

ONE NEW ZEALAND

RESPONSE TO THE COMMERCE COMMISSION'S STATEMENT OF ISSUES

Date: 5 March 2024

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
Wellington

1. Introduction and summary

- 1.1 This submission sets out One New Zealand Group Limited's (**One NZ's**) response to the Commerce Commission's (the **Commission's**) Statement of Issues dated 2 February 2024 (**Sol**). The Sol relates to the application for clearance lodged in connection with the proposed acquisition by One NZ of 100% of the shares in Dense Air New Zealand Limited (**Dense Air**) from Dense Air Limited and SoftBank Corp (the **Proposed Transaction**).
- 1.2 This submission reflects One NZ's views on the public version of the Sol, which is limited to the extent that relevant aspects of the Commission's analysis is redacted from the public version. One NZ has instructed Bell Gully to prepare a separate, confidential response to the confidential version of the Sol. This submission is made in addition to the separate report provided by its economic advisers, NERA.
- 1.3 One NZ remains strongly of the view that the Proposed Transaction will not substantially lessen competition in any market in New Zealand. The issues raised in the Sol do not withstand scrutiny and are not supported by evidence.
- 1.4 Dense Air Limited engaged in an extensive sales process in order to sell its spectrum holdings (directly or via the acquisition of shares in Dense Air). This included an invitation to all interested parties to participate. 2degrees did participate in this process, but determined [REDACTED] to acquire the Dense Air spectrum/shares. This may be because:
 - (a) 2degrees did not have sufficient financial capability to acquire the spectrum [REDACTED]; or
 - (b) 2degrees did not see [REDACTED] for the purposes of its network to [REDACTED].
- 1.5 The first reason cannot be correct: 2degrees is clearly not cash constrained, having recently sold its tower assets to Connexa for \$1.05b, and recording profits last year (of \$665.4m¹), a small fraction of which would have paid for the Dense Air shares. Even without this sale, the 2022 merger of 2degrees and Orcon established "a stronger player in the market"², and 2degrees cannot now be characterised as a new entrant that needs assistance to ensure that it retains a competitive presence. Under the ownership of well-resourced shareholders Macquarie Asset Management and Aware Super, 2degrees has substantial financial capacity to invest in its mobile network if it so chooses. Therefore, it can only be concluded that 2degrees did not [REDACTED] and did not see it as necessary for its ability to continue to compete effectively in downstream broadband and mobile markets.
- 1.6 Specific evidence relating to 2degrees' network, existing spectrum and use of that spectrum bears this out, in addition to its ability to acquire spectrum that is not currently allocated to MNOs, as set out in this submission.
- 1.7 In any event, the acquisition of Dense Air and its spectrum by One NZ could not possibly result in a substantial lessening of competition. Such a conclusion would necessitate a finding that Spark

¹ One NZ estimates that 2degrees EBITDA excluding the net gain on tower assets would be approximately \$300m for 2023.

² See: <https://www.crn.com.au/news/aussie-investors-to-pay-16b-for-kiwi-telco-2degrees-574486>

and other competitors (such as fibre broadband, satellite and WISP providers) will not be an effective constraint on One NZ in the factual, which is not the case, and nor does the Sol appear to reach any such conclusion.

- 1.8 If the Commission were to reach a decision that overrides the value the parties placed on spectrum in a competitive market, that itself would undermine competition. In particular, as set out below, One NZ does have specific need for this spectrum [REDACTED]. This results from the nature and spread of its customer base and network, which is unique to One NZ. This is in contrast to [REDACTED], which by the nature of 2degrees' network will only occur over a long period of time, if at all. By then, 5G will be the predominant technology. The Commission intervening in the Proposed Transaction would only serve to prefer one competitor (who did not want to pay market price for the spectrum) above another.
- 1.9 2degrees' submission, and the Commission's Sol, lean heavily on the concept of "parity" or "equivalence" of spectrum holdings to ensure that all parties can compete effectively. There is no basis for this concept, either in New Zealand or overseas precedent, or in fact and commercial reality. Seeking to achieve parity of spectrum holdings rather than allowing commercial realities to play out does not advance competitive outcomes it simply artificially manipulates the market.
- 1.10 In particular, if the Commission considers that "parity" is required in order to prevent a substantial lessening of competition in broadband or mobile markets (a conclusion that One NZ strongly disagrees with for the reasons set out in this response), then blocking One NZ's acquisition of the 2600MHz spectrum would itself result in a substantial lessening of competition. This is because, as recognised by the Commission in the Sol, the Proposed Acquisition will result in One NZ achieving spectrum parity with Spark, enabling it to better compete with Spark.
- 1.11 Accordingly, a determination made on the basis that 2degrees' acquisition of relevant spectrum is a more competitive outcome than if One NZ made this acquisition will not achieve parity or equivalence. Rather, it would essentially require a conclusion that 2degrees' achieving equal spectrum holdings with One NZ would be more desirable or be more competitive than One NZ achieving equal spectrum holdings with Spark. The idea that One NZ is better placed than 2degrees to mitigate an inability to add to its spectrum allocation is completely without foundation. This approach would essentially result in the Commission prioritising one form of parity over the other, leading to the Commission picking a preferred winner, which has no place in the application of the statutory test.
- 1.12 2degrees has on numerous occasions in the past complained that transactions of its competitors would prevent it from competing in the market. However, none of these concerns have come to fruition. For example, 2degrees traversed much of the same arguments it is currently making in objection to the 2019 renewal of Spark and Vodafone's (now One NZ's) management rights in the 1800 MHz and 2100 MHz bands, as set out further below. Similar arguments were made by 2degrees' in response to the (then proposed) 2013 acquisition of spectrum in the 700MHz band by Vodafone (now One NZ) or Telecom (now Spark). As is evident from 2degrees' market share growth and enhanced competitive position since that time, those concerns ultimately proved to be unfounded.
- 1.13 One NZ sets out in further detail below why the Proposed Transaction will not substantially lessen competition in any market by reference to the key areas in the Commission's Sol. In particular, this submission sets out the following (in order of discussion):
 - 2degrees has had ample opportunity to acquire the spectrum or a portion of the spectrum, but has chosen not to do so. This must reflect an assessment of the value of the spectrum to its network, which does not align with the dire consequences that 2degrees now claims will result from its failure to acquire;
 - the relevant markets are national markets for mobile telephony and residential broadband services, although no competition issues arise on any definition of the relevant markets;
 - One NZ is best placed to obtain the maximum benefits from acquiring Dense Air (and hence why it placed a higher value on the spectrum);
 - there is no reason to believe that, absent the Proposed Transaction 2degrees would reach an agreement with Dense Air, or that it would in fact roll out a national 4G FWA network if it did;

- achieving parity/equivalence in spectrum holdings is not the relevant test when assessing whether the Proposed Transaction could substantially lessen competition (particularly when accounting for the disparate size of the parties' customer bases and network utilisation);
- there is extensive competition in fibre and non-fibre areas and this will continue post-transaction;
- the spectrum is unlikely to improve the FWA services which 2degrees could offer today;
- 2degrees already has sufficient capacity to be an effective competitor in the market for mobile/broadband and, if it so chose, access to alternative measures by which it can increase its capacity;
- the Proposed Transaction will not result in any changes to the competitive dynamics for providing wholesale FWA; and
- the Proposed Transaction has no impact on the provision of mobile services as there remains alternatives for 2degrees to expand its mobile offerings, including via deploying existing spectrum on more sites, acquiring different spectrum and continuing to roll out 5G services which reduces demands on the 4G network.

