SPARK NEW ZEALAND TRADING LIMITED

14 APRIL 2023

RESPONSE TO STATEMENT OF ISSUES DATED 28 MARCH 2023

Introduction

1. This submission sets out Spark New Zealand Trading Limited's ("**Spark**") response to the Commerce Commission's (the "**Commission**") Statement of Issues dated 28 March 2023 ("**SOI**") in relation to Connexa Limited's ("**Connexa**") application for clearance to acquire certain passive mobile telecommunications infrastructure assets from Two Degrees Networks Limited and Two Degrees Mobile Limited ("**2degrees**") (the "**Transaction**").

2. Spark is grateful for the opportunity to respond to the SOI, and to provide further information in this submission to assist the Commission in its analysis. Spark considers that there is no realistic prospect that a substantial lessening of competition will arise in any market as a result of the Transaction, and trusts that this further information will assist the Commission to satisfy itself of the same.

3. In particular, Spark provides further information in relation to the following points raised in the SOI:

   (a) self-supply is a realistic and credible option for MNOs, and, therefore, will place competitive constraint on the TowerCos. In particular, if faced with increased prices or decreased quality post-transaction, MNOs could credibly threaten to self-supply (or indeed self-supply) passive infrastructure themselves to constrain Connexa.

   (b) the Transaction could not in any way lead to uncompetitive outcomes for MNOs in relation to 5G rollout given that rollout was anticipated at the time the MISAs were negotiated, and in any event 5G rollout will primarily depend on investment in additional active kit (not passive sites), and to the extent additional in-fill sites are required, they are likely to be smaller sites that are even more readily able to be self-supplied. To the contrary, the Transaction will likely lower the cost to MNOs of deploying 5G by increasing site-sharing potential for new in-fill sites designed to provide the improved site density needed for 5G networks.

   (c) Spark's non-discrimination clause cannot lessen competition given (i) it is a feature of both the factual and counterfactual, and (ii) is, in fact, an ordinary and pro-competitive provision that will not, from Connexa's side, lessen its incentives to attract new customers, nor from Spark's side, lessen its incentives to achieve competitive prices and price-check Connexa against alternative options.

   (d) neither Spark's 17% ownership interest in Connexa, nor its ownership of Entelar Limited ("**Entelar**"), could either separately (or in combination) give rise to any vertical effects in downstream telecommunications markets - such interests do not give Spark the ability or incentive to harm 2degrees' (or any other MNO's) competitiveness downstream.

   (e) "3-to-2" concerns do not arise from the Transaction. Namely:

(i) Spark is confident that its supply of passive tower build and maintenance services are optimised and efficient over the longer term, and the Transaction provides the opportunity for 2degrees to achieve a similarly optimal outcome under its own contractual arrangements with Connexa;

(ii) MNOs will retain the ability to self-supply (or credibly threaten to self-supply);

(iii) uncommitted volumes will be sufficient for MNOs to sponsor (or credibly threaten to sponsor) new entry; and

(iv) in the longer term, TowerCos will also face competitive constraint from low-orbit satellite providers (already there is a satellite provider that markets itself as "cell-towers-in-space" [ ]).

Furthermore, downstream competition among MNOs will be unaffected by the Transaction and consumers will continue to benefit from strong competition between three independent MNOs (and the Transaction will, in fact, be pro-competitive by delivering increased efficiencies through enhanced co-location opportunities).

Self-supply is a realistic option and credible threat

4. The Commission said in its SOI that it is testing whether MNOs could self-supply passive infrastructure assets to impose competitive constraint on TowerCos, with the Commission indicating that it considered that "self-supplying passive infrastructure assets would run contrary to the reasons for MNOs divesting such assets",[1] and "MNOs may face comparatively or disproportionately high overhead costs… in managing a small-scale operation of self-supplied passive infrastructure sites",[2] such that MNO self-supply would be "unlikely to occur in response to a SSNIP."[3]

5. However, contrary to the propositions raised in the SOI, Spark considers that MNOs would readily be able to self-supply (or credibly threaten to self-supply) to impose competitive discipline on the TowerCos:

(a) First, there is limited specialist expertise required to self-supply passive tower requirements. Rather, provision of passive tower requirements is primarily a civil engineering and an estate management / holding role, and MNOs have retained core network planning, engineering and maintenance (for active equipment) capacity, and Spark continues to own a small number of passive sites. To the extent an MNO wanted to self-supply on a site-by-site basis the only requirement is the (comparatively small) capital outlay for self-supply at a given site. In addition, MNOs will continue to have relationships with engineering contractors and service providers to enable self-supply (including the likes of Downer Group, Ventia, Universal Contract Group, Infratel, and Spark's continued ownership of Entelar).

