14 April 2023

CONNEXA RESPONSE TO THE STATEMENT OF ISSUES

Confidential material has been removed. Its location in the document is denoted by [ ].

1 Confidentiality is sought in respect of the highlighted information. Release of this information would be likely to unreasonably prejudice the commercial position of OTPP, Connexa, Spark and/or 2degrees. The parties request that they are notified if the Commission receives any request under the Official Information Act 1982 for the release of any part of the confidential information. They also request that the Commission seek and consider their views as to whether the confidential information remains confidential and commercially sensitive before it responds to such requests.

2 Connexa appreciates the opportunity to respond to the Commerce Commission's (**Commission**) Statement of Issues (**SOI**) regarding its application to acquire certain passive mobile telecommunications infrastructure assets of Two Degrees Networks Limited and Two Degrees Mobile Limited (**Proposed Transaction**), dated 16 December 2022 (**Clearance Application**).

3 In this submission, Connexa addresses the following issues raised by the Commission in the SOI:

3.1 unilateral effects in passive infrastructure markets (paragraph 4),

3.2 coordinated effects in passive infrastructure services markets (paragraph 64),

3.3 the presence of non-discrimination clauses in the Spark and 2degrees MISAs (paragraph 72), and

3.4 vertical effects in downstream telecommunications markets (paragraph 115).

UNILATERAL EFFECTS IN PASSIVE INFRASTRUCTURE SERVICES MARKETS

Summary

4 *The Commission's concern:* the Commission is concerned about a lessening of competition in relation to MNO and non-MNO customers seeking passive infrastructure services outside a contractual commitment (**Uncommitted Sites**).[1] The concern arises in a counterfactual in which there are three national independent TowerCos, compared with the factual in which there would be two (at least in the short term).[2]

5 *Connexa's response:* the Proposed Transaction will not result in a lessening of competition in the factual compared with the counterfactual described above, for the following key reasons:

5.1 each MNO agreed its MISA (including the scope of Uncommitted Sites) in competitive circumstances and where consolidation was either contemplated or could readily be anticipated, so MNOs should not be subject to any lessening of competition (see paragraph 6),

5.2 regardless, MNO customers will not experience a lessening of competition in relation to the supply of Uncommitted Sites,[3] and there will be no reduction in competition to entry for new entrants in downstream markets[4] because:

(a) where demand can be fulfilled by existing sites i.e. co-location (paragraph 17) there are limited local areas where a merger effect is theoretically possible, and in those areas:

(i) where Fortysouth is present, it will provide a material constraint and equivalent pricing outcomes, and

(ii) MNOs have options other than Connexa and Fortysouth and material countervailing power,

(b) where demand is fulfilled by construction of a new site (paragraph 29) there are alternatives including:

(i) Fortysouth,

(ii) customers' countervailing power including to self-supply. There is compelling evidence that MNOs could and would readily self-supply in response to a SSNIP,[5] or

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1 See Table 4 of the Clearance Application, "Sites where ongoing competition is relevant".

2 Connexa understands 2degrees is making a separate submission providing evidence regarding the counterfactual. See also the Clearance Application from [110].

3 The Commission states it is not satisfied that the pricing outcomes in a market with two large scale TowerCos would be materially the same as a market with three large scale TowerCos at [51] of the SOI.

4 The Commission states it is considering this at [66] of the SOI.

5 Small but significant and non-transitory increase in price. The Commission states it is continuing to test whether self-supply is a likely response to a SSNIP at [61] of the SOI.

(iii) a new entrant such as American Tower Corporation (**ATC**), and such new entry would be a likely response to a SSNIP,

(c) a new entrant MNO (whether a national entrant, private network or any other type) would have the same options as existing MNOs (see paragraph 52),[6]

(d) the competitive dynamic during the 5G rollout will not change to the detriment of MNOs (see paragraph 59), and

5.3 the same dynamics occur with respect to non-MNO customers (paragraph 60).

[6] There is no evidence that a theoretical new entrant would be insufficiently served by two TowerCos as there is no evidence the new entrant would not be in a position to trade one TowerCo off against the other TowerCo, including through contracts to effectively commit 100% of a new network build, or a substantial portion of its committed sites.

Background

The scope of Uncommitted Sites

6 Uncommitted Sites are sites that fall outside existing contractual commitments. Uncommitted Site demand can be fulfilled by new-build sites (**BTS**), or co-location, which are dealt with separately below. Uncommitted Sites include the following:

6.1 Spark and 2degrees' Uncommitted Sites are as set out in Table 1 below,

6.2 [REDACTED].[7] During the [REDACTED] (i.e. [REDACTED] and [REDACTED]) Spark and 2degrees have forecast uncommitted volumes of [REDACTED] and [REDACTED] respectively, of which [REDACTED] can be provided to an alternative tower provider, being [REDACTED] and [REDACTED] respectively,

6.3 Connexa assumes One NZ has Uncommitted Sites (outside its MISA commitments) although it has no visibility of the relevant volumes, or any pricing protection One NZ may have in relation to those sites,

6.4 at least some non-MNO customers have Uncommitted Sites.[8] and

6.5 for new entrant MNO (and other downstream telecommunications) and non-MNO customers, all demand effectively comprises Uncommitted Sites, given these customers have not yet entered commitments in relation to their passive infrastructure.

7 For reference, the table below sets out the scope for competition in relation to Spark and 2degrees' sites.[9]

Table 1: sites where ongoing competition is relevant

	Spark	2degrees[10]
Current existing sites	• [REDACTED]. • [REDACTED].[11]	• [REDACTED]. • [REDACTED].[12] [REDACTED].[13] [REDACTED],[14] [REDACTED].[15]

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7 Spark MISA [REDACTED], 2degrees MISA [REDACTED].

8 For example:

- [REDACTED], and
- the Rural Connectivity Group (**RCG**) is likely to be delivering Government-funded site demand, which Spark has estimated at [REDACTED] sites. It is possible RCG would choose not to self-supply such sites, and their new site demand will not be able to be easily delivered by way of co-location.

9 The table replicates Table 4 in the Clearance Application except that the table has been expanded in the final two bullet points in the final row, for clarity.

10 The 2degrees MISA is in draft.

11 Spark MISA [REDACTED]. However, [REDACTED].

12 2degrees MISA [REDACTED].

13 2degrees MISA [REDACTED].

14 2degrees MISA [REDACTED].

15 2degrees MISA [REDACTED].

	Spark	**2degrees**[10]
BTS sites[16]	• Commitment of 671 BTS sites [REDACTED].[17] • [REDACTED].[18] [REDACTED].[19]	• Commitment of 450 new sites, [REDACTED],[20] [REDACTED]. • [REDACTED].[21]
New sites	• [REDACTED].[22] • [REDACTED].[23] • [REDACTED] • [REDACTED].	• [REDACTED].[24] • [REDACTED].[25] • [REDACTED]. • [REDACTED].

Competition dynamics for the supply of Uncommitted Sites

8 For all MNO customers (existing and new entrant), and the vast majority of non-MNO customers, Uncommitted Site demand is not limited to a single site. For these customers, there is a wider dynamic to competition for Uncommitted Sites.

9 This dynamic means customers have countervailing power, as demonstrated in the following sections. It also means that, even if a reduction in competition were possible in a small number of individual areas (which Connexa does not consider will be the case), it is not clear this could be sufficiently material to amount to a substantial lessening of competition. For example, any such effect would have a negligible impact on the MNOs' costs[26] and it could not detrimentally affect their downstream service proposition.

10 Put another way, while there is a local element to competition in relation to Uncommitted Sites, it is not clear a single 500 metre local area can amount to a "market" in a context where suppliers' and customers' industry participation is never confined to such an area.

11 For completeness, for the very few customers whose Uncommitted Site demand would be limited to a single site (e.g. [REDACTED][27]), the geographic scope of the "market" in which their demand operates is much wider than for other customers, at least MNO customers (i.e. they have a larger geographic area in which they can locate their sites), and their equipment is much lighter, with far less stringent site

16 Note that the BTS commitment does not set out specific sites that must be completed. Instead, it represents the MNOs' expected demand over the period, with the MNO having committed to using Connexa to provide a certain number of sites that the MNO will identify as required.

17 Spark MISA [REDACTED].

18 Spark MISA [REDACTED].

19 Spark MISA [REDACTED].

20 2degrees MISA [REDACTED]. [REDACTED].

21 2degrees MISA [REDACTED].

22 Spark MISA [REDACTED].

23 Spark MISA [REDACTED].

24 2degrees MISA [REDACTED].

25 2degrees MISA [REDACTED].

26 See further, NERA Economic Consulting, Report on the proposed acquisition of 2degrees tower assets by Connexa (16 December 2022) (**NERA Report**), provided as Appendix 1 to the Clearance Application, at Part 4.1.

27 [REDACTED].

requirements. Accordingly, there is little likelihood of a reduction in options for those customers.

12 But regardless of how markets are defined, it is not realistic for Connexa to charge above competitive levels or provide uncompetitive service, following the Proposed Transaction. Customers have other options, and customers in other markets such as Australia and the United States have demonstrated those options.[28]

13 In the following sections, Connexa addresses the position of each type of customer, and provides evidence as to why the Proposed Transaction would not give rise to a lessening of competition in relation to any type. Connexa first addresses the position of existing MNOs' Uncommitted Sites.