2. Relevant background

2degrees had ample opportunity to acquire Dense Air or a portion of the spectrum

- 2.1 If Dense Air's spectrum were essential to allow 2degrees to continue to effectively compete in broadband and/or mobile (and alternative methods of increasing capacity were not viable), 2degrees would have [REDACTED]. 2degrees is owned by a well-resourced and large entity, with significant cash resources following the sale of its tower assets to Connexa (recording profits including the net effect of this sale of \$665.4 million in 2023 for its overseas owners). There is no suggestion it could not [REDACTED].³
- 2.2 2degrees participated in the Dense Air spectrum sales process and had equal opportunity alongside One NZ to purchase the shares in Dense Air outright. [REDACTED].⁴
- 2.3 As outlined above, [REDACTED]. This seems incongruous with statements from 2degrees that accessing the Dense Air spectrum is essential to its ability to continue to compete. For example in 2degrees' submission on the clearance application dated 8 December 2023 it stated that its "lack of spectrum is limiting our ability to compete with Spark and One NZ"⁵ and that there are no "competitively effectively mitigation options that would be available to 2degrees."⁶ Further, that "[t]his only leaves 2degrees the option of stopping offering particular products".⁷ These submissions claim somewhat existential consequences of 2degrees refusal to [REDACTED]. For such a large and profitable company as 2degrees, it is simply inconceivable that it would not be willing to [REDACTED] if it genuinely viewed this spectrum as essential. 2degrees' failure to do so is sufficient evidence in and of itself that 2degrees does not need the 2600MHz spectrum in order to effectively compete.
- 2.4 Arguments that 2degrees needs the spectrum to avoid an existential threat to its ability to compete are similar to previous objections raised by 2degrees, which have also proved not to be borne out. For example, in response to the 2019 renewal of management rights in the 1800 MHz and 2100 MHz bands by the Ministry of Business, Innovation & Employment (**MBIE**), 2degrees expressed concerns that the proposed renewal options would weaken 2degrees' position in the market.⁸ This was based on 2degrees' assertions that the relevant spectrum was important to its continued delivery of services to customers, and that the proposed renewal options would perpetuate 2degrees' cost disadvantage and limit its options for rolling out new technologies to existing and future retail and wholesale customers. Furthermore, in response to the (then proposed) 2013 acquisition of spectrum in the 700MHz band by Vodafone (now One NZ) or Telecom (now Spark), 2degrees publicly raised concerns about its "ability to become a full service telecommunications provider that challenges Vodafone and Telecom in the fixed and mobile

³ [REDACTED].

⁴ [REDACTED]

⁵ 2degrees' submission on One NZ's clearance application, dated 8 December 2023, at [1.2(b)].

⁶ At [1.2(g)].

⁷ At [2.16].

⁸ See: <https://www.rsm.govt.nz/assets/Uploads/documents/consultations/2018-renewal-of-management-rights-1800-2100-mhz-bands/1fa2efdc54/two-degrees-submission-on-1800-mhz-2100mhz-consultation.pdf> at p 2-3.

markets”.⁹ None of 2degrees’ concerns have since come to fruition. As set out elsewhere in this submission, 2degrees continues to be an effective competitor despite the subsequent granting of renewal rights by MBIE and acquisition of the 700MHz spectrum by Spark.

2.5 There is nothing different in this case. As set out below, the Proposed Transaction will have no impact on 2degrees’ ongoing ability to compete in the market and no adverse effect on competition.

3. Market definition

3.1 One NZ maintains its view set out in its application that the relevant markets are national markets for each of mobile telephony and residential broadband services.

3.2 In particular, a broad market definition in relation to broadband is appropriate when the Commission is assessing the impact of a spectrum acquisition on competition in broadband markets.

(a) One NZ is primarily acquiring this spectrum to support its 5G roll out (and 2degrees has plenty of spectrum well suited for 5G available). 4G FWA is likely to be substantially replaced by current mobile technology standard (5G) in the near future and it would be artificial to consider 4G and 5G networks to be in separate markets particularly given the positive impact the 5G roll-out at a site has on 4G network capacity at that site (as set out in more detail below).

(b) While FWA may not currently be an effective constraint on the supply of fibre, the supply of FWA is certainly constrained by the supply of fibre. Chorus has created a wholesale fibre product expressly for consumers who may otherwise have been interested in FWA, which is seeing significant growth, as set out further below.¹⁰ Chorus’ Home Fibre Starter product has a retail price cap of \$60. This helps retail service providers (**RSPs**) to compete for price sensitive end users and compares favourably to retail prices for 4G FWA which are also priced at around \$60, with no data cap, and ADSL retail prices in excess of \$60.¹¹ As set out in Chorus’ submission, there is evidence of substitutability between FWA and some fibre services, with the Commission having previously observed some MNOs choose to serve low speed customers with fibre and FWA.

(c) Alternatives to FWA remain in non-fibre areas, including copper, satellite and services provided by WISPs. As outlined in the Copper Withdrawal Code which the Commission has recently amended,¹² copper will not be withdrawn if fibre is not available.¹³ Chorus has said it wants to continue to expand fibre,¹⁴ and most of this build will be for communities adjacent to the existing fibre network which clearly competes with rural FWA. The Measuring Broadband New Zealand Spring Report, released January 2024, recorded that 4G FWA provides on average similar speeds to VDSL.¹⁵ Satellite is surging in popularity and there is clear evidence that it is a competitive constraint on FWA products (see further below).

3.3 The Commission is also assessing a national market for the acquisition of spectrum management rights.¹⁶ Its assessment is primarily focussed on determining the substitutability between different spectrum bands. One NZ addresses this further below in the competitive effects section, but broadly agrees with the Commission’s assessment about the substitutability of different spectrum

⁹ See: <https://www.2degrees.nz/media-releases/vodafones-chilling-attempt-to-monopolise-spectrum>

¹⁰ Incentive terms for this plan were expressly intended to see RSPs offer fibre starter at a price that was the same or less than the then market price for FWA. See: <https://sp.chorus.co.nz/product-offer/home-fibre-starter-plan-and-introductory-incentive>.