(b) Second, Spark does not consider that self-supply would "run contrary to the reasons for MNOs divesting such assets",[4] which (in addition to enhancing

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[1] Statement of Issues at [60]
[2] Statement of Issues at [60]
[3] Statement of Issues at [60]
[4] Statement of Issues at [60]

opportunities for co-location) were to release capital, and achieve a more capital efficient way of funding its passive infrastructure requirements. Namely:

(i) Spark released $900 million of capital by selling 70% of its TowerCo with approximately 1,263 sites to Ontario Teachers' Pension Plan ("**OTPP**").[5] By contrast, Spark estimates that it could self-supply a particular uncommitted site [ ]. In no way does Spark consider that such a small capital outlay on a site-by-site basis would undermine or run counter to its rationale of achieving the $900 million of capital proceeds from its 2022 sale to OTPP.

(ii) While Spark considers that use of an independent TowerCo (with pricing and terms agreed through a MISA) may be a more capital efficient way of Spark receiving competitive prices for its passive tower requirements, if Spark were to not receive competitive pricing from independent TowerCos, it would at that point be most capital efficient for Spark to self-supply (or threaten to self-supply) to ensure it receives competitive prices.

(c) Third, Spark does not consider that it would face comparatively or disproportionately high overhead costs in operating certain self-supplied passive infrastructure sites. As noted above, the requirements in owning passive infrastructure is primarily an estate management / holding role, and there are relatively low marginal costs associated with the ownership holding of a given site. Furthermore:

(i) Spark has maintained, as noted above, core network planning, engineering and maintenance (for active equipment) capacity along with a small number of passive sites, and the responsibility for the management / holding of any passive assets could readily sit with those same personnel without requiring material additional costs.

(ii) Spark (and other MNOs) have long experience designing and constructing (i.e. self-supplying) mobile tower sites, and Spark does not consider that the divestment to Connexa has resulted in non-replicable intellectual property being lost to Spark. Spark's key rationale for divesting the Connexa business (in addition to releasing capital and achieving capital efficiencies) was that a specialised TowerCo would be more able to aggregate demand and demand projections from across the market and, therefore, spur increased network sharing and lower network costs. From Spark's perspective, that is the only core competency that Connexa or any other specialist TowerCo will have that Spark will not, and even that will only affect site economics at the margins and for certain site types (and, therefore, would not preclude Spark from self-supplying to ensure it achieves competitive outcomes).

(iii) Spark continues to own and operate certain fixed (non-mobile) infrastructure inputs, and so could aggregate its demand for engineering services across its fixed, active mobile, and passive mobile requirements in order to achieve scale efficiencies in engaging any third party services

[5] https://www.sparknz.co.nz/news/Spark-announces-sale-of-TowerCo/

providers (and it would expect to run a competitive tender process for such work in any event).

(iv) Spark has previously looked to self-supply certain inputs (for example, in August 2016 when it announced it would look to achieve "ownership economics" for local access fibre assets in the Auckland and Wellington CBDs),[6] which demonstrates that it will look to self-supply inputs where it considers it in its best interests (and that the overheads of such ownership is not cost prohibitive to Spark exploring such opportunities).

(v) Spark's initial investment in and subsequent acquisition of Connect 8 (now part of Entelar) is further evidence that Spark will invest to acquire (self-supply) capacity to meet its needs where it considers it might not be obtaining the best outcomes from the market. For example:

(aa) when Spark first acquired 50% of Connect 8 in 2015 it said that it would "give [Spark] more flexibility, supplier-capacity, and control over delivery time frames";[7] and

(bb) in 2018 Connect 8 acquired Electra subsidiary Sky Communications to obtain Sky Communication's mobile network design, build and supply capabilities,[8] and Spark sponsored Connect 8's further expansion in that sector through directing expenditure to Connect 8.