MNOs have chosen for certain sites to be uncommitted, in competitive circumstances

14 The circumstances in which Uncommitted Sites have come about evidences that the Proposed Transaction will not result in a substantial lessening of competition in relation to the supply of Uncommitted Sites to existing MNOs. That is:

14.1 each MNO negotiated its MISA in highly competitive circumstances, and chose to contract out of ongoing competition for a large proportion of sites, including by committing a large volume of its future build requirements to its counterparty TowerCo,[29]

14.2 Uncommitted Sites by definition fall outside the MISAs, but the MISAs define the scope and extent of the Uncommitted Sites. In other words, the same competitive process that resulted in the MNOs agreeing MISAs to their satisfaction also led to the (partial or full) exclusion of certain sites from the MISAs (e.g. as noted above, [REDACTED]),

14.3 not only did the MNOs agree to exclude Uncommitted Sites, they did so in part <u>in order</u> to maintain pressure on their TowerCo counterparty,[30]

14.4 each MNO agreed its MISA, including its Uncommitted Sites, in a context where consolidation of site ownership was either planned, or could reasonably have been anticipated:

(a) 2degrees has agreed to its MISA in the context of selling 100% ownership of a large proportion of its passive infrastructure assets to the existing owner of the former Spark passive infrastructure i.e. it agreed its MISA on the basis of the Proposed Transaction,

(b) Spark has also agreed to the Proposed Transaction, and

(c) it would be surprising if, in negotiating its own long-term arrangements, One NZ did not consider the potential effect of a changed supply structure.[31] Given the competitive nature of its sale

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[28] See also Clearance Application at [238]-[252].

[29] See further Report by NERA Economic Consulting on the Proposed Transaction (**NERA Report**), provided as Appendix 1 to the Clearance Application, Part 7.1 and 3.4.

[30] See further, Clearance Application at [125].

[31] [REDACTED].

process, Connexa assumes One NZ considers itself adequately protected for an eventuality such as the Proposed Transaction, and

14.5 had the MNOs anticipated a scenario in which consolidation of site ownership could result in a substantial lessening of competition for the supply of passive infrastructure services to Uncommitted Sites, presumably they would not have agreed to the exclusion of sites from their MISAs.

15 Put another way, for the Commission's theory of harm to hold in respect of MNOs, it is first necessary to believe the MNOs have misjudged the negotiation of their sales and MISAs. Given the sophistication of the counterparties this is highly unlikely.[32]

The Proposed Transaction will not adversely affect competition for the supply of Uncommitted Sites to existing MNOs

16 Uncommitted Site demand can be fulfilled through either co-location or building a new site. Connexa deals with these two scenarios separately in the following sections.

How the Proposed Transaction could affect competition for the supply of Uncommitted Sites through co-location

17 The Proposed Transaction is only capable of affecting competition for the supply of Uncommitted Sites to existing MNOs through co-location where, in a realistic counterfactual, there would be a larger number of site owners in a relevant geographic "market", with capacity to host additional tenants, than will be the case in the factual. In other scenarios, there will be no difference between the factual and the counterfactual at a local level.

18 Even in those areas where the Proposed Transaction would reduce the number of independently owned co-location options, competition will not be lessened because:

18.1 Fortysouth will be a material constraint in many local areas,

18.2 there are few local areas where Fortysouth is not an option, and

18.3 (even where Fortysouth is not present) MNOs have options other than national TowerCos.

Fortysouth will be a material constraint in many local areas

19 In local areas where Fortysouth, Connexa and 2degrees have overlapping existing co-location capacity, Fortysouth will remain a material constraint in the factual, which would prevent a lessening of competition.

20 Improving co-location ratios is a critical aspect of TowerCos' performance, so both Connexa and Fortysouth will be highly incentivised to attract additional co-location. As towers are largely fixed-cost, incremental revenue associated with co-location is

[32] Connexa notes the Commission's press release on its decision to grant clearance for Kinetic NZ Holdings Limited to acquire all of the shares in NZB Holdco Limited (8 July 2022), in which the Deputy Chair stated "our investigations indicated that, like the Ministry of Education, regional authorities are sophisticated purchasers that are able to design tender processes to achieve competitive outcomes", contributing to the Commission being satisfied that the merged entity is likely to face significant competition from rival bus companies such that a substantial lessening of competition is not likely. See: https://comcom.govt.nz/case-register/case-register-entries/kinetic-nz-holdings-ltd-and-nzb-holdco-ltd/media-releases/kinetic-cleared-to-acquire-nz-bus

valuable and TowerCos would be likely to accept any incremental revenue to host an additional tenant.[33]

21 Consistent with this feature of competition, both the NERA Report and NERA's memo dated 14 April 2023 (**NERA Memo**) find that there would be no material deterioration in pricing outcomes where there are two, compared with three, independent national TowerCos (assuming only national TowerCos are competing).[34] In an auction, the driver of price is the costs of the second-cheapest provider. The key costs of building towers are external to the TowerCos (i.e. contractors) so the costs of an additional national TowerCo would not be expected to vary materially or systematically from those of the other two. The extent of existing co-location could affect costs although, as above, any incremental revenue from additional co-location would be attractive (and if the Proposed Transaction results in increased co-location it would operate to reduce costs and potentially price).

22 In reality, even in local areas where the Proposed Transaction could reduce the number of existing national TowerCos from three to two, MNOs' options would not be reduced from three to two. Rather, MNOs have alternatives and countervailing power, as set out in later sections.

There are few local areas where Fortysouth is not an option

23 NERA's screening analysis to consider the number of sites where there is potential for an overlap found 68 sites.[35] The parties consider this number likely overstates the overlap. To further refine the analysis, NERA applied an analysis of One NZ's demand for points of presence (**PoPs**), which allowed NERA to estimate whether One NZ is likely to have demand for additional sites near the overlapping 2degrees and Connexa sites. When this is applied, the number of site pairs reduces to 25.[36]

24 NERA did not carry out a site by site analysis (e.g. topography, the presence of towers owned other than by Connexa, 2degrees or Fortysouth, other structures amenable to active equipment and other factors), meaning in practice the number of site pairs may well be significantly fewer than 25. Given MNOs are customers nation-wide, it is implausible that Connexa could, as a practical matter, take advantage of localised "market power" in such a small number of areas to increase price or decrease service quality. (And even if it were able to do so, such conduct could not give rise to a substantial lessening of competition in any genuine market.)

25 Therefore, the Proposed Transaction, and reduction from three to two TowerCos, would bring about little change in relation to the number of existing sites available to host additional tenants.

26 But regardless, existing national TowerCos are not MNOs' only options.

MNOs have options other than national TowerCos

27 In local areas where the Proposed Transaction would result in a reduction in the number of independently owned towers, it would not be realistic for a TowerCo to

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[33] NERA Report, [6.2].

[34] NERA Report, [6.2], NERA Memo [2.1].

[35] Clearance Application at [153.5](b)(i); NERA Report at [94] to [95]. Or, at most, 78 using Stats NZ's categorisation of whether areas are urban and rural instead of the MNO categorisation of sites as urban/rural.

[36] For further information, see NERA Report at [96] to [97].

take advantage of the scenario to offer higher prices or lower quality of service for co-location:

27.1 there is in almost all circumstances the potential to bypass (or threaten to bypass) a particular site:

(a) in many cases establishing a PoP on a tower is not the customer's only option. For example, MNOs can place equipment on the side of a building, expand the capacity of active equipment at nearby sites, or engage in active sharing,

(b) MNOs can build their own site, noting cheaper site types such as light poles are a genuine constraint on co-location (as 2degrees explains in its separate submission). Self-supply is uncomplicated, and MNOs necessarily retain the ability to engage in it. MNOs remain network businesses with active equipment to deploy and maintain nationwide i.e. they do not stop being network businesses by selling a portion of their existing passive infrastructure,[37] and

(c) new technologies may provide further alternatives, and this may occur increasingly over time. The recent deal between One NZ and SpaceX to provide 100% mobile coverage of New Zealand is a tangible example of how MNOs might reduce their dependence on passive mobile telecommunications infrastructure over time.[38] As acknowledged by the Commission, telecommunications markets are characterised by high levels of innovation, and MNOs being highly innovative further strengthens their countervailing power,[39] and

27.2 competition to supply co-location services to existing MNOs never occurs solely in a single local area. That is:[40]

(a) each site offered to a MNO outside a MISA or other contract is an "audition" for further sites (or a potential loss of sites to another TowerCo so as to open up an opportunity for customers to facilitate a new or smaller TowerCo's expansion), and ultimately a diminution of that TowerCo's competitiveness in the next round of contract competition. There is every reason for Connexa to expect entry by a new TowerCo (such as ATC), and its conduct is constrained by this threat,[41] and

(b) each customer will have an informed view on what a competitive co-location price "should" be, being a customer in other parts of the country.

28 Reflecting this commercial reality, NERA's findings suggest it would simply not be rational for any supplier of passive infrastructure services (whether that supplier is

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37 A fuller assessment of MNOs' ability and incentive to self-supply is provided at paragraph 31.

38 One NZ, '100% mobile coverage. Launching 2024.' (3 April 2024), available at: https://one.nz/why-choose-us/spacex/

39 SOI at [65].

40 Clearance Application at [238.2]; NERA Report at Part 6.5.

41 A fuller assessment of entry is provided below at paragraph 42.

alone, is one of two suppliers in an area, or one of several suppliers in an area) to offer uncompetitive terms to a MNO in any local area.[42]

The Proposed Transaction will not reduce competition for the supply of Uncommitted Sites to MNOs through construction of new sites

29 In this section, Connexa analyses a scenario where there is no co-location opportunity in a local area where a MNO customer requires a new site that is an Uncommitted Site. While there would be fewer TowerCos than in the factual, it would not be correct to say MNOs' options reduce from three to two. In fact, there are other alternatives, which means the reduction has far less theoretical impact. The Proposed Transaction would not lessen competition in this scenario because:

29.1 Fortysouth will be a material constraint,

29.2 self-supply will be a material constraint, and a likely response to a SSNIP,

29.3 MNOs have countervailing power in addition to their ability to self-supply, and

29.4 alternative tower owners and new entrant TowerCos are likely to be used in response to a SSNIP, as seen with Stilmark in Australia (see further paragraph 44).