¹¹ Chorus’ Submission on One NZ and Dense Air clearance application, dated 19 February 2024, at [6.3].

¹² See: <https://comcom.govt.nz/news-and-media/media-releases/2024/commission-amends-copper-withdrawal-code-to-enhance-consumer-protection>

¹³ See: <https://comcom.govt.nz/regulated-industries/telecommunications/telecommunications-for-consumers/copper-withdrawal-code>

¹⁴ Chorus has recently extended fibre to 10,000 homes and businesses in 59 communities across New Zealand, and has stated it wants to “take fibre further”. For further detail see: <https://company.chorus.co.nz/media/releases/chorus-extends-fibre-to-10-000-homes-and-businesses>.

¹⁵ Measuring Broadband New Zealand, Spring Report, January 2024, at p7, see: https://comcom.govt.nz/data/assets/pdf_file/0023/341807/MBNZ-Spring-Report-30-January-2024.pdf.

¹⁶ Sol, at [46].

bands.¹⁷ Additionally, One NZ notes that 2degrees itself has acknowledged the potential to use a wider range of spectrum bands for 5G mobile services, with 3G spectrum bands reutilised to provide 5G overtime.¹⁸

- 3.4 However, One NZ agrees that the precise market definition here is not determinative. On any view of the markets, the Proposed Acquisition is pro-competitive and could certainly not be said to substantially lessen competition.

4. **With and without scenarios**

Efficiencies arising from One NZ acquiring the spectrum in the factual

- 4.1 The Commission appears to consider the state of competition in the factual will be the status quo, compared to a counterfactual where 2degrees is a more effective competitor.¹⁹ This fails to address that in the factual One NZ will be able to compete more effectively and also that One NZ is best placed to deploy the spectrum as it already has 2600MHz spectrum and suitable equipment which will allow it to readily integrate the Dense Air spectrum into its network.
- 4.2 While One NZ intends to use the Dense Air spectrum for 5G, which will be of primary benefit in the next 2-4 years as its 5G roll out accelerates (depending on the uptake of 5G capable devices), it will in the short term employ the spectrum on its [REDACTED]. As customers with 5G capable devices move to using 5G, [REDACTED]. This will see a benefit for competition in such areas in the short term.

One NZ counterfactual

- 4.3 [REDACTED]
- 4.4 As set out in the clearance application and submission on the Commission's Statement of Preliminary Issues, [REDACTED].

2degrees in the factual

- 4.5 The Sol appears to suggest that alternatives to increase capacity to acquiring this spectrum would be viable for One NZ (such that any benefits arising for One NZ are not sufficiently transaction specific)²⁰ but the alternatives are somehow not viable for 2degrees.²¹ In other words, that One NZ is somehow better placed to pursue an alternative technology strategy than 2degrees and that requiring One NZ rather than 2degrees to do so might be a more competitive outcome. However, 2degrees' valuations of the cost of the next best alternative for 2degrees appear to be driven by the desire for equivalence with One NZ's total spectrum holdings, rather than an assessment of replicating the benefits of the Proposed Transaction in acquiring the specific 2600MHz spectrum itself.
- 4.6 This provides an inflated prediction of the cost of alternatives and also does not acknowledge that 2degrees has other alternative means (co-locating, MORAN, rolling out its existing spectrum on more sites, increasing its 5G rollout etc) to expand its mobile/broadband offering which are feasible, as discussed further below. 2degrees has also already committed to build an additional 450 sites as part of the sale of its towers to Connexa (and it would have received a cash injection

¹⁷ As outlined in [52] of the Sol, industry participants support One NZ's submissions on the substitutability of mid-band spectrum and 2600 MHz spectrum, and that this will be re-farmed overtime to 5G. One NZ also notes as outlined in this submission that it will depend on and MNO's network architecture and active equipment, which is why this spectrum is especially useful to One NZ and 2degrees will have difficulties rolling out this spectrum.

¹⁸ See: <https://www.2degrees.nz/media-releases/2degrees-to-close-3g-services-late-2025>

¹⁹ Sol, at [178].

²⁰ Sol, at [86].

²¹ See Sol, at [160] which notes in some instances the alternatives may not be commercially viable and/or practical, indicating alignment with 2degrees' submission on One NZ's clearance application, dated 8 December 2023, at [157].

from that sale to assist), so building further towers as an alternative to acquiring spectrum cannot be said to be uneconomic.²²

- 4.7 For these reasons, it is disingenuous to suggest that alternatives to acquiring the spectrum are viable for One NZ, such that the efficiencies arising are not transaction specific, but no such alternatives are available to 2degrees.

2degrees counterfactual

- 4.8 There is no reason to believe, [REDACTED], that 2degrees would in fact reach an agreement to acquire Dense Air in the event that One NZ were prevented from completing its acquisition.
- 4.9 Further, as set out below, there is a real question as to whether 2degrees would in fact use the Dense Air spectrum to roll out a national 4G FWA offering, even if it did acquire the Dense Air spectrum. One NZ understands 2degrees' existing equipment is not compatible with 2600MHz spectrum, and it would not be efficient for 2degrees to roll out new equipment just to deploy a 4G FWA network. This makes no sense given the deployment costs and likely uneconomic return on such a narrow business case given uncertain uptake of 4G FWA customers (particularly in fibre areas, where as explained 4G FWA faces strong competition from fixed access technology and strict rules around how it is marketed to consumers).²³ It also makes no sense in light of the impending transition to 5G (for which 2degrees has plenty of existing spectrum available to support), which has better speeds and a better customer experience. Market trends, including internationally, indicate more focus will be on 5G in the near future.

Acquisition by smaller regional players is not a valid counterfactual

- 4.10 Contrary to the submission by WISPA NZ to the Commission's Statement of Preliminary Issues, the acquisition of Dense Air by a smaller regional operator is not a valid counterfactual as One NZ understands that no such operators participated in the Dense Air sales process. Further, WISPs are primarily focused on a particular region and would place less value on national spectrum rights (gaining the benefit in only the region they operate in).

5. Parity of Spectrum Holdings

- 5.1 2degrees seems to suggest that parity of spectrum holdings between all market participants is required to prevent a substantial lessening of competition and this is a pervasive theme of the Sol. This cannot be correct. One NZ sets out below that:
- (a) MNOs, including 2degrees are currently strongly competing despite current asymmetric spectrum holdings;
 - (b) even if 2degrees acquired the Dense Air spectrum this would not achieve parity as asymmetries remain in either the factual or the counterfactual. A decision based on symmetry of spectrum holdings would simply prefer one version of "inequality" over another;
 - (c) spectrum holdings are not the only factor influencing network capacity and performance;
 - (d) parity has not been a feature of previous Commission decisions, spectrum auctions, allocations or renewals, nor is it required overseas;
 - (e) equivalence of cost base is not required for other significant drivers of MNO's costs, nor for costs in other industries;

²² See: https://comcom.govt.nz/_data/assets/pdf_file/0021/302385/Proposed-Acquisition-of-2degrees-Tower-Assets-by-Connexa-16-December-2022.pdf, at p 8.

