

**PRELIMINARY RESPONSE OF ONE NZ TO THE SUBMISSION BY 2DEGREES TO THE
COMMERCE COMMISSION REGARDING THE CLEARANCE APPLICATION BY ONE NZ RELATING
TO THE PROPOSED ACQUISITION OF DENSE AIR**

Dated 18 December 2023

1. Introduction

- 1.1 One New Zealand Group Limited (**One NZ**) provides the below preliminary response to 2degrees' submission dated 8 December 2023 in relation to One NZ's application to the Commerce Commission for clearance for its acquisition of Dense Air New Zealand Limited (**Dense Air**) (the **Proposed Transaction**).
- 1.2 One NZ has had limited time to consider the lengthy 2degrees submission (received by One NZ on 11 December) ahead of the upcoming decision date of 19 January 2024 (noting the Commission's statutory shutdown). Accordingly, and taking account of the extent of the material redacted from the version available to One NZ, One NZ will provide a further more detailed response to this submission in due course. However, at this point it wishes to address the key themes of the 2degrees submission.

2. Initial observations / summary

- 2.1 2degrees does not seem to raise any concerns about the impact of the Proposed Transaction on its ability to compete in mobile or 5G. One NZ agrees with this position. 2degrees has ample spectrum to operate as a highly effective competitor in both.
- 2.2 2degrees' submission instead focuses on what it sees as the impact of the Proposed Transaction on its ability to compete in 4G FWA compared to the counterfactual, which it seems to believe will result in a substantial lessening of competition. One NZ disagrees with this position.
- 2.3 As expanded on further below, 2degrees' arguments essentially boil down to a demand for equivalence of total network capacity with One NZ (which would give 2degrees much higher capacity per user than One NZ), rather than demonstrating a substantial lessening of competition is likely. In any event, there is no separate FWA market, and particularly no separate 4G FWA market, as 2degrees appears to be asserting.
- 2.4 2degrees has provided no evidence as to why its expansion in 4G FWA would change the already highly competitive broadband market. The Commission has considered this very point in previous cases and determined there to be sufficient existing competition between broadband suppliers irrespective of whether a transaction would result in fewer or weaker FWA providers. In any event, 4G FWA has a relatively limited lifespan and will soon be replaced by 5G FWA (which 2degrees is already rolling out). To the extent that 2degrees wishes to increase its 4G FWA capacity in the short term it has alternative options available to do so.

3. Equivalence with One NZ

- 3.1 2degrees' arguments focus on its ability to achieve "equivalence" with One NZ. For example, 2degrees states in its submission "*2degrees would need to build [redacted] more towers to reach near equivalence with One NZ's network capacity*".¹ One NZ submits that equivalence is the incorrect measure to assess whether a substantial lessening of competition is likely as a result of the Proposed Transaction.
- 3.2 2degrees does not need to have equivalent capacity with One NZ to compete. There are many parameters of competition between mobile and broadband suppliers, capacity being merely one element. 2degrees, Spark and One NZ do not currently have equivalence of spectrum holdings, yet the mobile markets are highly competitive and the parties all use surplus spectrum to provide FWA services in a highly competitive broadband market.

¹ 2degrees' submission, dated 8 December 2023, at [2.13(a)].

- 3.3 One NZ notes that 2degrees is doing very well in broadband based on its current network and spectrum holdings (and without equivalence). 2degrees has grown share for the September quarter of this year, while Spark and One NZ have lost share. One NZ understands 2degrees has grown 9% quarter on quarter. While some of this growth will relate to the acquisition of the MyRepublic base (estimated at c.20k customers), 2degrees would still have made a significant gain regardless, which One NZ estimates to be 3% growth (quarter on quarter).
- 3.4 Finally, One NZ notes that none of the previous Commission decisions relating to spectrum have assessed the transaction by reference to equivalence. In New Zealand and other jurisdictions, the acquisition of spectrum is a competitive process which is driven by the value placed on the specific spectrum by each market participant (according to their particular needs and competitive strategy). That competitive process can lead to asymmetric outcomes, but such outcomes are not indicative of competition concerns in mobile or broadband markets.

4. **No separate FWA market**

- 4.1 There is no separate FWA market, and particularly no separate 4G FWA market, as 2degrees seems to be implicitly suggesting.
- 4.2 While One NZ agrees with 2degrees that 4G FWA is not a particularly effective substitute for some broadband users², as submitted in One NZ's clearance application, other forms of broadband still provide a strong constraint on FWA.³ For example, the price of FWA will be constrained by the price at which consumers can obtain alternative types of broadband, e.g., fibre. Even if 2degrees was limited in expanding its 4G FWA offer (which is not the case), the Proposed Transaction will not give One NZ market power in 4G FWA because it is constrained by other suppliers of broadband. Indeed, 2degrees itself offers fibre and FWA broadband offerings at the same price point, with its Fibre Starter offer retailing at \$50, the same price as its 4G unlimited FWA.⁴
- 4.3 This is reinforced by the fact that One NZ is intending to use the acquired Dense Air spectrum for 5G (rather than 4G FWA).

5. **Spectrum bands are substitutable**

- 5.1 2degrees seems to be suggesting that spectrum in the 2300 and 2600 bands is essential for 4G FWA and not substitutable with other mid band spectrum. One NZ submits that this is incorrect. While it is true that 3.5GHz spectrum is not a direct substitute for 4G FWA, other spectrum which sits in the mid band (i.e., 1800 and 2100), are direct functional substitutes for 4G FWA. As set out in the clearance application, there will be numerous opportunities to acquire or obtain additional spectrum of all frequencies both in the immediate future and over the next 10 years, including spectrum suitable for 4G FWA.
- 5.2 Additionally, spectrum in the low band can also provide 4G mobile and FWA services.⁵ For example, the majority of One NZ's 4G FWA is provided via 700, 1800 and 2100. Only ~[redacted]% of One NZ's FWA traffic is on the 2600 band. This is in the context of only ~[redacted]% of One NZ's network containing the 2600 band.
- 5.3 Additionally, in relation to TDD and FDD spectrum, 2degrees' argument at 3.2 of its submission is unclear. 2degrees suggests that TDD is more efficient, which One NZ agrees with, however this case involves FDD and 2degrees already has TDD (its 3.5GHz spectrum). There remains further TDD spectrum available – such as 2300MHz and 3.5GHz.