Fortysouth will be a material constraint

30 Fortysouth will remain an alternative in relation to all Uncommitted Sites where demand is fulfilled by building a site. The two national TowerCos will be strongly incentivised to win Uncommitted Sites. This incentive is to:[43]

30.1 retain a strong customer relationship with a MISA counterparty, or

30.2 build a relationship with a third party MNO,

to win incremental volumes and also to position for an improved position with the MNO during the term of the MISA, and in the next round of MISA competition. Note in this regard that uncommitted new build sites are unlikely to be fully priced in to the purchase price. This means that MNOs are exposed to the contract prices agreed for these volumes. However, the carve-out also allows MNOs to maintain competitive tension on TowerCos by self-supplying and acquiring towers from other TowerCo providers. Although the MISAs seek to ensure that competition is kept at the margins during their term, as the MNOs are able to use competition to extract better prices on Uncommitted Sites, they will be incentivised to use parties besides their counterparty TowerCo if pricing is not competitive. This is the case in both the factual and counterfactual.

Self-supply by MNOs is likely in response to a SSNIP

31 It is likely that MNOs would, in the factual, self-supply passive infrastructure to countervail any higher prices, or poor price/quality offered by a TowerCo.[44] Given the Commission has specifically noted it is not yet satisfied that self-supply is likely in response to a SSNIP, Connexa addresses the issue in more detail in this section. [45]

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[42] NERA Memo, [2.2] and [2.3].

[43] Clearance Application at [218].

[44] For further information, see Clearance Application at [222] to [225], and [240] to [242].

[45] The Commission states it is continuing to test this at [61] of the SOI.

32 First, Connexa notes the Commission does not cite evidence in support of its concern, which suggests the MNOs themselves are not concerned about it and instead are confident they could self-supply.

33 Second, the fact that MNOs may first utilise provisions of existing MISAs/MSAs with TowerCos to have passive infrastructure provided at agreed prices and terms in response to a SSNIP,[46] does not mean self-supply is not also a likely response. MNOs are able and would be willing to self-supply.

34 MNOs are <u>able</u> to self-supply because:

34.1 NERA's work demonstrates there are not material economies of scale in building new sites, and there is ready access to inputs required to build sites.[47] So cost should not be a deterrent to self-supply,

34.2 with regard to overhead costs for subsequently managing any self-supply sites, there is no basis to conclude that MNOs will face comparatively or disproportionately high overhead costs:

(a) MNOs would not require any additional capability. The key requirements are managing landlords and engaging third party contractors, both of which they will be continuing to do following the Proposed Transaction due to their remaining network business requirements. MNOs will continue to be nationwide network businesses – this feature of their business is not being passed on with the sale of passive infrastructure assets. That is, MNOs will retain ownership of, and responsibility for, active equipment which is deployed on passive infrastructure throughout the country. Accordingly they will have the skills and relationships required for involvement in passive infrastructure. In other words, maintenance and management of network infrastructure will remain a part of any MNO's business despite the advent of separate TowerCos. Any management of passive self-supply sites would take place alongside MNOs' active asset management, which Connexa expects would minimise overhead costs,

(b) further, MNOs will remain owners and managers of some passive infrastructure. For example, [REDACTED]. [REDACTED]. Connexa understands [REDACTED], and

(c) [REDACTED] and [REDACTED],[48]

34.3 MNOs have retained relationships with contractors and service providers. This allows them to self-supply efficiently (including on a site-by-side basis) if service levels or cost outcomes are not acceptable,

34.4 the process for sourcing a location to establish a site and contracting to physically build and maintain the site is not a meaningful barrier to self-supply.[49] Not only are these steps straightforward and not particularly

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46 The Commission raises this at [59] of the SOI.

47 NERA Report at Part 7.4.

48 [REDACTED].

49 The Commission notes self-supply would require MNOs to source locations on which to establish sites and to contract with third parties at [60] of the SOI.

complex, MNOs will necessarily retain the ability to carry them out and/or contract for them, as required. Connexa understands MNOs in the past outsourced site acquisition activity, and notes there are several entities that acquire land for utilities and Crown entities, such as The Property Group,[50] Align,[51] Wilson Hurst,[52] WSP[53] and Aurecon,[54] and

34.5 there is no financial reason for MNOs (and other customers) not to self-supply, including because MNOs do not need to pay upfront as they are able to negotiate an alternative payment mechanisms.[55]

35 It should be noted that self-supply is a constraint even for co-location. As noted above, low-cost light poles are sufficiently cheap and accessible to MNOs that they can be used as a credible threat in relation to co-location.

36 There is evidence that MNOs will be <u>willing</u> to self-supply:

36.1 as above, [REDACTED], and [REDACTED], and

36.2 given commercial TowerCos are a relatively new development in New Zealand, evidence of the willingness (and ability) to re-commence self-supply is found offshore.

37 Specifically, Optus and Vodafone Hutchison Australia's (**VHA**) experience with Crown Castle in Australia supports the arguments and evidence above. In the early 2000s, Crown Castle entered the Australian mobile towers market through its acquisitions of tower portfolios from each of Optus and VHA.[56] Following completion of the BTS commitments entered into at the time of the sales, Optus and VHA commenced self-delivering towers:

(a) in November 2010, VHA announced the self-build of 1,400 additional sites, and

(b) in May 2012, Optus and VHA announced an agreement to share a portion of existing sites and the delivery of 500 additional shared sites.[57]

38 In May 2015, Crown Castle announced its exit from Australia and the sale of Crown Castle Australia to a consortium of infrastructure investors led by Macquarie Asset Management (then Macquarie Infrastructure and Real Assets), with the business

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50 For further information, see https://www.propertygroup.co.nz/our-work/transmission-gully/.

51 For further information, see https://align.net.nz/services/.

52 For further information, see https://www.wilsonhurst.co.nz/property-consulting#page.

53 For further information, see https://www.wsp.com/en-nz/projects/waka-kotahi-nz-transport-agency-property-acquisition-disposal.

54 For further information, see https://www.aurecongroup.com/projects/data-and-telecommunications/telstra-deployment-site-acquisition-environment-and-design and https://www.aurecongroup.com/projects/data-and-telecommunications/lte-4g-rollout.

55 The Commission notes self-supply would require MNOs to pay for the costs of constructing sites upfront, as opposed to a TowerCo covering these costs, and notes that in managing the sites MNOs may face comparatively or disproportionately high overhead costs at [60] of the SOI.

56 The Clearance Application sets out additional detail at [248] to [252].

57 The Clearance Application sets out additional detail at [252].

later rebranding as Axicom. [REDACTED][58] and, as a result, Optus and VHA (which has traded as TPG Telecom Limited (**TPG**) since 2018[59]) continued to self-deliver. A summary of the tower build out by Optus, TPG, and Axicom from 2016 is set out in Figure 1 below.[60]

Figure 1: Optus, TPG and Axicom tower builds

[REDACTED]

39 [REDACTED].[61] [REDACTED], driven by Optus[62] and TPG[63] actively deploying directly.

40 Alongside the global trend for MNOs to divest these assets,[64] MNOs anticipate being able to self-supply. While it may not be their first preference, they are easily able and willing to do so to avoid a SSNIP. Further, there does not need to be a large volume of self-supply to retain competitive tension, a small number of self-supplied sites, or even simply the credible threat of self-supply, can do so.

MNOs have countervailing power

41 MNOs have material countervailing power in addition to their ability to self-supply. In addition to the reasons set out above in relation to co-location, providing a commitment of Uncommitted Sites to a TowerCo other than its MISA counterparty is a significant loss of business for the TowerCo that is the MISA counterparty. Any alternative provider of passive mobile telecommunications services would value such a commitment highly, and further such a commitment can itself help to underwrite new entry.

New entry is a likely response to a SSNIP

42 The threat of new entry counters any potential lessening of competition. Irrespective of whether there is an entity currently expressing an intention to enter, entry by a new supplier or expansion by an existing entity into supply of passive mobile telecommunications infrastructure is likely to be sufficient to constrain

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58 [REDACTED].

59 Following the merger between VHA and TPG announced 30 August 2018. For further information see https://www.vodafone.com/news/technology-news/vodafone-group-announces-merger-between-vha-and-tpg.

60 [REDACTED].

61 [REDACTED].

62 In 2021, Optus assets were sold to Australian Super.

63 TPG sold its tower portfolio in early 2022.

64 The Commission raises that self-supply would run contrary to the reasons for MNOs divesting such assets, and that the global trend of MNOs divesting these assets further suggests that self-supply is a second best option for MNOs and unlikely to occur in response to a SSNIP at [60] of the SOI.

Connexa following the Proposed Transaction and prevent a substantial lessening of competition.

43 *A new entrant TowerCo does not need to be a large scale, national alternative to be a real constraint for Uncommitted Sites*:[65] market participants other than large scale, national TowerCos are able to provide a meaningful constraint on the two large scale, national TowerCos in the factual, particularly in relation to Uncommitted Sites (and particularly BTS commitments), which do not require an existing national towers footprint. A small new entrant TowerCo can provide a meaningful alternative.