²³ See: <https://www.tcf.org.nz/wp-content/uploads/Documents-TCF-Broadband-Product-Disclosure-Code.pdf>

- (f) there are sufficient alternatives to the 2600MHz spectrum available, even if 2degrees did need further spectrum to compete (which is not the case);
- (g) if all MNOs had parity in spectrum holdings, then Spark and One NZ customers would have a significantly worse customer experience (e.g. slower speeds) than 2degrees' customers as both have larger customers bases). This in turn would reduce the ability of Spark and One NZ to compete in the market and affect outcomes that the Commission is seeking to achieve through Part 7 of the Telecommunications Act 2001; and
- (h) what matters is sufficient headroom to ensure competitors can grow and expand, rather than parity of spectrum holdings. 2degrees has more headroom than One NZ.

MNOs are currently competing strongly without spectrum parity

- 5.2 2degrees has argued that parity / acquiring this spectrum would make it a "better" competitor. Neither 2degrees, nor the Commission, has explained why spectrum parity between 2degrees and One NZ is necessary to prevent a *substantial lessening of competition*.
- 5.3 To conclude parity is essential would require a finding that competition to date, which has occurred between MNOs with disparate spectrum holdings, has been ineffective. To the contrary, as One NZ has previously submitted to the Commission, 2degrees has an enhanced competitive position and has achieved scale which enables it to be a strong competitor with Spark and One NZ.²⁴ One NZ notes various public statements from 2degrees about its own competitiveness and competitive impact, as well as statements to this effect from the Commission. For example:
- (a) 2degrees stated in relation to its merger with Orcon that the merger would create an "even stronger challenger in the New Zealand telecommunications market with a comprehensive service and infrastructure offering across mobile, broadband, and energy services" servicing more than 1.5 million mobile customers.²⁵
 - (b) The Commission confirmed in its mobile market study findings that competition in the retail mobile market has become "more established with the emergence of the third MNO. The entry of 2degrees, and the completion of its own national network in recent years, has resulted in mobile consumers now having the choice of three independent network-based competitors, each offering similar levels of population and geographic coverage."²⁶ Further, that it "appears that 2degrees is well-positioned to compete in the supply of mobile services across all customer segments."²⁷
- 5.4 The proposed acquisition of the spectrum by One NZ does not result in 2degrees becoming more capacity constrained. It is not for merger control regimes to interfere to place any single competitor on par with another competitor (and no decision the Commission makes regarding the Proposed Transaction will equalise spectrum holdings across mobile operators). Asymmetry in spectrum holdings (as a driver of tension and dynamic competition) is not a 'competitive harm'. The relevant question is whether there is a real prospect of harm to a competitor, resulting in a substantial reduction of downstream activity (scale or scope) as a result of the Proposed Transaction. One NZ submits that, to the contrary, the transaction is likely to result in more competition in the downstream markets. Further, to reach a conclusion that the Proposed Transaction will have the likely effect of substantially lessening competition would necessitate a finding that Spark, Starlink and other competitors will not be an effective constraint on One NZ in the factual. The Sol contains no such analysis.

A range of factors impact network performance and capacity, not just spectrum holdings

- 5.5 A straight comparison of total spectrum holdings is not a useful basis on which to assess network capacity and the ability for the MNOs to compete. The idea that competing MNOs require parity in

²⁴ See One NZ's preliminary response to 2degrees' submission dated 18 December 2023 at [6.1], [6.2] and [7.2]. See also One NZ's clearance application, dated 2 November 2023, at [19.8] to [19.10].

²⁵ For further detail see: <https://www.2degrees.nz/media-releases/2degrees-and-orcon-group-to-merge>

²⁶ See: https://comcom.govt.nz/_data/assets/pdf_file/0022/177331/Mobile-Market-Study-Findings-report-26-September-2019.PDF at [5.3].

²⁷ At [5.19].

spectrum holdings ignores the impact of a range of other factors on network performance and capacity, including differing customer numbers, customer usage / mix and spectrum deployment. Indeed, One NZ estimates [REDACTED].

- 5.6 As set out in Annex 1, One NZ's network capacity model (the **Network Model**) shows that [REDACTED].²⁸
- 5.7 This is supported by the Crowdsourced data in the Umlaut report, which shows that, on a national basis, Spark has the poorest speeds and coverage despite having the highest spectrum holdings.²⁹ This makes it clear that spectrum is not the key driver in delivering quality service. The report also shows that coverage between 2degrees and One NZ is essentially equal, but 2degrees has an edge when it comes to download speed. As outlined in further detail below, these findings demonstrate that service providers do not require equivalent spectrum holdings to deliver an equivalent experience to customers.
- 5.8 The NERA Report also bears out this analysis, including the notable example of O2 in the UK. As set out in the NERA report, "... O2 grew its market share with substantially smaller percentage spectrum holdings than 2Degrees. Today, after acquiring new spectrum at auction and through spectrum trades, O2's share of spectrum in the UK has climbed to 22%, the same level that 2degrees would be in the factual. With this level of spectrum share, O2 sustains a market-leading subscriber base of 30.5 million subscribers, a 34.6% market share." In light of this example, the idea that 2degrees requires parity of spectrum holdings to be an effective competitor is untenable.
- If parity is required previous acquisitions of spectrum which increased asymmetry would not have been allowed in New Zealand or overseas*
- 5.9 A requirement for parity has not featured in previous Commission decisions involving spectrum. If parity is required, all previous decisions which resulted in or increased disparity would not have been granted clearance, e.g., *Craigs Wireless*, which increased the spectrum holdings of Spark, taking it well beyond parity with other competitors.³⁰
- 5.10 Further, spectrum allocation mechanisms employed by New Zealand to date would essentially be rendered useless. As outlined in Section 116 of the Radiocommunications Act 1989, the allocation of radio licenses are to be provided for by competitive tender, auction or by any other means. Competitive auctions have historically assumed an asymmetric distribution within a cap, and direct allocation and renewal have typically rolled over existing asymmetric allocations. If the Commission finds that unequal holdings are anticompetitive, this necessarily would limit the Crown's discretion to choose an allocation method for spectrum, preventing competitive auctions.
- 5.11 The outcome would be that the spectrum should simply be given to the party holding the smallest share of spectrum to date. An acquisition of spectrum at auction by anyone other than the smallest spectrum holder might be considered unlawful on the basis of the approach suggested in the Sol. This would essentially result in the Crown having to allocate spectrum for free. It is unlikely any party would be willing to pay for spectrum if they know they were guaranteed to be allocated the spectrum in order to achieve parity with their competitors. To the best of One NZ's knowledge, this is not something that has ever been suggested by the Commission. The reality is that, to the extent that the disparity in spectrum holdings would prevent a party from being able to compete, the Crown can take this into account in how it designs initial allocations (e.g. acquisition limits in auctions), when considering reallocation of this spectrum, and other spectrum allocations in the future.
- 5.12 Furthermore, a requirement for parity is not how telecommunications markets operate overseas and is out of line with all international precedent. The United Kingdom's Office of Communications (**Ofcom**) stated in its 2017 Competition issues and Auction Regulations that it did not consider that operators need to have the same, or close to the same, shares of spectrum in order for there

²⁸ For further detail, see Annex 1.