(d) Fourth, even if Spark (hypothetically) were not willing to have smaller amounts of capital tied up on a small-scale site-by-site basis, it expects there would be third party investors that would be incentivised to provide the upfront capital to receive an ongoing revenue stream from Spark for such sites. Indeed, that is not unlike the business model of American Towers, which has established itself in New Zealand through the acquisition of Clearspan. For example, American Towers' New Zealand website sets out that "providing a lump-sum payment for their cellular lease in exchange for the future rent paid by tenants at the site" is its business model in New Zealand – see Figure [1] below.[9]

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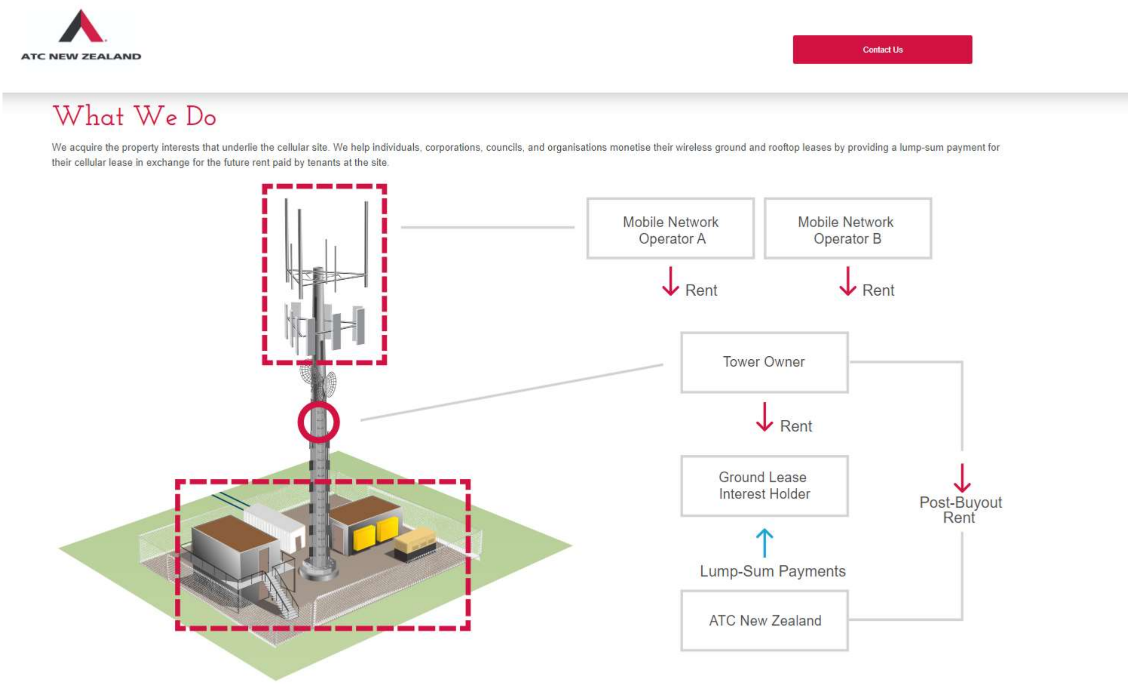
[6] Dene Mackenzie "Spark CBD fibre ambition" (29 August 2016) Otago Daily Times. Accessible at: https://www.odt.co.nz/business/spark-cbd-fibre-ambition

[7] https://www.nzx.com/announcements/260322

[8] https://www.nzx.com/announcements/317578

[9] https://www.americantower.com/en/new-zealand/?utm_source=google&utm_medium=cpc&utm_campaign=atc-nz-search&utm_content=nz&utm_term=cell%20phone%20towers%20on%20private%20property&creative=652016343739&keyword=cell%20phone%20towers%20on%20private%20property&matchtype=b&network=g&device=c&gclid=Cj0KCQjwz6ShBhCMARIsAH9A0qXPw0uzORsJWCICK9g4JTCstt9BcZfQkZKnYCr-4VSLrqnw40AZTRcaArzTEALw_wcB