44 For example, Australian experience has shown that where TowerCos are commercialised, new entrants can and do emerge providing a new source of competition even if they do not provide a state-wide or nation-wide offering. For example, Stilmark entered the Australian market in 2013 and expanded to owning 75 sites, the majority in New South Wales and Victoria, before being acquired.[66]

45 The following TowerCos are operating successfully with a small number of towers in Australia:[67]

45.1 Vertel, with approximately 200 towers,[68]

45.2 Everest,[69] which BoFA estimates has approximately 40 macro and monopole mobile towers in service, and

45.3 TX Australia, with approximately 70 towers.[70]

46 In New Zealand, ATC is just one potential new entrant that would provide a real constraint.[71] Irrespective of whether it has a current intention to become a TowerCo in New Zealand, there is no doubt it would have the ability and incentive to do so in response to any commercial opportunity e.g. if a MNO were dissatisfied with its MISA counterparty and decided to seek alternatives for a new BTS commitment. That is:

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65 At [55] of the SOI, the Commission states with the Proposed Transaction, there would be no large scale, national alternatives to the merged entity for MNOs and non-MNO customers in relation to uncommitted sites, and the presence of three TowerCos in the counterfactual would mean MNOs and non-MNOs would have more options for supply, including potentially in less populated areas than would be the case with only two TowerCos.

66 Clearance Application at [244].

67 Tower numbers provided by BofA.

68 https://vertel.com.au/

69 https://everestinfrastructure.com.au/

70 https://www.txaustralia.com.au/

71 The Clearance Application sets out further background about ATC at [95].

46.1 ATC recently acquired 100% of the shares in Clearspan Property Limited (**Clearspan**),[72] with the intention of continuing to grow Clearspan and invest in the New Zealand telecommunications industry,[73]

46.2 Clearspan established operations in 2007. It specialises in operating as a landlord to TowerCos, by owning land under New Zealand mobile telecommunications towers. Its key clients are telecommunications companies and utility providers. Connexa understands Clearspan's portfolio includes land under approximately [REDACTED] mobile towers. Further:

(a) [REDACTED],

(b) [REDACTED], and

(c) [REDACTED],

46.3 as one of the world's largest and most sophisticated TowerCos, which has recently invested in the land under a number of TowerCo sites, it would be readily possible for ATC to expand into providing towers as well as land (even without a BTS commitment). As existing TowerCo leases expire with ATC, ATC could offer the same location with its own tower to the existing MNO on the site, thereby substituting out the existing TowerCos over time, and avoiding the need for the MNO to relocate its equipment, and

46.4 [REDACTED]. Further, in consenting to ATC's acquisition of Clearspan, the OIO noted that this was likely to lead to a "significant level of capital investment resulting from [ATC]'s proposed growth strategy for new site acquisitions". In line with this observation, ATC has launched a New Zealand webpage on its corporate website.[74]

47 In addition to new entrant TowerCos such as ATC, existing tower owners could readily expand into providing infrastructure suitable for MNOs e.g. RCG, which could expand to serve MNOs outside rural areas, Mount Campbell Networks Limited, which provides other infrastructure, or Kordia, which already hosts MNOs in some locations, or Chorus, which has a large national portfolio of sites and an established co-location service. In this regard, note:

47.1 NERA's work demonstrates there are not material economies of scale in building a single new site,[75] and

47.2 there is ready access to inputs required to build sites.[76]

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[72] Overseas investment decision for case 202100802 – ATC New Zealand Limited, 6 October 2022 (*ATC OIO decision summary*). For further information see https://www.linz.govt.nz/our-work/overseas-investment-regulation/decisions/2022-10/202100802. See also https://www.nbr.co.nz/business/oio-approves-50m-land-portfolio-sale-to-american-behemoth/.

[73] See https://www.nbr.co.nz/business/oio-approves-50m-land-portfolio-sale-to-american-behemoth/.

[74] ATC has launched a New Zealand webpage on its website https://www.americantower.com/en/new-zealand/?utm_source=google&utm_medium=cpc&utm_campaign=atc-nz-search&utm_content=nz&utm_term=cell%20tower%20property%20value&creative=652016343739&keyword=cell%20tower%20property%20value&matchtype=b&network=g&device=c&gclid=EAIaIQobChMI_4bu9seR_gIVr9dMAh0CJgJjEAAYASAAEgIm2vD_BwE

[75] NERA Report at Part 7.4.

[76] Clearance Application at [221.2].

48 There is therefore every reason to expect a new entrant to take up any commercial opportunity opened up by uncompetitive behaviour from the existing national TowerCos – there is no particular barrier created by the need for scale or expertise.

49 *MNOs are able to facilitate a new entrant TowerCo based on forecast Uncommitted Site volumes:*[77] in entering MISAs with the TowerCos, Spark and 2degrees have forecast uncommitted volumes of [REDACTED] and [REDACTED] respectively, of which [REDACTED] can be provided to an alternative tower provider, being [REDACTED] and [REDACTED]. One NZ is also likely to have uncommitted demand.[78]

50 Based on the examples above, even during the initial stages of the MISAs, the number of MNOs' Uncommitted Sites is easily sufficient to support one or more new entrants (even setting aside the potential for an entrant to achieve additional revenue from non-MNO customers).

51 *The 5G roll out is not likely to have a material effect on Uncommitted Site volumes:*[79] Connexa agrees with the Commission that future technologies have the potential to reduce MNOs' need for TowerCos. But 5G relates mostly to improving active equipment. There may be an increase in Uncommitted Site volumes beyond forecasts where densification is required but this should not be material since Spark and 2degrees had taken into account the advent of 5G when negotiating their MISAs. Further, while 5G may entail densification, 5G equipment is more able to be hosted on the sides of buildings and thus a TowerCo may be less likely to be used to provide the host infrastructure.

The Proposed Transaction will not reduce competition to supply new entrants to downstream telecommunications markets

Competition for new customers is likely to be more intense than an existing customer of the equivalent type

52 New entrant customers' demand is entirely comprised of Uncommitted Sites. A new customer has not committed its sites to a TowerCo and thus will have a greater number of sites it can package up and create an auction for, compared to an equivalent customer that has existing sites i.e. an existing customer will only be tendering incremental site demand, whereas a new customer will be able to tender (and/or self-supply, as was the case for 2degrees) its total demand or any portion of it.[80] This feature means competition to serve new customers is likely to be more intense than competition to serve existing customers, given the former is in a position to package up its entire demand in a manner of its choosing.

53 In addition, a new customer that does not have an existing network has more flexibility in how it plans its network and therefore may be able to plan its network in a way that avoids sites in particular areas it may perceive to be less competitive.

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[77] The Commission raises uncertainties about whether any MNO could facilitate a new entrant TowerCo at [56] of the SOI. See also [57].

[78] See NERA Report, Appendix 1, at Table 3.3 and [117](e).

[79] The Commission refers to this at [58] of the SOI.

[80] NERA Memo [2.3].

54 For completeness, non-discrimination clauses in the MISAs do not reduce the incentives to compete for new customers (in the factual or counterfactual), given [REDACTED].[81]

There would be no lessening of competition to supply a national new entrant MNO

55 Accordingly, all of the same arguments and evidence set out in relation to existing MNO customers apply to a new entrant MNO, such that the Proposed Transaction would not result in any lessening of competition to supply such a new entrant (in turn impacting competition downstream[82]). In addition to those arguments and evidence:

55.1 it is not likely in terms of the "real chance" standard that a new MNO would enter. In the Commission's Mobile Market Study, several parties submitted that a fourth national MNO was unlikely and the Commission concluded, based on its analysis of the retail mobile market in New Zealand, there did "not appear to be a strong case for regulatory intervention to promote a fourth MNO to enter the New Zealand market",[83]

55.2 unlike an existing MNO, a new entrant MNO would have additional options to:

(a) enter as a Mobile Virtual Network Operator (**MVNO**), at least as it establishes itself. The Proposed Transaction will not affect the dynamics of supply to MVNOs, which means, as long as MNOs are protected, MVNOs will not be separately affected,[84]

(b) seek active sharing arrangements as part of growing into a full service MNO. The Proposed Transaction will not impact MNOs' ability to enter into active sharing agreements, and

(c) not be an anchor tenant for a TowerCo, but rather co-locate between two TowerCos (or more, as relevant), entering into a MISA with more than one. Co-location leads to more efficient deployment,[85] and is attractive to both TowerCos and MNOs. [REDACTED].[86] It results in assets being more utilised bringing increased revenue without significant costs (benefitting the TowerCo) and reduces the cost per user, since the fixed cost per tower is shared among more MNOs (benefitting the MNOs). Connexa expects there will be significant competition between TowerCos for co-location opportunities in the case of any new entrants.

56 Self-supply is also a realistic option for a new entrant MNO, in the same way as 2degrees. That is, a new entrant could deploy a combination of MVNO-style access, active sharing, co-location and self-supply (with particular emphasis on light poles). The Proposed Transaction will not adversely affect such a MNO's prospects.

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81 See paragraph 73.

82 SOI at [46.2].

83 Commerce Commission, *Mobile Market Study – Final Report,* 26 September 2019 at [4.28] to [4.32].

84 See also Clearance Application, [10.4](a) and [154].

85 See NERA Report at [32].

86 [REDACTED], Spark MISA, [REDACTED] and 2degrees MISA, [REDACTED].

There would be no lessening of competition to supply new entrant "private networks" and other downstream entrants

57 The Commission notes in the SOI that there are high levels of innovation in telecommunications markets and that other network types, such as private networks, may become more common.[87] (Connexa notes that high levels of innovation in telecommunications markets provide yet another reason why the Proposed Transaction cannot detrimentally impact MNOs, because innovation contributes to MNOs' countervailing power and provides the prospect of future options becoming available to reduce their dependence on third party suppliers of passive mobile telecommunications infrastructure.)