²⁹ See: <https://www.accenture.com/content/dam/accenture/final/accenture-com/document/2023-New-Zealand-Mobile-Benchmark-Certificate.pdf>.

³⁰ *Spark New Zealand Trading Limited and Craig Wireless New Zealand Spectrum Operations Limited and Woosh Wireless Holdings Limited* [2016] NZCC 7.

to be strong competition.³¹ Furthermore, the ACCC has considered spectrum three times in the last ~15 years, according to its published authorisation and informal merger review registry.³² Based on publicly available information, the ACCC has tended to direct the focus of its analysis in these cases to whether the relevant spectrum would be likely to facilitate new entry into the market, while also having regard to its use (or non-use) prior to the relevant transaction. It does not appear that in these cases the ACCC gave weight to the differential between spectrum holdings of the relevant providers, or made any suggestion that spectrum parity was required. Similarly, in a 2016 decision involving two large telecommunications providers, the CMA directed its focus to the impacts of the merger on potential new entry/expansion and relevant foreclosure effects, and did not appear to give weight to the parties' respective spectrum holdings.³³

Required equivalence of cost base is not a feature of other MNO costs, or costs in other industries

- 5.13 Required equivalence of cost base is not a feature of any other market as far as One NZ is aware, nor is it a feature of other significant drivers of MNO's costs. For example, there is no required equivalence of handset supply terms, labour costs, software licensing costs, property and site access costs or other material drivers of overall cost base of any mobile operator, which would plainly never be expected. Rather, differing decisions as to where to invest capital is a fundamental tenet of competition.

There are sufficient alternatives to 2600MHz spectrum

- 5.14 The Sol states that "evidence indicates that there are unlikely to be other opportunities in the short to medium term for 2degrees to acquire sufficient additional spectrum to remove, or materially reduce, the disparity in its holdings compared to One NZ (and Spark)."³⁴ However:
- (a) for the reasons outlined above "parity" is not the correct test. In focusing on parity, the Commission has seemingly failed to consider whether sufficient spectrum is already held by 2degrees to prevent a substantial lessening of competition, while One NZ does not consider that a substantial lessening of competition will arise even if 2degrees is not able to acquire any more spectrum in the short term, in reality 2degrees does have clear opportunities to acquire further spectrum;
 - (b) the Sol does not suggest or provide any evidence that other spectrum is unavailable.³⁵ In particular, the Sol (at least the public version which One NZ can review) has not addressed the potential for 2degrees to acquire further 2100MHz, 2300MHz and 3.5GHz spectrum which has recently been, or is currently the subject of a sales process through Tu Atea, as well as [REDACTED]. The Commission should take further steps to establish the actual position regarding these bands and their availability for 2degrees; and
 - (c) if 2degrees did in fact need to acquire more spectrum than is available from sources such as Tu Atea (which One NZ disagrees is the case), it would have been amenable to [REDACTED], which would have supplemented spectrum it could acquire from other sources.

³¹ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0022/103819/Statement-Award-of-the-2.3-and-3.4-GHz-spectrum-bands-Competition-issues-and-auction-regulations.pdf at [6.45].

³² See: <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/singtel-optus-pty-ltd-proposed-acquisition-of-vividwireless-group-limited>, <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/optus-mobile-pty-ltd-proposed-acquisition-of-certain-spectrum-licences-from-3g-investments-australia-pty-ltd>, and <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/hutchison-telecommunications-australia-limited-proposed-acquisition-of-aapt-limiteds-850-mhz-spectrum-licences>

³³ See: https://assets.publishing.service.gov.uk/media/56992242ed915d4747000026/BT_EE_final_report.pdf

³⁴ Sol, at [172.5].

³⁵ Instead it focuses on, as at paragraph 151, that there is uncertainty regarding any future acquisitions in the short to medium term.

What matters is headroom, not parity

- 5.15 Where there are competitors of different sizes in a market, what matters is the access these competitors have to sufficient headroom in order to enable them to grow overtime. This does not require parity of spectrum.
- 5.16 A focus on parity leads to a number of perverse consequences:
- (a) if One NZ cannot acquire Dense Air, then presumably Spark could not acquire any similar spectrum holdings in the future. This would have a significant effect on competitive bidding for spectrum;
 - (b) if parity is essential to being able to compete, then declining clearance would itself result in a substantial lessening of competition by preventing One NZ achieving parity with Spark (with the notion that One NZ is better placed than 2degrees to mitigate the effects of not obtaining the spectrum being wholly without foundation for reasons set out elsewhere in this submission); and
 - (c) if in a hypothetical counterfactual 2degrees were to acquire the Dense Air spectrum and therefore gain spectrum parity with One NZ, the Commission would need to decline clearance for any additional acquisitions of spectrum by 2degrees (e.g. Tu Atea spectrum) as this would take it above parity compared to One NZ.
- 5.17 This analysis demonstrates why it is problematic for the Commission to determine which combination of spectrum allocations is optimal from a competition perspective, when access to spectrum is determined by a well-functioning competitive market.
- 5.18 Additionally, the capacity model that 2degrees has supplied to the Commission is simplistic in nature. In 2degrees' submission to the Commission, 2degrees compared total capacity holdings (using total spectrum holdings * total number of sites).³⁶ This measure is too simplistic, as capacity cannot be considered in isolation from the size of the customer base. 2degrees measure fails to take into account the average speeds a customer on each network will experience (either mobile or FWA). One NZ's Network Model (see Annex 1) demonstrates that 2degrees has plenty of headroom to grow its customer base based on its current capacity per customer. This is expanded on further in the NERA report.

6. Competitive effects – FWA in fibre areas

- 6.1 Currently 87% of New Zealand's population (1.5 million addresses) have access to ultra-fast broadband (**UFB**) i.e., are located in fibre areas. The acquisition of the 2600MHz spectrum has no impact on the competitive landscape in fibre areas as all MNOs, along with a myriad of other broadband suppliers, can offer competitive services to end users using fibre (accessible from LFCs on standard terms). The competitive offerings of FWA are constrained by customers' willingness and ability to switch to fibre, as recognised in the Sol regarding low usage households.³⁷ There is currently no price differential between Fibre Starter (Chorus' product which competes with FWA) and 4G FWA offerings, with 2degrees selling both products at the same price.³⁸ 2degrees' arguments that 4G FWA does not constrain fibre, even if correct, are irrelevant as fibre is clearly a constraint on the provision of FWA services.
- 6.2 This is further illustrated by the fact that One NZ has [REDACTED].^{39,40}

³⁶ See 2degrees' submission on the One NZ/Dense Air clearance application, dated 8 December 2023, at [2.13(a)].