Figure [1] – Screenshot from American Towers' New Zealand website



(e) Fifth, the constraint on the merging parties does not need to arise from actual self-supply, but rather the "credible threat" to make such a switch. This is recognised by:

(i) the Commission's Mergers and Acquisitions Guidelines ("**M&A Guidelines**"), which refer to countervailing power being present where the customer can switch or **credibly threaten** to switch" to an alternative.[10]

(ii) previous Commission decisions, for example its 2018 *Ingenico / Paymark* decision: "If Verifone had a **credible threat** of building an alternative network, it would motivate Paymark to offer reasonable terms on the wholesale and aggregation agreement."[11]

(iii) the European Commission in its "Guidelines on the assessment of horizontal mergers":[12]

> One source of countervailing buyer power would be if a customer could **credibly threaten** to resort, within a reasonable timeframe, to alternative sources of supply should the supplier decide to increase prices or to otherwise deteriorate quality or the conditions of delivery. This would be the case if the buyer could immediately switch to other suppliers, **credibly threaten to vertically**

[10] M&A Guidelines at [3.115.2].

[11] Ingenico Group SA and Paymark Limited [2018] NZCC 18, para [142].

[12] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:031:0005:0018:en:PDF#:~:text=The%20Commission's%20assessment%20of%20mergers,constraints%20facing%20the%20merged%20entity.

> **integrate into the upstream market or to sponsor upstream expansion or entry for instance by persuading a potential entrant to enter by committing to placing large orders with this company**. It is more likely that large and sophisticated customers will possess this kind of countervailing buyer power than smaller firms in a fragmented industry. [Emphasis added]

Accordingly, the question for the Commission is not whether MNOs would actually self-supply particular uncommitted sites, but whether they could credibly threaten to do so. Spark's perspective is that plainly MNOs could credibly threaten to do so for the reasons outlined at 5 above – in particular given up until recently all MNOs self-supplied their passive infrastructure requirements (which very much demonstrates their capability to do so again).

6. Accordingly, Spark considers that MNOs would readily be able to self-supply (or credibly threaten to self-supply) to impose competitive discipline on the TowerCos.

The Transaction does not lessen competition with respect to 5G

7. The Commission's SOI says "[a]t this stage, we are 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".[13]

8. However, from Spark's perspective, it does not consider that the Transaction could in any way lead to less competitive outcomes for MNOs in relation to 5G roll out. That is because while, as the SOI notes, the roll out of 5G will require a densification of MNOs' networks,[14] most often in built-up areas, that is more likely to primarily involve MNOs upgrading active infrastructure at pre-existing passive sites and then in-filling sites using smaller street-side or lamppost sites. In no way will the Transaction lessen competition for MNOs in either of those options to roll out 5G, namely:

   (a) Spark's plans in relation to the roll out of 5G were already well advanced and known at the time Spark entered into its MISA with Connexa. Accordingly, the contractual arrangements it has entered into with Connexa already cover what Spark considers it would require from Connexa to ensure Spark obtains competitive outcomes for its 5G roll out requirements (with the concept of "uncommitted sites" being included in the MISA to provide Spark with additional options to achieve even more competitive outcomes).

   (b) The Transaction does not, at all, relate to the provision of active infrastructure, so Spark's (and other MNOs') roll out of active infrastructure for 5G (and 4G) at existing sites will in no way be impacted – and Spark considers that the required large "macro" passive sites for active kit for 5G is largely already in place (in other words, Spark does not require significant numbers of additional large "macro" passive sites for its roll out of 5G, rather its roll out primarily requires investment in additional active kit). If anything, the Transaction will provide more, and more efficient, options for MNOs for the roll out of additional active infrastructure at co-located passive sites by facilitating greater passive co-location compared to the counterfactual.

[13] Statement of Issues at [53]

[14] Statement of Issues at [53].