58 The competitive dynamic faced by a private network, or other non-national downstream telecommunications entrant would be the same as for existing MNOs. Therefore, the arguments and evidence set out above in relation to existing and national new entrant MNOs apply equally to such entrants. Note also:

58.1 new network types such as private networks will likely not require access to a national network of passive infrastructure.[88] While the new entrant would have fewer sites to bargain with, it is also likely to mean more flexibility as to the configuration of sites, allowing the entrant more choice of geographic areas. Further, it increases the prospect that a smaller new entrant TowerCo could meet the customer's full needs, and

58.2 the Ofcom discussion paper the Commission refers to in the SOI[89] states that Ofcom expects to see competition among a range of players to provide private networks. In addition to being smaller customers, private networks do not necessarily need all of their own equipment, or direct access. As with new entrant MNOs, Connexa expects MVNO-style access, and/or active sharing, as well as self-supply, would be available to such a customer.

The rollout of 5G will not change competitive dynamics such that the Proposed Transaction would result in a substantial lessening of competition

59 In relation to 5G, competition between TowerCos for the roll out of passive infrastructure for 5G networks is materially the same in the factual compared to the counterfactual,[90] because the underlying dynamics remain the same, so there will be no material difference in pricing outcomes. As noted above, Spark and 2degrees had taken into account the advent of 5G when negotiating their MISAs. In addition, 5G requires smaller equipment, increasing options for the nature and location of sites and thus providing more options for customers.

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[87] The Commission states this at [65] of the SOI.

[88] The Commission states it is continuing to consider whether new entry –as a MNO or non-MNO – may require access to a national network of passive infrastructure at [66] of the SOI.

[89] Ofcom discussion paper, "Ofcom's future approach to mobile markets" (9 February 2022), available at: https://www.ofcom.org.uk/__data/assets/pdf_file/0027/231876/mobile-strategy-discussion.pdf . The Ofcom papers adds that private networks may provide mobile coverage in areas that otherwise do not have coverage from public networks. It notes that, in these cases, a neutral host model may be adopted, provided by localised mobile network providers using a range of wireless technologies depending on the requirements of the area and the users.

[90] The Commission states at [53] of the SOI it is not satisfied that competition between TowerCos for the roll out of passive infrastructure for 5G networks would be materially the same in the factual compared to the counterfactual.

The Proposed Transaction will have no adverse impact on competition to supply non-MNO customers

Existing non-MNO customers

60 Non-MNO customers acquire passive infrastructure services in the same way as MNOs. Accordingly, the same dynamics are at play, and the Proposed Transaction will not reduce competition to supply passive infrastructure to non-MNO customers for the same reasons as MNO customers. There are several additional features of non-MNOs which provide further comfort that there would be no lessening of competition to supply non-MNO customers:

60.1 non-MNO customers tend to have less stringent site requirements, and therefore a broader set of options for their sites.[91] This means they are able to use different and less robust structures. It can also make self-supply a cheaper option than it is for MNOs (e.g. Connexa understands WISPs currently largely self-supply), and

60.2 non-MNO customers typically require fewer sites, and there is a very small number that use only a single site. While they have fewer sites to package and leverage, correspondingly, without the need for dense national coverage, non-MNO customers tend to have a larger geographic area within which they can choose sites and do not always require sites engineered to the same standards as MNOs (they use lower specification and therefore cheaper structures).[92] So, there is even less chance the Proposed Transaction would reduce their options.

61 To illustrate, Table 2 below sets out the position of each of Connexa and 2degrees' existing non-MNO customers.

Table 2: options available to specific non-MNO customers

Customer name	Number of sites	Comment
Connexa's customers		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[91] For further information, see Clearance Application at [262] to [264].

[92] NERA Memo [2.3].

Customer name	Number of sites	Comment
[REDACTED]	[REDACTED]	[REDACTED]
2degrees' customers		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

New entrant non-MNO customers

62 As with MNO customers, competition to serve a new entrant non-MNO customer would be more attractive than an existing customer i.e. competition for their demand would be more intense than an equivalent existing customer. Furthermore, as with existing non-MNO customers, new entrant non-MNO customers typically have fewer site needs, and therefore more choice as to how to configure their network. This makes it much less likely such a customer would be seeking to locate in any local areas that are less competitive in the factual than would the case in a relevant counterfactual (on the assumption such areas could theoretically exist).

63 When establishing a new network, there is likely to be an even greater discretion as to how to configure that network, allowing the customer to optimise its location choices.

COORDINATED EFFECTS IN PASSIVE INFRASTRUCTURE SERVICES MARKETS

Summary

64 *The Commission's concern:* the Commission is concerned that a reduction from three to two national independent TowerCos in the factual could increase the prospects of coordination between TowerCos,[93] including because of the MISAs.

65 *Connexa's response:* The Proposed Transaction will not substantially lessen competition in any passive mobile telecommunications infrastructure markets by allowing TowerCos to coordinate their behaviour because:

65.1 the markets are not vulnerable to coordination, and the Proposed Transaction will not change conditions in the markets to make coordination more likely, more complete, or more sustainable (see paragraph 66), and

65.2 the MISAs do not enable Connexa to coordinate more easily with Fortysouth, in the factual, compared to the counterfactual (see paragraph 68) – the Commission's concerns relating specifically to non-discrimination clauses in the MISAs are dealt with separately.

[93] The Commission states it is continuing to assess whether the markets are vulnerable to coordination, and whether the Proposed Transaction will not change conditions in the markets to make coordination more likely, more complete, or more sustainable, at [71] of the SOI.

Markets not vulnerable to coordination and the Proposed Transaction does not increase prospects of coordination

66 Passive infrastructure services markets are not vulnerable to coordination, and a reduction from three to two national independent TowerCos cannot increase prospects of coordination between TowerCos in relation to competition to supply Uncommitted Sites:[94]

66.1 in the factual, the two existing national TowerCos would be competing intensely.[95] Importantly, they would be competing with other entities, and they would be competing in a context where customers have countervailing market power (i.e. customers can take their Uncommitted Sites to other passive infrastructure owners). For MNOs, this could include sponsoring entry using Uncommitted Sites or sponsoring new entry e.g. from ATC. For MNOs and, arguably to a greater extent non-MNOs, it could also include turning to owners of structures other than passive mobile telecommunications infrastructure. Further, it is possible for MNOs and many non-MNOs, to self-supply and bypass both TowerCos.[96] As a consequence, there would be no incentive for the national TowerCos to coordinate, as if they increased price above competitive levels or decreased service levels below competitive levels, they would lose customers to other suppliers of services and/or self-supply by customers. The only difference between the factual and the relevant counterfactual is a reduction by one in the number of independent TowerCos, which would not alter these incentives,

66.2 in supplying Uncommitted Sites to a customer, the TowerCos are "auditioning" for a wider role with the customer in question (wherever that customer's demand exceeds a single site). This scenario differs from one where a supplier competes for a customer in a single local market – customers have significant leverage beyond a local area. In particular, given the small number of large potential customers for TowerCos, losing even a small amount of business with a particular MNO can have a significant negative impact on that TowerCo. For example, a small allocation of Uncommitted Sites from a MNO, or the first sites in a new entrant's business, are an opportunity to secure a wider relationship in the future. Each site is potentially worth more to a TowerCo than the revenue it will generate from that site, as it brings the potential for securing greater revenue by providing additional sites to the customer. As a result, TowerCos could not reach a more profitable outcome if they accommodated each other's price rises at individual sites or groups of sites. On the contrary, each is incentivised to win each increment of demand if at all possible. In that scenario there is no incentive to coordinate. This dynamic does not alter between the factual and counterfactual,

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[94] The Commission states:

- coordinated behaviour involves firms recognising that they can reach a more profitable outcome if they accommodate each other's price increases. Firms may coordinate their behaviour on price or any other dimension of competition or by allocating customers or territories, and
- successful coordination requires firms to reach at least an implicit agreement, and then to maintain that agreement by detecting and punishing any firm that deviates from the agreement (Commerce Commission, Mergers and acquisitions guidelines (May 2022) at page 27).

[95] The national TowerCos would be competing to provide services in relation to MNO and non-MNO customers' uncommitted sites (which, for new entrant MNO or non-MNO customers, would be potentially all of the customer's demand).

[96] NERA Report at [130].

66.3 costs of a MNO switching tower providers (i.e. physically moving equipment from one tower to a nearby tower) are material. These costs mean existing tenants are not materially contestable during the life of the tower/assets, and TowerCos will be incentivised to compete aggressively for co-location.[97] Again, the value of winning a site is significant, and there is no incentive to accommodate another TowerCo, in the factual or any realistic counterfactual,

66.4 in this way, NERA finds there is a high incentive to deviate because the pricing constructs adopted by the TowerCos mean that hosting co-location is highly profitable.[98] This means that:

(a) in areas where no TowerCo has coverage, TowerCos will be very incentivised to place the first tower and then have incumbency advantage in attracting co-location, and

(b) in areas where multiple TowerCos have towers already, the costs of the tower are essentially sunk and covered by the anchor tenant, so attracting additional co-location away from a rival is highly profitable when there is spare space on the tower,[99] and

66.5 NERA concludes the market is not currently vulnerable to coordination and the Proposed Transaction will not change this.[100]

67 In any event, at a practical level Connexa and Fortysouth would not have any ability to reach an implicit agreement in relation to the supply of passive mobile telecommunications infrastructure services. Specifically, Uncommitted Sites would arise at irregular intervals, and transactions would involve varying numbers of sites, in specific locations, and a range of customers. Generally, while an individual tower structure is somewhat homogenous, each package of sites would be likely to have unique features, meaning there is no obvious metric on which to base coordination (even if there were transparency). In the ordinary course, there would be no transparency as to the price and non-price terms offered for any particular package of sites (processes are likely to be by way of competitive tender) or opportunities for interaction. Put another way, there are not market features that may facilitate coordinated conduct, which would not change as a result of the Proposed Transaction.

