

## Anticipated acquisition by Cellnex UK Limited of Arqiva Services Limited

### Summary of the CMA's decision on relevant merger situation and substantial lessening of competition

ME/6860/19

#### SUMMARY

1. On 8 October 2019, Cellnex UK Limited (**Cellnex**) agreed to acquire Arqiva Services Limited (**Arqiva**) (the **Merger**) from Arqiva Holdings Limited (**Seller**). Cellnex and Arqiva are together referred to as the **Parties** and, for statements referring to the state of the market in the event that the Merger is completed, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Cellnex and Arqiva is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of access to **passive infrastructure** (sites with elevated structures to which telecommunications equipment can be attached) used by wireless communication providers in the UK. This comprises both:
  - (a) **macro sites**, which provide broad coverage and are generally characterised as sites containing tower structures, or assets such as rooftops or pylons. The Parties overlap in the supply of access to macro sites that are (i) developed sites (which already host or are ready to host active telecommunications equipment); (ii) undeveloped sites (which do not yet have the infrastructure required to host active telecommunications equipment); and (iii) sites that are Built-to-Suit (**BTS**) (which involves constructing passive infrastructure to the specification of a customer); and

- (b) **small cell sites**, which are outdoor ‘sub-macro’ solutions that provide infill coverage and densification in high-use areas.
- 4. The CMA has assessed whether the Merger gives rise to horizontal unilateral effects in:
  - (a) The supply of access to macro sites (including developed sites and sites that are BTS) and ancillary services to wireless communication providers (the **supply of access to macro sites**) in the UK; and
  - (b) The supply of access to small cell sites to wireless communication providers (the **supply of access to small cell sites**) in the UK.

## **Macro sites**

- 5. Arqiva is a large and well-established supplier of access to macro sites in the UK. Arqiva holds a significant share of supply both by stock (based on the total number of current tenancies of each supplier) and by flow (based on each suppliers’ wins in recent competitive interactions), particularly where self-supply is excluded. Cellnex, as a relatively new supplier in the market, has a low share of supply by stock but higher shares of supply by flow, indicating that it may be a more significant competitive threat to Arqiva for new tenancies in future than it has been in the past.
- 6. The available evidence indicates that the extent of competitive interaction between the Parties has been limited to date. Where the Parties have competed with each other (in particular in relation to one recent tender), the CMA found that other suppliers would have been well-placed to replicate the constraint provided by Cellnex. In light of indications that Cellnex could have been becoming a more significant competitive constraint to Arqiva, the CMA has carefully considered the commercial strategy of Cellnex absent the Merger. The available evidence shows, however, that Cellnex would have focussed on incremental growth, and therefore that the competitive constraint exercised by Cellnex on Arqiva would not have been meaningfully different in future.
- 7. The available evidence shows several other credible alternative suppliers (such as WIG, Atlas Towers and Shared Access) that are at least similarly positioned to Cellnex in terms of their ability and/or incentive to compete at

present and to expand in future. This is consistent with the position set out in the share data, which show several alternative suppliers that are of a comparable size to Cellnex on the basis of both stock and flow. The Parties also monitor a variety of competitors in their internal documents.

8. The CMA also assessed the competitive constraint on the Merged Entity from self-supply, particularly by the Parties' largest customers, the mobile network operators (namely, Telefonica, Vodafone, Three and EE) (the **MNOs**) and the joint ventures between those MNOs, MBNL and CTIL (together, the **MNO JVs**). The MNOs currently use their own existing infrastructure for the majority of their demand and the CMA found that large volumes of the Parties' internal documents identify MNO self-supply as a material constraint. While the nature of the constraint from self-supply means that it is not among the most immediate sources of competition to the merging companies (with self-supply therefore being considered as an out-of-market constraint), the CMA found that the Merged Entity would face a material constraint from the threat of self-supply by MNOs.
9. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of access to macro sites.

## Small cells

10. The Parties are not currently close competitors in the supply of access to small cell sites in the UK. While Arqiva holds a significant share of deployed small cell sites in the UK, with activities centred on London, Cellnex's existing small cell sites are very limited and are located at motorway stations.
11. The CMA has seen some evidence that Cellnex may become a more important competitor in the supply of access to small cell sites in the future. The CMA therefore considered a potential competition theory of harm, and assessed whether:
  - (a) Cellnex would be likely to expand in the supply of access to small cell sites in the absence of the Merger; and
  - (b) Such expansion would lead to greater competition in the supply of access to small cell sites (such that the loss of constraint posed by Cellnex would

lead to a realistic prospect of an SLC), taking into account other existing players and potential entrants.

12. On the first question, the CMA notes that Cellnex is one of three bidders for Transport for London's (**TfL**) Telecommunications Commercialisation Project. The project involves partnering with TfL to provide mobile coverage at stations and in tunnels and includes the commercialisation of 80,000 streetscape assets (street lighting columns and bus shelters) which can be marketed for small cell deployment to MNOs. If successful in the bid, the CMA notes that this provides Cellnex with access to a significant number of assets for potential small cell deployment and therefore the possibility to expand its position in small cells in the UK, subject to customer demand.
13. It has, however, not been necessary for the CMA to conclude on whether Cellnex's expansion through winning this contract would be likely. This is because the CMA found that, irrespective of any prospective expansion by Cellnex (including through the TfL contract), there will remain sufficient competition in the supply of access to small cell sites in the UK, such that any loss of constraint posed by Cellnex would not lead to a realistic prospect of an SLC. The available evidence does not suggest that Cellnex is a materially stronger competitor than any of the range of other existing and potential competitors in the market, and the CMA has found there to be a number of alternative solutions that would provide an additional constraint on the Merged Entity.
14. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of access to small cell sites in the UK.

## **Decision**

15. As a result, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects.
16. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).