³⁷ Sol, at [67].

³⁸ 2degrees offers fibre and FWA broadband offerings at the same price point, with its Fibre Starter offer retailing at \$50 for its Pay Monthly mobile plan customers, the same price as its 4G unlimited FWA. See:

https://www.2degrees.nz/broadband/plans?qad_source=1&discount=no

³⁹ See: <https://assets.ctfassets.net/7urik9yedtcq/nzx-doc>

https://assets.ctfassets.net/7urik9yedtcq/5HEZKMCr51rFgSQ76jOdAW/5ac859f42f9ccc37f3a1296dd4750ecf/chorus-413555/2927f97b649c5ba7deb4c5355d82d433/2_Investor_Presentation.pdf

See also: <https://assets.ctfassets.net/7urik9yedtcq/5HEZKMCr51rFgSQ76jOdAW/5ac859f42f9ccc37f3a1296dd4750ecf/chorus-financial-results-full-year-fy23-02-investor-presentation.pdf>

⁴⁰ See: <https://assets.ctfassets.net/7urik9yedtcq/5HEZKMCr51rFgSQ76jOdAW/5ac859f42f9ccc37f3a1296dd4750ecf/chorus-financial-results-full-year-fy23-02-investor-presentation.pdf>

- 6.3 If 2degrees wants to compete more heavily in FWA in urban areas, it has plenty of capacity in 5G (3.5GHz spectrum), which it could use to deliver urban FWA. It would certainly be more efficient for 2degrees to focus on rolling out 5G using its existing 3.5GHz holdings rather than 4G FWA. Given the transition to 5G, 4G FWA will very quickly become a legacy product, and to use the 2600MHz would require 2degrees to acquire 2600MHz capable equipment (as set out further below).
- 6.4 Regardless, the ability of MNOs and a myriad of other competitors to offer competitive services to end users using fibre services (among other means as set out below) will continue to constrain One NZ in the provision of FWA in fibre areas post-Transaction.

7. **Competitive effects – FWA in non-fibre areas**

- 7.1 There are around 220,000 households in non-fibre areas. In this section, One NZ sets out:
- (a) an overview of the make-up of the areas in New Zealand in which fibre services are not available;
 - (b) a summary of the significant extent of existing competition in these areas (which means the Proposed Transaction will not result in a substantial lessening of competition even if 2degrees is not able to expand its services in such areas at all);
 - (c) an overview of the Network Model showing [REDACTED] in these areas based on existing spectrum holdings;
 - (d) why the Proposed Transaction will allow One NZ to be more competitive in non-fibre areas;
 - (e) why acquiring the Dense Air spectrum would be unlikely to result in 2degrees rolling out a national 4G FWA offering or being more competitive in these areas; and
 - (f) the many options available to 2degrees should it wish to expand FWA in non-fibre areas.

Overview of the make-up of non-fibre areas

- 7.2 Non-fibre areas are made up of the following:
- (a) Areas covered by the Rural Connectivity Group (**RCG**), a joint venture between 2degrees, Spark and One NZ, sites delivering coverage to approximately 30,000 households. RCG runs the passive and active components of the network and all MNOs have access to the same sites with MNOs spectrum pooled to deliver services within the coverage area (meaning 2degrees has equal ability to service these customers as One NZ and Spark). Accordingly, there will be no impact on competition or capacity at all in these areas;
 - (b) Rural Broadband Initiative phase one (**RBI1**) funded sites,⁴¹ where One NZ previously won two contracts to deliver FWA. One NZ's previous requirement to offer co-location on commercial terms has now transferred to FortySouth. There are [REDACTED] towers where One NZ continues to have a requirement to allow other parties (including other MNOs and WISPS) to co-locate at zero margin. In the remainder of RBI1 sites, One NZ supplies wholesale services to access seekers. 2degrees currently only co-locates on around [REDACTED] of these sites (see further below);
 - (c) Areas covered by One NZ sites that have been built or had upgrades funded by Crown Infrastructure Partners (**CIP**) through the rural connectivity upgrade programme, or One NZ sites built on a commercial basis in those areas where anticipated demand for services justifies investment (i.e. without Government funding). Co-location on these sites is now available from FortySouth and One NZ supplies wholesale services to access seekers; and

⁴¹ Many RBI1 sites are now in fibre areas as the UFB footprint has expanded overtime.

- (d) areas where other operators have funded and built their own sites, with collocation on these sites now available from Connexa.

7.3 Therefore, MNOs can offer FWA in non-fibre, non-RCG areas by:

- (a) purchasing wholesale services from an operator who has coverage in the area;
- (b) co-locating on existing sites;
- (c) upgrading existing sites with additional spectrum (for more capacity); or
- (d) building their own sites themselves or by commissioning a towerco to do so.

Existing competition in non-fibre areas

7.4 In relation to non-fibre areas (which only amounts to approximately 220,000 addresses), One NZ sees strong competition from:

- (a) Spark;
- (b) Starlink, the satellite internet provider which is available to all addresses (including those not serviced by UFB or the RBI) and now has ~45,000 connections. While this gives Starlink an overall 2.3% share of the national broadband market⁴², One NZ expects the vast majority of Starlink's connections would be located in non-fibre areas. This is a significant presence and represents huge growth given it only launched in 2020;⁴³ and
- (c) local WISPS, which also have coverage in many non-urban areas using wireless technologies. WISPS have ~70,000 connections in total across New Zealand⁴⁴ (i.e. around one third of total households in non-fibre areas) and may have coverage in areas where there is poor FWA coverage.

7.5 [REDACTED]

7.6 Further competition from other Low Earth Orbit (**LEO**) providers is also imminent. OneWeb has recently partnered with Sat One to offer OneWeb's LEO satellite services in Australia and New Zealand⁴⁵ and Amazon's LEO satellites are also expected to launch in the short term.⁴⁶

Network Model shows [REDACTED]

7.7 In its Network Model, One NZ has modelled the customer experience in fibre and non-fibre areas for each of 2 degrees and One NZ based on current spectrum holdings, both with reference to current spectrum deployed and in circumstances where all spectrum is deployed. The full results of the Network Model and its underlying assumptions are set out in **Annex 1**. As the Network Model demonstrates, 2degrees is capable of providing [REDACTED]. While the Dense Air spectrum would [REDACTED].