MISAs do not enable Connexa to coordinate more easily with Fortysouth in the factual, compared to the counterfactual

68 Spark's MISA is in place irrespective of the Proposed Transaction. Only 2degrees' MISA is to be signed as part of the Proposed Transaction and so only the incremental addition of 2degrees' MISA could be capable of giving rise to any acquisition-related impact on competition.[101] It is not clear whether the Commission is considering a counterfactual in which there is:

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97 NERA Report [86].

98 *ibid*.

99 *ibid*.

100 NERA Report at [131].

101 Connexa assumes the starting point of the Commission's theory of harm is there is a real chance 2degrees would not agree a MISA in a realistic counterfactual. There is no basis to conclude 2degrees would not agree a MISA in any realistic counterfactual. The only theoretically possible counterfactual where 2degrees could conceivably not have a MISA is where 2degrees retains its

68.1 a third national TowerCo but there is a real chance 2degrees would not agree a MISA, or would negotiate a more "competitive" MISA in some way, or

68.2 a reduction from three to two TowerCos where the presence of MISAs heightens the effect on coordination of that change.

69 Regardless, 2degrees' MISA cannot increase the prospects of coordination. 2degrees' signing of its MISA means competition is at an end for a large number of sites during the term of the MISA. Connexa would not have the ability to raise prices for those sites even if coordination were possible because the MISAs set prices and terms. Accordingly, the MISAs reduce the scope of sites in relation to which coordination would be theoretically possible, so would reduce rather than increase the potential for coordination.

70 With respect to Uncommitted Sites, where there is scope for ongoing competition within the term of the MISAs, the MISAs do not increase price transparency or interaction as between TowerCos, align TowerCos' size or costs, or have any other effect that could increase the prospects of coordination.

71 The Commission notes the MISAs may provide [REDACTED].[102] It is not clear to Connexa how this could facilitate coordination between TowerCos. Specifically, if Spark and 2degrees gain information that is generalised, Fortysouth's knowledge of that information is unlikely to be actionable. Further, Spark and 2degrees have an incentive to ensure competitive TowerCos, rather than coordinated TowerCos. As such, as with any commercial customer they could be expected to deploy any information they obtained about one TowerCo only insofar as they considered they could obtain competitive advantage from it (e.g. driving better pricing or terms, rather than the opposite).

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towers. Connexa understands 2degrees will provide a separate submission containing additional information regarding its alternatives to the Proposed Transaction.

[102] SOI at [72]. It is worth reiterating that the Spark MISA is in place regardless of the Proposed Transaction and that 2degrees would be likely to have a MISA in any counterfactual in which it sold its towers.

THE EFFECT OF NON-DISCRIMINATION CLAUSES IN THE MISAS

Summary

72 *The Commission's concern:* the Commission is testing whether the presence of non-discrimination clauses in MISAs may:

72.1 impact competition in local markets to supply Uncommitted Sites to existing and new entrant MNOs, and non-MNO customers,[103] and in particular 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,[104]

72.2 increase the prospects of coordination between TowerCos by [REDACTED],[105] and

72.3 run contrary to Connexa's submissions that passive infrastructure services do not have a big impact on downstream competition.[106]

73 *Connexa's response:* in Connexa's view:

73.1 the non-discrimination clauses in the MISAs are unable to form the basis of any theory of harm because 2degrees would require the same or equivalent protections in any realistic counterfactual (see paragraph 77),

73.2 even if 2degrees would not have a non-discrimination clause in the counterfactual, overall neutral treatment of customers is fundamental to independent TowerCos' business model so there would be no material difference between the factual and the counterfactual (see paragraph 84),

73.3 even if the above were incorrect:

(a) the non-discrimination clauses are incapable of causing any lessening of competition because [REDACTED] (see paragraph 90), and

(b) the non-discrimination clauses do not increase the potential for coordination between TowerCos because[107] [REDACTED] (see paragraph 109), and

73.4 the inclusion of non-discrimination clauses does not run contrary to Connexa's submissions that passive infrastructure services do not have a big impact on downstream competition[108] (see paragraph 111).

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[103] SOI at [47].

[104] SOI at [62].

[105] SOI at [74].

[106] SOI at [54].

[107] The Commission raises this at [72] of the SOI.

[108] The Commission notes this at [54] of the SOI.

Background

74 Non-discrimination clauses [REDACTED] appear in Spark and 2degrees' MISAs with Connexa. [REDACTED].

75 Spark's MISA is in place irrespective of the Proposed Transaction. [REDACTED].

76 Only 2degrees' MISA is to be signed as part of the Proposed Transaction and so only the incremental addition of 2degrees' non-discrimination clauses could be capable of giving rise to any acquisition-related impact on competition.

2degrees would require the same or equivalent protections in any realistic counterfactual[109]

77 In Connexa's view, without the Proposed Transaction, there is no conceivable basis on which to conclude 2degrees would not require the same or equivalent protections.[110] If 2degrees were committing to be a customer of any passive mobile telecommunications infrastructure supplier, *which were also free to offer services to MNOs that compete with 2degrees*, then it would be rational for 2degrees to protect its equivalence of treatment relative to its competitors.

78 First, 2degrees has agreed its MISA in competitive circumstances, and non-discrimination requirements are a part of the overall competitive bargain 2degrees has chosen. There is no basis to conclude 2degrees would prefer a different outcome (i.e. different, or no, non-discrimination requirements) in a counterfactual in which it sold to a different purchaser. In other words, non-discrimination clauses are likely to be an inevitable outworking of the competitive scenario, in that they are an important component of the overall bargain the MISA represents.

79 Connexa considers that, [REDACTED].

80 Connexa also expects the relevant terms of 2degrees' MISA to be present in any realistic counterfactual in which 2degrees sells to an independent third party as:

80.1 non-discrimination obligations are likely to be considered important by any MNO customer of a passive infrastructure services provider that provides, or could provide, services to other MNOs, [REDACTED],

80.2 a generalised non-discrimination obligation is likely to be accepted by any TowerCo that stands by its status as an independent, neutral host for MNOs (see further below), and

80.3 non-discrimination clauses in MISAs are common in other jurisdictions. Publicly available examples include:

(a) in conjunction with Vantage Towers Greece, Vodafone Greece and Wind Hellas have committed to a long-term Master Services Agreement that ensures "non-discriminatory treatment for both Vodafone Greece and Wind Hellas and will be independently monitored",[111] and

[109] See [40] of the SOI. Connexa understands 2degrees will provide a separate submission containing additional information regarding its alternatives to the Proposed Transaction.

[110] Spark's MISA would be unaffected, given the Spark MISA is in place regardless of the Proposed Transaction.

[111] Vodafone Group, Press Release 'Vantage Towers' (24 July 2020), available at: https://www.vodafone.com/news/technology-news/vantage-towers

(b) the Annual Reports of the ATC state "in many of the markets in which we operate, we are required to provide tower space to service providers on a non-discriminatory basis, subject to the negotiation of mutually agreeable terms".[112]

81 The only theoretically possible counterfactuals where 2degrees could conceivably not have non-discrimination requirements are where 2degrees:

81.1 retains its towers (so it can safeguard its own protection and/or not proactively offer services to other customers), and/or

81.2 sells its towers but with a substantial degree of influence over the resulting TowerCo, or an exclusive arrangement with the TowerCo (such that it can directly influence or control its own treatment).

82 In the above alternative counterfactuals, 2degrees would safeguard against discriminatory treatment by exerting control over the tower assets, and it is the safeguarding against discriminatory treatment that it is attempting to do in the factual with the non-discrimination clause. Note also that, in these alternative counterfactuals, there would not be an additional independent national TowerCo with the incentive to compete vigorously for customers. In other words, these counterfactuals would not be more competitive than the factual.

83 Accordingly, the Commission's theories of harm cannot manifest given there is no relevant difference between the factual and the counterfactual.

Non-discriminatory treatment of customers is fundamental to TowerCos' business model

84 Connexa has a strong incentive to treat MNOs neutrally at an overall or systematic level, and to be seen to do so.[113] Connexa's success depends on its ability to attract as many MNO and non-MNO customers as possible. Any hint that Connexa could or would systematically treat Spark, or any other MNO, more favourably than any other MNO, would compromise its fundamental proposition to customers.

85 Fortysouth is in the same position. Fortysouth presumably wishes to convey that it would not systematically treat One NZ more favourably than any other MNO that approached it for services.[114]

86 Consistent with Connexa and Fortysouth's neutral proposition:

86.1 offshore TowerCos tend to convey their neutrality as a core part of their proposition,[115] and

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112 American Tower Corporation, Annual Report to the US Securities and Exchange Commission (for the year ended 31 December 2021) at page 6, available at: https://americantower.gcs-web.com/static-files/fbbf86d9-f10f-4a75-927c-551a6812a8ce

113 As explained in Connexa's RFI response dated 8 February 2023 (**RFI**), at [24] and [44].

114 On its home page, Fortysouth describes itself as "independent" (see https://fortysouth.co.nz/). It does not emphasise any relationship with One NZ (see https://fortysouth.co.nz/about-us/ and https://fortysouth.co.nz/new-zealand-meet-fortysouth/).

