduces potential vertical effects as, if Connexa failed to meet its contractual obligations in the MISA due to actions by Entelar, Connexa would be in breach of the MISA to 2degrees. Expanding on this:

(a) [.] Connexa uses Entelar as a contractor to build and maintain passive infrastructure, which means that under the Proposed Acquisition the risk of vertical effects is reduced compared with the counterfactual due to the [ ];

(b) Connexa owes contractual obligations to 2degrees under the draft MISA to [ ] If Connexa failed to meet these contractual obligations due to actions by Entelar, Connexa would be in breach of the MISA to 2degrees – given that Connexa is liable for [ ];

(c) [ ]

Accordingly there is no practical ability for Spark to seek to foreclose 2degrees through its ownership of Entelar, and this is an improvement for 2degrees relative to the current position today and potentially the counterfactual.