² 2degrees' submission, dated 8 December 2023, at [10.3].

³ See One NZ's clearance application dated 1 November 2023, from [16.1] to [16.3].

⁴ See [Broadband on 2degrees | Broadband plans | 2degrees](#), accessed on 18 December 2023.

⁵ See One NZ's clearance application dated 1 November 2023, at [22.3].

- 5.4 Finally, One NZ notes that 2degrees has painted a pessimistic view of carrier aggregation.⁶ In One NZ's view, the carrier aggregation feature in the current 4G and 5G network is highly sophisticated and very efficient. The real-life difference in efficiency between aggregated carriers and one contiguous frequency block of the same bandwidth is small and insignificant (in the order of single digit percentage) in actual 4G and 5G networks.
- 5.5 Using carrier aggregation to combine different blocks of spectrum has its own advantages. For example, it provides flexibility to assign different services to different frequency bands, to make use of different characteristics offered by different frequencies, allowing more overall efficiencies and improved user experience, while at the same time retains the ability to combine some or all of the frequency blocks to provide maximum throughput, if and as required. In addition, carrier aggregation technology is a mature technology that has been available and implemented by all operators and equipment vendors for many years. All mainstream handset and FWA user equipment support this feature.

6. The Commission has previously found the market to be competitive

- 6.1 In the *Spark NZ / Craig Wireless* case in 2016 the Commission considered a counterfactual of Craig Wireless establishing its own competing FWA service utilising the management rights that were the subject of the clearance application.⁷ However, even in that case, the Commission concluded there was sufficient competition between Spark and other existing broadband suppliers irrespective of whether Craig offered a new service.⁸ There is no reason why the Commission should have taken into account the constraint of fixed broadband on FWA in 2016, but should not do so now.
- 6.2 The market has become significantly more competitive since 2016. For example, at the start of 2017 Vodafone (now One NZ) and Spark had a combined 69% share of broadband connections, whereas today this has decreased to only 55% combined. There are numerous public statements from 2degrees regarding its enhanced competitive position. For example, 2degrees submitted in the *Vocus / 2degrees* merger decision, that in 2degrees' view that transaction would:⁹

Enhance competition in the relevant markets by leveraging the existing positions of Vocus NZ and 2degrees (and combined scale) to create a stronger number three player and a stronger challenger to compete with its largest competitors, Spark and [One NZ].

7. 2degrees has alternative strategies to increase capacity

- 7.1 In any event, One NZ disagrees that there are no viable alternative strategies for 2degrees to enhance its capacity. Alongside the ability to build towers (and contrary to 2degrees' comments, building more towers could be a viable or real alternative¹⁰ given 2degrees' customer base), 2degrees could also upgrade its towers or acquire alternative spectrum.¹¹ One NZ understands that 2degrees is currently undertaking an extensive equipment upgrade programme on its towers. One NZ is not able to engage regarding 2degrees' comments on upcoming spectrum availability given the extent of redactions applied to its submission. However, One NZ notes that 2degrees has a number of options for the acquisition of additional spectrum, including through engagement in the Interim Māori Spectrum Commission allocation processes which are now underway.
- 7.2 The strong financial results of Voyage Digital NZ Limited (2degrees' parent company) also support that 2degrees is a strong and well-resourced competitor, who can make investments in its network (including via offering more to acquire Dense Air if it had considered it worthwhile).

⁶ 2degrees' submission, dated 8 December 2023, at [3.2(b)].

⁷ *Spark New Zealand Trading Limited and Craig Wireless New Zealand Spectrum Operations Limited and Woosh Wireless Holdings Limited* [2016] NZCC 7, at [43].

⁸ At [63].

⁹ Voyage Digital (NZ) Limited, Orcon Holdings Limited and Two Degrees Group Limited [2022] NZCC 3 at [18.2].

¹⁰ 2degrees' submission, dated 8 December 2023, at [2.13(c)].

¹¹ See One NZ's clearance application dated 1 November 2023, at [11.7].

Voyage Digital NZ Limited reported revenue of over \$1.25bn for FY23, with profits of \$665.4m attributable to its owners.¹² The implicit argument that 2degrees is somehow limited in its ability to invest in its network compared to its competitors is simply false.

7.3 Further, 4G FWA has a relatively limited lifespan and will soon be replaced by 5G which 2degrees appears to be comfortable it can compete in due to its spectrum holdings in 3.5GHz. Additionally, as 2degrees submits, its lower spectrum bands will be re-farmed to 4G or 5G after late 2025.¹³

8. **Conclusion**

8.1 One NZ submits that the reasons above are sufficient to demonstrate that 2degrees' submission does not raise any issues that could suggest the Proposed Transaction could substantially lessen competition in any market. Accordingly, One NZ requests that the Commission proceeds to grant clearance to the Proposed Transaction.

8.2 Nevertheless, to the extent that any doubt could remain, One NZ will prepare more detailed submissions addressing in more granularity the points the 2degrees submission has raised and will provide this to the Commission in due course.

¹² See <https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/8275948/documents>.

¹³ 2degrees' submission, dated 8 December 2023, at [5.1].