115 For example, Indara's website states 'As a neutral host, our co-location and infrastructure sharing model enables customers and network providers to improve the quality and reach of their network services more quickly and cost-effectively' (see https://indara.com/solutions/towers/); Cellnex's website states '… Cellnex has developed an industrial model in Europe that advocates neutrality and sharing' (see https://www.cellnex.com/news/neutral-shared-infrastructures-reduce-costs-improve-

86.2 the Commission's mobile co-location standard terms determination (**STD**) acknowledges non-discrimination in seeking to overcome the lack of neutrality that could arise where towers are owned by participants in downstream markets. This is done through considering compliance with standard access principle 3,[116] "the access provider must provide the service on terms and conditions on which the access provider providers the service to itself."[117]

87 As a result, non-discrimination protection is likely in a counterfactual in which there is an additional TowerCo – any independent TowerCo would be expected to agree to such a clause. To resist would undermine the neutral proposition.

88 Furthermore, even if there were a counterfactual in which 2degrees sold to an independent TowerCo and did not seek non-discrimination protection, for commercial reasons the TowerCo would nevertheless need to somehow demonstrate non-discriminatory treatment. Put another way, it is likely there would be no material difference between the factual and the most theoretically competitive counterfactual, even if 2degrees did not have a non-discrimination clause in the counterfactual.

89 [REDACTED].

The non-discrimination clauses cannot materially affect ongoing competition

90 Even if different (or no) non-discrimination requirements were present and TowerCos were not constrained by a commercial need to be neutral (neither of which is realistic, in Connexa's view), 2degrees' non-discrimination clause is not capable of giving rise to any adverse effect on competition.

91 [REDACTED].

92 To evidence the points made in the paragraph above, in the following sections Connexa describes the clauses, and sets out examples of their effect. Connexa also provides information on the negotiation of the clauses, which illustrate its incentives.

[REDACTED]

Key features of the requirements

93 [REDACTED]:

93.1 [REDACTED], and

93.2 [REDACTED].

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efficiency-boost-sustainability-mwc23/); American Tower's website states 'neutral-host infrastructure providers like American Tower are best suited to provide this' (see https://www.americantower.com/us/news-and-events/blog/neutral-host.html); and BAI Communications' website states 'expanding into continental Europe with BAI Italia brings new neutral-host options to Italy' (see https://www.baicommunications.com/blog/expanding-into-continental-europe-with-bai-italia-brings-new-neutral-host-options-to-italy/).

116 Telecommunications Act 2001, Schedule 1, Subpart 2, clauses 5 and 6.

117 See, for example, Commerce Commission, Standard Terms Determination for the specified service Co-location on cellular mobile transmission sites, Decision 661, 11 December 2008, [30]-[38] (https://comcom.govt.nz/__data/assets/pdf_file/0037/87949/Mobile-Co-location-STD-Decision-Report.pdf).

94 [REDACTED]:

94.1 [REDACTED],

94.2 [REDACTED], and

94.3 [REDACTED]. [REDACTED].

95 In addition to the non-discrimination clauses:

95.1 [REDACTED].

95.2 [REDACTED].

Scenarios in which the non-discrimination clauses in the 2degrees MISA apply

96 [REDACTED].

97 [REDACTED]:

97.1 [REDACTED],

97.2 [REDACTED], or

97.3 [REDACTED].

98 [REDACTED]:

98.1 [REDACTED], and

98.2 [REDACTED].

99 [REDACTED].

100 [REDACTED]:

100.1 [REDACTED],

100.2 [REDACTED],

100.3 [REDACTED], or

100.4 [REDACTED].

101 [REDACTED]:

101.1 [REDACTED], or

101.2 [REDACTED].

102 [REDACTED]:

102.1 [REDACTED], or

102.2 [REDACTED].

[REDACTED]

103 When negotiating the MISA, [REDACTED]. The negotiation of the clauses is consistent with the view that they do not hold Connexa back from competing.

104 [REDACTED] is provided as **Appendix 1** [REDACTED].

105 [REDACTED].

106 [REDACTED].

107 [REDACTED].

108 [REDACTED].

The non-discrimination clauses do not increase the potential for coordination between TowerCos

109 Relevant markets are not vulnerable to coordination.[118] Even if there were a difference between the factual and the counterfactual as regards non-discrimination requirements, 2degrees' (or Spark's) non-discrimination requirements do not increase the information flow between TowerCos, or otherwise increase the ability or incentive for TowerCos to coordinate.

110 The non-discrimination requirements can only, even theoretically, affect the prospects of coordination where they apply. As outlined above, [REDACTED].

The presence of non-discrimination clauses does not run contrary to Connexa's submissions that passive infrastructure services do not have a big impact on downstream competition

111 The NERA Report found that [REDACTED].[119] [REDACTED].[120] Further, price increases in passive mobile telecommunications infrastructure are not capable of meaningfully increasing the costs of downstream mobile services.

112 It remains the case that [REDACTED], and that towers are generally uncomplicated structures whose features do not have a bearing on the technology or service MNOs can offer.

113 Nevertheless, where MNOs choose for passive infrastructure to be deployed, that infrastructure is hosting key aspects of MNOs' network equipment. Accordingly, it would be irresponsible of MNOs not to safeguard their ability to control [REDACTED].

114 More generally, MNOs use Connexa to supply an input into their service offering, and Connexa is free to supply those inputs to their competitors, based on its neutral host model. It is unsurprising that such clauses would be included even if they cannot affect downstream competition.[121]

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118 See paragraph 66.

119 NERA Report at Part 4.1.

120 At [117.1] and [153.2], and Part 4.1, respectively.

121 [REDACTED].

VERTICAL EFFECTS IN DOWNSTREAM TELECOMMUNICATIONS MARKETS

Summary

115 *The Commission's concern:* the Commission is concerned the Proposed Transaction would give Spark the ability and incentive to influence Connexa (either directly, or indirectly via Entelar) to harm 2degrees by, e.g., raising its costs, reducing the quality of services provided by Connexa, delaying site builds, or by any other means.[122]

116 *Connexa's response:* Connexa considers:

116.1 Entelar's role as a service provider for 2degrees and Spark would not be materially different in the factual compared with the counterfactual (see paragraph 117),

116.2 Spark has no ability to indirectly influence Connexa, via Entelar, to harm 2degrees. That is, it is not plausible that Entelar could successfully raise prices or reduce the quality of services to Connexa where the service is being carried out for 2degrees because (see paragraph 121):

(a) the Operational Services Agreement (**OSA**) does not [REDACTED] for services to 2degrees (paragraph 122),

(b) Connexa's incentives are not to tolerate any attempt by Spark/Entelar to increase prices or worsen services provided to 2degrees (see paragraph 129):

(i) Connexa is an independent, neutral host, with no ownership or other interest in Entelar, and no incentive to favour Entelar,

(ii) [REDACTED],[123] and

(iii) Connexa's ability to keep its costs down is one of its key levers for performance, and

(c) there are a number of competing providers of construction and maintenance services, so Connexa would not be compelled to take up uncompetitive services from Entelar (see paragraph 141),

116.3 Spark has no ability to influence Connexa directly, to harm 2degrees through services provided by Entelar, or in any other way, as (see paragraph 146):

(a) Spark's directors cannot influence or know about services provided to 2degrees (see paragraph 146), and

(b) even if protections failed, Spark would not be able to influence Connexa to harm 2degrees (see paragraph 151),

116.4 [REDACTED] (see paragraph 157), and

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[122] The Commission raises this at [78] of the SOI.

[123] The Commission acknowledges these protections at [87] of the SOI.

116.5 Spark has no incentive to harm 2degrees, via Entelar or otherwise, because [REDACTED] (see paragraph 160).

Entelar's role as a service provider for 2degrees and Spark would not be materially different in the factual compared with the counterfactual

117 In both the factual and any counterfactual, Entelar would be a service provider owned by Spark that [REDACTED]:

117.1 [REDACTED], and

117.2 [REDACTED].

118 Connexa acknowledges the Commission's view that 2degrees' relationship with Connexa is more significant in the factual than it would be in a counterfactual where it sold its towers to another purchaser (as it would have a MISA with that purchaser rather than Connexa).[124] Nevertheless, in that counterfactual:

118.1 2degrees' MISA counterparty could use Entelar's services as extensively as Connexa will do in the factual,

118.2 Connexa would compete for 2degrees' Uncommitted Sites as it would in the factual. Entelar could be used to deliver those services, and

118.3 2degrees could engage Entelar directly for active network installation and maintenance, or to support 2degrees self-supply (and, presumably, Entelar would want to win 2degrees' business).

119 In short, the Commission's theory of harm is based on a difference between the factual and counterfactual that is, at most, a matter of degree.

120 Furthermore, [REDACTED],[125] [REDACTED].

Spark has no ability to influence Connexa, via Entelar, to harm 2degrees

121 Connexa considers it is not plausible that Entelar would or could successfully raise prices or reduce the quality of services to Connexa where the services are being carried out for 2degrees, for the reasons set out below.

The OSA does not [REDACTED]

122 [REDACTED].

The OSA [REDACTED]

123 The Commission suggests that, because the OSA [REDACTED][126] [REDACTED].[127] However, the OSA [REDACTED], which leaves Connexa free to respond to its incentives in respect of 2degrees sites.

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[124] The Commission raises this at [77] of the SOI.

[125] [REDACTED].

[126] [REDACTED].

[127] The Commission raises this at [85] of the SOI. For completeness, under the OSA, Connexa has committed [REDACTED]. Specifically:

- [REDACTED],
- [REDACTED], and
- [REDACTED].

124 [REDACTED],[128] [REDACTED].[129] [REDACTED].

125 [REDACTED]. [REDACTED].

126 [REDACTED] provided as **Appendix 2**.

127 [REDACTED] provided as **Appendix 3**.

128 [REDACTED].