7.8 The Network Model makes clear that using overly simplistic measures such as "parity" of spectrum wholly misrepresents the actual competitive effects of relative spectrum allocations. 2degrees clearly has more than sufficient spectrum allocation to compete hard in non-fibre areas, but appears to have made a business decision not to do so. There is no reason to expect that it obtaining the Dense Air spectrum would change this strategy, whereas it would clearly [REDACTED].

⁴² Internal One NZ estimate based on share of ASNs.

⁴³ Based on data from the Asia Pacific regional internet address registry estimates as at 20 February 2024. For latest estimates see: <https://stats.labs.apnic.net/cgi-bin/aspop?c=NZ>.

⁴⁴ For further detail see: [WISPA-submission-in-response-to-Statement-of-Preliminary-Issues-8-December-2023.pdf](https://www.comcom.govt.nz/assets/Uploads/WISPA-submission-in-response-to-Statement-of-Preliminary-Issues-8-December-2023.pdf) ([comcom.govt.nz](https://www.comcom.govt.nz)) at p 1.

⁴⁵ For further detail see: <https://oneweb.net/resources/sat-one-secures-oneweb-capacity-australia-and-new-zealand>

⁴⁶ For further detail, see: <https://www.aboutamazon.com/what-we-do/devices-services/project-kuiper>

One NZ will be more competitive with the Dense Air spectrum

- 7.9 The Dense Air spectrum is not well suited for rural areas, being primarily useful for urban locations (as previously submitted)⁴⁷, unlike low band spectrum which has better suitability for rural locations. This spectrum is therefore primarily being acquired by One NZ to accelerate its 5G roll out in urban areas. However, 2600MHz spectrum does have some benefit [REDACTED].
- 7.10 One NZ will, in the short term, [REDACTED]. The Dense Air spectrum will assist One NZ to improve the service experience of its existing customers and [REDACTED].⁴⁸
- 7.11 Importantly, this will benefit not only those customers (being primarily mobile customers with high data use) who will be switched to 5G, but also customers remaining on 4G, including 4G FWA. This is because when One NZ deploys 5G at a site, a substantial proportion (i.e., up to [REDACTED]) of data usage switches to the 5G network, which has much greater capacity than the 4G network. This leaves a much greater amount of 4G capacity for a smaller number of 4G users, improving the experience of these users. One NZ believes that approximately [REDACTED] of mobile handsets are 5G capable⁴⁹ and this figure is increasing rapidly. Accordingly, [REDACTED] will have substantial benefits for its customers (in both fibre and non-fibre areas).
- 7.12 One NZ's strategy is to deploy 5G more quickly on sites that are [REDACTED], which will include sites in non-fibre areas where 5G would [REDACTED]. This may also assist in some areas which are [REDACTED]. The Proposed Transaction will therefore improve One NZ's quality of service in these areas, and provide a more competitive alternative for customers to consider alongside the existing alternative options.

The 2600MHz spectrum is unlikely to make a difference to 2degrees' 4G FWA offering

- 7.13 Acquiring Dense Air's 2600MHz spectrum would be unlikely to improve the extent or quality of FWA which 2degrees could offer today. 2degrees has a very small presence in 4G FWA in rural non-fibre (and non RCG) areas.
- 7.14 When assessing non-fibre areas, the Commission should exclude from its consideration RCG addresses (which 2degrees has equal capacity to service regardless of its spectrum holdings), and any addresses beyond c. [REDACTED] from a tower, for which 2600MHz spectrum will be of little or no benefit. One NZ estimates that around [REDACTED] of customers in non-fibre areas sit outside the range where mid-band spectrum can reach, which renders the 2600MHz spectrum even less suitable to assist 2degrees with rolling out a 4G FWA offering as the addressable customer market would be very small.
- 7.15 Excluding the ~30,000 RCG households from the ~220,000 non-fibre households gives a remaining figure of ~190,000 households for which differences in spectrum holdings could possibly have an impact. ~60% of these sit outside the range of mid-band spectrum, leaving fewer than ~80,000 households which could potentially be targeted using 2600MHz spectrum. This is unlikely to be considered sufficient to support any rational business case for 2degrees acquiring and upgrading new equipment to use the 2600MHz spectrum across rural areas, particularly factoring in competition from One NZ, Spark, WISPs, satellite providers and the impact of the impending 5G roll-out. The cost of deploying network assets to address a consumer segment of this size would exceed any plausible return on investment. In these areas it is much more likely that [REDACTED] whereas 2degrees, with substantially fewer customers, has many alternative options to develop an offering or improve an existing offering if it has one. These conclusions are borne out by One NZ's Network Model.
- 7.16 As set out below, 2degrees could have pursued many different approaches to better service FWA in rural areas, including using its' existing spectrum or via wholesale arrangements. However, 2degrees has chosen not to pursue these strategies. It is not at all clear why, if 2degrees acquired

⁴⁷ See One NZ's Clearance Application dated 2 November 2023, at [1.5].

⁴⁸ As outlined in [184] of the Sol, in the factual One NZ will be more competitive in the retail supply of wireless broadband services, the Dense Air spectrum will enable One NZ to offer more wireless broadband at faster download and upload speeds.

⁴⁹ This is based on One NZ data for One NZ's post-paid mobile customers.

2600MHz spectrum via Dense Air, it would suddenly determine to start rolling out 4G FWA products in non-fibre areas, particularly given:

- (a) the imminent switch to 5G which will result in 4G FWA very quickly becoming a legacy product;
- (b) the cost and effort associated with building out 2600MHz on its towers, especially given that, One NZ understands, 2degrees does not currently have equipment compatible with 2600MHz; and
- (c) that 700MHz and 900MHz spectrum would be a more suitable means to roll out rural 4G FWA than 2600MHz.

7.17 One NZ understands that 2degrees is currently engaged in swapping out its existing Huawei equipment with Ericson equipment (as it is under a regulatory obligation to switch out Huawei equipment when upgrading a site to 5G⁵⁰), [REDACTED]. This means that even if 2degrees did determine to roll out 2600MHz capable equipment on its sites as part of this change and use that to offer 4G FWA, non-fibre areas close to towers (for which the 2600MHz could have a use) would only see a benefit in several years' time. In this time, the market will have moved towards greater 5G uptake in any case. As noted above, it seems unlikely that there would be any credible business case for deploying legacy 4G FWA in this scenario, and no competitive benefit for consumers in doing so at a point in time where higher quality 5G FWA services are industry standard and deliver far superior quality of service. As noted above, 2degrees has sufficient 3.5GHz spectrum holdings to enable deployment of 5G FWA (and the same amount of this spectrum as One NZ).

7.18 However, One NZ sets out below some of the options available to 2degrees to expand its 4G FWA offering should it indeed choose to do so, independent of acquiring the Dense Air spectrum (or indeed any further spectrum). This includes via more upgrades to 5G, [REDACTED], by deploying existing spectrum, or by co-locating on more sites.