(c) In relation to smaller sites, self-supply will very much be a viable and realistic option for the reasons outlined at paragraphs 4 to 5 above. These sites typically do not require involved consenting and site acquisition processes, cost much less than large “macro” sites, and can be deployed in “cookie-cutter” fashion using standardised designs.

9. Accordingly, Spark cannot see any way in which the Transaction could lead to less competitive outcomes for MNOs in relation to 5G rollout. To the contrary, the Transaction will likely lower the cost to MNOs of deploying 5G by increasing site-sharing potential for new in-fill sites designed to provide the improved site density needed for 5G networks.

The Transaction does not give rise to any vertical foreclosure effects

10. Spark cannot see any way in which its minority shareholding in Connexa, or its ownership of Entelar, could give rise to any vertical foreclosure concerns in relation to 2degrees (or any other MNO).

11. First, in relation to Spark's minority shareholding in Connexa (and directorships), as outlined to the Commission previously, [ ].

12. Second, none of the requirements, as set out in the M&A Guidelines, for vertical input foreclosure exist in practice. That is:

(a) Connexa will not have market power. It will continue to be constrained, including in relation to the provision of passive infrastructure to 2degrees, by FortySouth, the credible threat of self-supply, and the credible threat of new entry (see further at paragraph 23 below). As the Commission's M&A Guidelines set out: "A firm is generally only able to foreclose competitors if it has market power at one or more level(s) of the supply chain. If a firm does not have market power, its competitors could switch to other suppliers or purchasers".[15] As the OECD has set out, "the ability to foreclose depends on the **absence of effective counter-strategies** by disadvantaged rivals". Possible counterstrategies available to competitors "include adapting their production process to be able to use a different input, purchasing an upstream player or begin producing the input themselves".[16] In this case, the credible threat of self-supply is an effective and readily available counter-strategy.

(b) Neither Connexa (nor Spark, even assuming it had any ability to influence Connexa's supply to 2degrees) would have the incentive to foreclose 2degrees given any attempt to do so would inevitably result in 2degrees switching uncommitted volumes to FortySouth, self-supply, or sponsoring a new entrant at the expense of returns to Connexa. As the Commission's M&A Guidelines set out: "A firm will only rationally foreclose competitors if it is profitable to do so".[17] Plainly it would not be profitable for Connexa (or Spark) to seek to foreclose 2degrees when 2degrees would have alternative options open to it.

13. For similar reasons, there is no way in which Spark could have the ability or incentive to foreclose 2degrees through its ownership of Entelar. Namely:

(a) First, Entelar operates separately from Spark with protocols in place.

[15] M&A Guidelines at [5.7].
[16] UK contribution to the OECD roundtable on "Vertical Mergers" (2007). [Emphasis added]
[17] M&A Guidelines at [5.8].

(b) Second, Entelar will not have market power and, therefore, no ability to foreclose 2degrees, or degrade services to Connexa when it is developing new sites for 2degrees. Entelar is just one of many providers of services for the physical building and maintaining of infrastructure. As the Commission noted in its SOI:[18]

> There are several contractors of similar scale to Entelar. These and other contractors would still have the opportunity to compete for the business of other parties, including customers that seek contractors to build or maintain passive infrastructure for purposes other than mobile telecommunications.

(c) Third, Spark / Entelar would not have the incentive to foreclose 2degrees through Spark's ownership of Entelar:

(i) If the services Entelar provide to Connexa were to be degraded in relation to 2degrees' requirements, then it is inevitable that Connexa would switch to alternative providers (and the Commission notes there are others "of similar scale to Entelar") to ensure that 2degrees receives adequate service, thereby reducing Entelar's revenue, [ ]

(ii) Spark's rationale for the Transaction arises from the potential to increase co-location, as it announced to the market: "We believe the addition of 2degrees' tower assets into Connexa will deliver greater operational efficiencies that will support more infrastructure sharing, better network economics, and faster deployment of new digital infrastructure across Aotearoa".[19] [ ] so any attempts to restrict 2degrees from co-locating at sites would have direct costs to Spark.

(iii) Any strategies that reduced the revenues that Connexa receives from 2degrees would again have direct financial impact to Spark by reducing its dividend stream and the value of its holding in Connexa.