Connexa is an independent neutral host, with no incentive to favour Entelar

129 Connexa would not wish to tolerate any attempt by Spark/Entelar to increase prices or worsen services provided to 2degrees, or any of its customers. Connexa is an independent, neutral host, with no ownership or other interest in Entelar. It has nothing to gain from favouring the services offered by Entelar where it could obtain better services elsewhere. In fact, doing so could undermine its core business proposition of independence and neutrality.

130 [REDACTED].[130] [REDACTED].

The trajectory of negotiation of the OSA provides evidence of Connexa's incentives

131 When negotiating the OSA, [REDACTED]. [REDACTED] is provided as **Appendix 4** [REDACTED].

132 Key points from the OSA negotiation are:

132.1 [REDACTED]:

(a) [REDACTED], and

(b) [REDACTED],

132.2 following the negotiations, as noted above [REDACTED],[131] and

132.3 [REDACTED].[132]

133 [REDACTED].[133] [REDACTED].[134]

Offering lesser services to 2degrees [REDACTED]

134 Connexa is dis-incentivised to facilitate any attempts by Spark and/or Entelar to provide lesser services to 2degrees, compared with Spark, as doing so could [REDACTED].

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128 OSA, [REDACTED].

129 OSA, [REDACTED].

130 Clearance Application at [42], and [75] to [77]; [REDACTED].

131 OSA, [REDACTED].

132 OSA, [REDACTED].

133 OSA, [REDACTED].

134 OSA, [REDACTED].

135 [REDACTED].[135] As the Commission has acknowledged,[136] the 2degrees MISA provides [REDACTED].[137]

136 Therefore, even if Connexa itself were not incentivised to provide timely and cost-effective services to 2degrees (which it is), [REDACTED].

Connexa is incentivised to keep its costs down for 2degrees' sites

137 With the bulk of its demand contracted, Connexa's ability to keep its costs down, [REDACTED], is one of its key levers to outperform.

138 [REDACTED]:

138.1 [REDACTED]:

(a) [REDACTED],[138]

(b) [REDACTED],[139] and

(c) [REDACTED],[140]

138.2 [REDACTED],

138.3 [REDACTED], and

138.4 [REDACTED].[141]

139 In summary, [REDACTED].

140 It would therefore be self-defeating for Connexa to use a construction and maintenance provider (Entelar or otherwise) that offers uncompetitive service(s) or pricing [REDACTED].[142]

Connexa has options other than Entelar, so has no reason to tolerate uncompetitive prices or services

141 There are a number of contractors for the construction of passive mobile telecommunications infrastructure from which Connexa may choose. The work is not particularly specialised and there is a range of options for carrying it out. Contractors are not owned by (with the exception of Entelar) or committed exclusively to any provider of passive mobile telecommunications infrastructure and instead are free to provide services to any provider. As a result, there is no reason Connexa would be compelled to take up services offered by Entelar in any circumstances, including where those services would be for 2degrees. Instead, Connexa has choice.

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[135] 2degrees MISA, [REDACTED].

[136] At [87] of the SOI.

[137] See 2degrees MISA, [REDACTED].

[138] 2degrees MISA, [REDACTED].

[139] 2degrees MISA, [REDACTED].

[140] 2degrees MISA, [REDACTED].

[141] 2degrees MISA, [REDACTED].

[142] Noting [REDACTED], 2degrees MISA, [REDACTED].

142 In addition to Entelar, all of the following contractors operate nationally:

142.1 Downer Group NZ,

142.2 Ventia NZ,

142.3 Broadtech, and

142.4 Infratel Networks Limited.

143 Sub-contracting services are also required for passive mobile telecommunications infrastructure building. These services are not particularly specialised and can be obtained from a range of sub-contractors (with some of the contractors listed above also offering sub-contracting services), including at a local level. Examples include:

143.1 MRT Construction,

143.2 HEB Construction,

143.3 DW Dentice Buildmaster,

143.4 WSP,

143.5 Northland Underground Drilling (Northland) – small civils jobs,

143.6 Huband Contractors (Northland) – small civil jobs,

143.7 Steve Bowling (Northland), and

143.8 Duyvestyn Drainage Limited (Midlands).

144 The provision of construction and maintenance services is therefore highly competitive, and Connexa will have numerous options from which to choose [REDACTED].

145 Accordingly, Connexa has every ability to bypass Entelar if the latter (influenced by Spark) sought to harm 2degrees, or otherwise offered uncompetitive services.

Spark has no ability to influence Connexa directly to harm 2degrees, through services provided by Entelar (or in any other way)

Spark's shareholding and governance rights would not allow Spark to harm 2degrees

Spark would have no influence over Connexa

146 Connexa understands the Commission accepts that Spark's shareholding and formal governance rights in the factual would not give rise to any material influence over Connexa. [REDACTED].[143]

[143] See also the Clearance Application at [28.1].

The Commission has oversight of changes to Connexa's governance and control

147 The Commission has expressed a concern that Connexa's governance arrangements could be changed without the Commission's oversight if the Proposed Acquisition took place.[144] But:

147.1 any acquisition by Spark of additional shares in Connexa that brought about a change in the influence Spark has over Connexa would be subject to Commission oversight under section 47 of the Commerce Act 1986 (**Commerce Act**), and

147.2 any change to governance arrangements that were brought about by agreement between OTPP and Spark, and which resulted in a change in the influence Spark has over Connexa, would be subject to Commission oversight pursuant to section 27 of the Commerce Act.

Connexa protects 2degrees from Spark's influence or oversight

148 [REDACTED],[145] [REDACTED].[146]

149 [REDACTED].[147] Notably:

149.1 [REDACTED],

149.2 [REDACTED].[148] [REDACTED],[149] and

149.3 [REDACTED].

150 [REDACTED].

Even if governance protections failed, there would be no information shared with Connexa's board that would allow Spark to influence the services Entelar provides to 2degrees

151 [REDACTED].

152 Under the SHA, [REDACTED].[150]

153 The above includes [REDACTED]. [REDACTED].

154 [REDACTED].

155 [REDACTED].

156 For completeness, **Appendix 5** sets out [REDACTED].

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144 The Commission raises this at [85] of the SOI.

145 [REDACTED].

146 Shareholders' agreement relating to Frodoco Holdings Limited, dated 14 October 2022, [REDACTED].

147 As set out in [REDACTED] at [28].

148 For example, [REDACTED].

149 See Clearance Application at footnote 35.

150 See also [REDACTED].

Connexa understands Spark does not influence Entelar's decisions about service delivery

157 [REDACTED].[151] [REDACTED].[152]

158 As above, Entelar operates in highly competitive markets, [REDACTED]. In that context, Entelar has no incentive to provide uncompetitive services for 2degrees, as it could lose business to its competitors [REDACTED]. In the same way that being a neutral host is fundamental to Connexa's offering, Connexa assumes being a neutral supplier is equally integral to Entelar's business model.

159 Consistent with the dynamic described above, Connexa understands Entelar currently provides services to all MNOs, which suggests it is trusted to operate in a non-discriminatory manner (despite being wholly owned by Spark). This is further supported by the fact that 2degrees [REDACTED].[153]

It would not be rational for Spark to pursue a foreclosure strategy

160 Even if the aforementioned contractual and governance arrangements were somehow insufficient to protect 2degrees,[154] Spark does not have incentives to circumvent these arrangements in order to foreclose 2degrees.

161 [REDACTED].[155]

162 [REDACTED]. Even if it successful, the strategy would not significantly undermine the effectiveness, nor dramatically increase the operational costs, of 2degrees' network.

163 Further, [REDACTED].

164 Accordingly, [REDACTED].

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151 The Commission refers to this at [82] of the SOI.

152 *ibid.*

153 See [83] of the SOI.

154 According to the Commission's concerns at [85] of the SOI.

155 See also [REDACTED].

APPENDIX 1: [REDACTED]

[REDACTED]

APPENDIX 2: [REDACTED]

[REDACTED]

APPENDIX 3: [REDACTED]

[REDACTED]

APPENDIX 4: [REDACTED]

[REDACTED]

APPENDIX 5: [REDACTED]

[REDACTED]	**[REDACTED]**	**[REDACTED]**
[REDACTED]	[REDACTED]	• [REDACTED].[156] [REDACTED],[157] [REDACTED].[158] • [REDACTED].[159] • [REDACTED]. • [REDACTED].[160] [REDACTED][161] [REDACTED][162] [REDACTED].
[REDACTED]	[REDACTED]	• [REDACTED].[163] • [REDACTED]. • [REDACTED].[164] • [REDACTED]. • [REDACTED].[165] • [REDACTED]. • [REDACTED].

156 [REDACTED].

157 [REDACTED].

158 [REDACTED].

159 [REDACTED].

160 [REDACTED].

161 [REDACTED].

162 [REDACTED].

163 [REDACTED].

164 [REDACTED].

165 [REDACTED].

[REDACTED]	**[REDACTED]**	**[REDACTED]**
[REDACTED]	[REDACTED]	• [REDACTED]. • [REDACTED]. • [REDACTED].[166]
[REDACTED]	[REDACTED].[167] [REDACTED].	• [REDACTED].[168] • [REDACTED].[169] • [REDACTED].[170]
[REDACTED]	[REDACTED]	• [REDACTED].[171] • [REDACTED].
[REDACTED]	[REDACTED]	• [REDACTED][172] [REDACTED].
[REDACTED]	[REDACTED]	[REDACTED].[173]

166 [REDACTED].

167 [REDACTED].

168 [REDACTED].

169 [REDACTED].

170 [REDACTED].

171 [REDACTED].

172 [REDACTED].

173 [REDACTED].