Upgrading sites to 5G

7.19 As set out above, when One NZ upgrades a site to 5G, this [REDACTED]. 2degrees has a large amount of 3.5GHz spectrum (much more on a per-customer basis than Spark or One NZ) and is in the process of rolling out 5G. Accordingly, like One NZ, it can focus its 5G deployment on those areas where it believes [REDACTED]. This would allow it to offer more 4G FWA products if there was demand for these products.

MORAN Agreement

7.20 To date, 2degrees has prioritised cost efficiency over developing a rural FWA footprint. Specifically, it has sought to limit requirements to build its own infrastructure (or co-locate on independent tower infrastructure) and instead, entered into a managed capacity services arrangement with One NZ (**MORAN Agreement**).

7.21 2degrees' existing MORAN Agreement with One NZ [REDACTED] which would be required for it to compete in rural FWA.⁵¹ This suggests that [REDACTED] and acquisition of additional spectrum would make no difference to that. 2degrees has also never been a wholesale rural FWA customer of One NZ on the RBI sites, which would be a very cost-effective way of offering rural FWA.

7.22 2degrees has a small FWA footprint. As noted, its strategy has prioritised cost-efficiency for mobile coverage over rural FWA coverage. The existing MORAN Agreement, which underpins this strategy, would require 2degrees to [REDACTED] a further challenge to a claimed strategy by

⁵⁰ Relating to control over areas of specified security interest pursuant to the Telecommunications Interception Capability and Security) Act 2013.

⁵¹ The existing MORAN agreement only includes 700MHz (4G) and 900MHz (3G). [REDACTED].

2degrees that seems to entirely diverge from the actual strategy demonstrated by 2degrees to date.

7.23 [REDACTED].

7.24 It would be uneconomic for 2degrees to [REDACTED], and it would be uneconomic to deploy active equipment just for rural FWA, as the addressable market is small and the equipment is costly. It would also be uneconomic for 2degrees to build new sites in non-fibre areas purely for FWA upside. [REDACTED]. This further indicates that 2degrees is not planning to roll out a national 4G FWA network.

Deploying existing spectrum

7.25 One NZ understands that there is a very low proportion of 2degrees' non-fibre locations where its existing mid-band spectrum has actually been deployed (based on data from the Radio Spectrum Database⁵², One NZ estimates only [REDACTED] of non-fibre sites have 1800MHz, and [REDACTED] of sites have 2100MHz⁵³). 2degrees could improve its rural FWA capacity simply by deploying existing spectrum holdings in rural areas (see One NZ Network Modelling at Annex 1). Again, that it has chosen not to do so indicates it has no intention or strategy to deploy 4G FWA on these sites in the near future.

7.26 The 2600MHz spectrum would only be potentially beneficial to a maximum of [REDACTED] sites where 2degrees has currently deployed both its 1800MHz and 2100MHz holdings. On other sites, 2degrees could use its existing spectrum holdings to increase FWA capacity.

Co-locating on more sites

7.27 2degrees could also co-locate on more FortySouth or Connexa sites in non-fibre areas (noting Connexa holds sites which were previously owned by Spark in addition to sites which were previously owned by 2degrees). [REDACTED].

7.28 2degrees could also acquire wholesale services to offer FWA to rural customers should it choose to engage in rural 4G FWA, which would be lower cost than co-locating. One NZ has approximately 356 sites in non-fibre areas where it could sell FWA wholesale.

7.29 Therefore, based on 2degrees' prior commercial strategy and choices, the 2600MHz would not materially increase its ability to compete in non-fibre FWA.

8. Wholesale

8.1 One NZ typically offers bespoke wholesale deals, [REDACTED]. Accordingly, the below separately assesses wholesale broadband and mobile services.

Broadband

8.2 The wholesale FWA market is very small, at only [REDACTED] connections (according to estimates of Spark's customer base, alongside One NZ's own figures) as at December 2023. The Proposed Transaction will not reduce competition in the wholesale market.

8.3 In relation to rural wholesale, [REDACTED]. 2degrees also wholesales Starlink's business grade communications. Retailers can either buy wholesale services from One NZ or co-locate on RBI1 sites. As outlined above, 2degrees co-locates on a number of these sites. Whilst 2degrees may argue it is capacity constrained on these sites so it cannot provide wholesale services on all of them, [REDACTED]. 2degrees has options to expand wholesale services via co-location, although it has not done this as it does not make economic sense.

8.4 For urban wholesale, there are more players in this market, including Chorus and other Local Fibre Companies (**LFCs**). The market for urban FWA is very small, especially for Mobile Virtual

⁵² One NZ's analysis estimates a non-fibre site as a site which is within >1km of fibre using the Radio Spectrum database.

⁵³ These sites are not mutually exclusive, some sites will have both spectrum bands.

Network Operators (**MVNOs**). A number of MVNOs offer low priced / discounted fixed broadband, therefore 4G FWA is not often attractive to their customer base. For example, Mercury, Contact Energy and Nova predominantly sell discounted fibre packages to attract / retain electricity customers. Other MVNOs such as RocketMobile and The Warehouse mobile do not offer broadband.

- 8.5 Therefore overall, the Proposed Transaction will not result in any changes to the competitive dynamics for providing wholesale FWA. It may enable wholesalers to sign up more customers with One NZ increasing its capacity, but MVNOs may be cautious about adding customers to FWA as it is only offered when there is excess capacity.

Mobile

- 8.6 As outlined below, there will be no impact on mobile as all MNOs have sufficient mobile capacity. Accordingly, the above has focused on wholesale wireless broadband services.

9. Mobile

- 9.1 The Proposed Transaction will have no impact on mobile services. One NZ primarily offers unlimited mobile plans via 5G for which 2degrees already has plenty of well-suited spectrum. Mobile plans are offered on a national basis (and One NZ provides 2degrees with a wholesale active sharing agreement via the MORAN agreement).

- 9.2 In relation to unlimited mobile broadband plans, 2degrees will still post-transaction have the ability to increase capacity for its unlimited plans by using existing spectrum it has not yet deployed (as is the case for FWA, as set out above) or spectrum suitable for 5G networks (e.g., its 3.5GHz spectrum) as most customers now buying unlimited data have 5G capable phones. [REDACTED] of One NZ's unlimited plan consumer customer base have 5G capable phones, and this is increasing each month as customers replace 4G phones with newer versions. If 2degrees requires more capacity to offer unlimited plans, it could increase the speed of its 5G rollout which would offload some of the traffic from 4G to 5G.

- 9.3 Whilst 2degrees does not offer an unlimited plan in the market, [REDACTED]. Accordingly, there should be nothing stopping 2degrees from offering unlimited plans if it chooses to.

10. Conclusion

- 10.1 Accordingly, based on the points outlined in the above, the Proposed Transaction will not result in a substantial lessening of competition in any market.

Annex 1 – One NZ FWA Network Capacity Model

[REDACTED]