14. Accordingly, Spark cannot see any way in which its minority shareholding in Connexa, or its ownership of Entelar, could give rise to any vertical foreclosure concerns in relation to 2degrees (or any other MNO).

Spark's non-discrimination clause does not lessen competition

15. Spark does not consider that the inclusion of non-discrimination clauses in MISAs (such as Spark's MISA) in any way:

(a) runs contrary to Connexa's submission that passive infrastructure does not "have [a] big impact on downstream competition";[20] or

(b) "may 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".[21]

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[18] Statement of Issues at [96].

[19] MARKET RELEASE – THURSDAY, 15 DECEMBER 2022. Spark New Zealand confirms Connexa to acquire 2degrees' tower assets

[20] Statement of Issues at [54].

[21] Statement of Issues at [62].

16. In relation to the first point, Spark does not agree that the inclusion of a non-discrimination clause in its MISA is in any way contrary to Connexa's submission that passive infrastructure is not a key determinator of downstream mobile competition. Rather, Spark agrees with Connexa's submission to the Commission that:

    (a) passive infrastructure costs make up only a small proportion of retail mobile costs;

    (b) coverage is no longer a material competitive differentiator; and

    (c) to the extent that there are downstream benefits of more infrastructure-based competition between MNOs, that is primarily competition in relation to active infrastructure (i.e. spectrum and software are the key drivers of innovation) and not passive infrastructure (which is only the location of the active infrastructure).

17. Spark does not consider the inclusion of a non-discrimination clause undermines this submission. Rather, while passive infrastructure cost and coverage is only a minor input to downstream competition, it is nonetheless a necessary input and, in that context, it is commercially prudent for Spark in negotiating its MISA to seek commercial protections to ensure it is receiving as competitive service and pricing as possible. Spark seeks to negotiate competitive service and pricing on all inputs into its business – both large and small.

18. In relation to the second point, Spark does not consider that its non-discrimination clause could have any disincentive on price competition – either from Connexa's side (in its price offering to other customers) or from Spark's side (in seeking competitive quotes from other TowerCos). That is because:

    (a) From Connexa's side, it is operating in a competitive passive infrastructure market (competing against FortySouth, self-supply, and other potential new entrants – see paragraph 23 below), and it will have strong incentives to win incremental new revenue / volume from those alternatives by pricing competitively for new customers / uncommitted volumes. Namely, additional volumes will inevitably provide Connexa with further economies of scale that would incentivise it to compete vigorously for new business, and [ ]

        (i) [ ]; or

        (ii) [ ]

    (b) From Spark's side, Spark will still be incentivised to "price check" and, if necessary, switch to its alternatives for uncommitted sites (including FortySouth, self-supply, and other options) to ensure that it is receiving competitive pricing and services (as noted above, the concept of "uncommitted sites" was included in the MISA to provide Spark with additional options to achieve even more competitive outcomes).

19. Third, the existence of Spark's non-discrimination clause is not Transaction specific – i.e. Spark would have a non-discrimination clause with Connexa irrespective of whether or not the Transaction with 2degrees occurs (and, therefore, to the extent Spark's clause would have any impact, those impacts would occur with or without the Transaction).

20. Fourth, the Commission has previously observed that non-discrimination (or "most favoured nation") clauses are "not uncommon across a range of industries"[22] and are often negotiated for a number of legitimate, pro-competitive and efficiency enhancing justifications, can "have pro-competitive rationales and efficiency benefits",[23] and would only substantially lessen competition in specific circumstances. Drawing from the Commission's previous analysis, this would only happen if:[24]

    (a) the clause required TowerCo to charge other customers at a percentage higher than the customer that benefits from the clause;

    (b) the clause was targeted at preventing expansion by other customers; or

    (c) the clause prevented other customers being able to compete with the customer that benefits from the clause.

21. Further, in the telecommunications industry specifically (in other contexts), the Commission has recognised the value of non-discrimination as a competition enhancing tool, noting that:[25]

> Equivalence and non-discrimination are technology neutral, regulatory tools used under the Act and the deeds to encourage competition in telecommunications markets by regulating the supply of services between network operators and access seekers.

22. Given the absence of these specific circumstances identified in 20, the fact that the parties are operating in an industry where the Commission has promoted non-discrimination as pro-competitive, and Spark would have a non-discrimination clause in both the factual and counterfactual, it is difficult to see how the non-discrimination clauses could be said to lead to any reduction in competition.

"3-to-2" concerns do not arise from the Transaction

23. "3-to-2" concerns do not arise from the Transaction. Namely:

    (a) Spark is confident that its supply of passive tower build and maintenance services are optimised and efficient over the longer term, and the Transaction provides the opportunity for 2degrees to achieve a similarly optimal outcome under its own contractual arrangements with Connexa. As the Commission noted in its decision to clear the *Kinetic / NZ Bus* transaction, it is important to take into account circumstances where customers are "sophisticated purchasers and are able to design tender processes to achieve competitive outcomes",[26] and that is certainly true of the MNOs and, therefore, the MISAs that have been entered into to achieve competitive outcomes for the longer term.

    (b) As outlined at paragraphs 4 to 6 above, in addition to purchasing from separate independent TowerCos, Spark (and other MNOs) will retain the ability to self-

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[22] NZCC. Progressive Enterprises Limited: investigation closure report. (20 November 2014). At [110] to [111].

[23] Para 9.136. Market Study into the Retail Grocery Sector. Final Report. (8 March 2022).

[24] NZCC. Progressive Enterprises Limited: investigation closure report. (20 November 2014). At [111].

[25] NZCC. Equivalence and non-discrimination – guidance on the Commission's approach for telecommunications regulation. (30 September 2020). At [1.4]

[26] 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

supply (or credibly threaten to self-supply) to ensure they obtain competitive outcomes.

(c) Spark expects that its uncommitted site volumes [ ] would [ ] sponsor entry or expansion by a new TowerCo (for example, American Towers' entry) – in particular, given a TowerCo is primarily just a real estate investment trust ("**REIT**"), so a TowerCo would not necessarily need upfront scale to enter into a market (a TowerCo can scale as it grows). Further, in addition to Spark's uncommitted volumes, there would also likely be available volumes that could incentivise new entry, namely volumes from:

(i) other MNOs that (likely) have also retained uncommitted sites in their respective MISAs;

(ii) Government-funded tower sites [ ], which the Rural Connectivity Group ("**RCG**") will have decision rights for in terms of how those volumes are fulfilled,[27] [ ]; and

(iii) other non-MNOs.

(d) In the longer-term, low orbiting satellites will likely provide an additional competitive alternative to terrestrial based passive infrastructure - indeed, one satellite provider, Lynk, [ ], refers to its satellite mobile service offering as "cell-towers-in-space":[28]

> Charles Miller, CEO of Lynk, said, "This launch extends Lynk's leadership in the satellite-direct-to-standard-phone category. While others have just figured out that satellite-direct-to-phone is a big deal, we invented and patented the technology in 2017, started testing the technology in space in 2019, and now have three commercial **satellite-cell-towers-in-space**. We are years ahead of everybody else." [Emphasis added]

24. Furthermore, downstream competition among MNOs will also be unaffected by the Transaction (with the Commission noting in its SOI that it has "no concerns that the Proposed Acquisition might… give rise to coordinated effects in downstream telecommunications markets"),[29] and therefore consumers will continue to benefit from strong competition between three independent MNOs (and will benefit from the efficiencies and pro-competitive effects that the Transaction delivers from enhanced passive infrastructure co-location).

Concluding comments

25. For the reasons outlined above, Spark considers that there is no realistic prospect that a substantial lessening of competition will arise in any market as a result of the Transaction, and trusts that the information will assist the Commission to satisfy itself of the same.

[27] See, for context: https://www.beehive.govt.nz/release/govt-marks-350th-tower-push-improved-rural-connectivity

[28] 10 January 2023. Lynk Launches World's 2nd and 3rd Commercial Cell-Towers-in-Space. Retrieved from: https://lynk.world/news/lynk-launches-worlds-2nd-and-3rd-commercial-cell-towers-in-space/

[29] Statement of Issues at [9].