

Anticipated acquisition by Cellnex UK Limited of Arqiva Services Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6860/19

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 announced on 22 April 2020. Full text of the decision published on 18 May 2020.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. On 8 October 2019, Cellnex UK Limited (**Cellnex**) agreed to acquire Arqiva Services Limited (**Arqiva**)ⁱ (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**).

ASSESSMENT

Parties

17. Cellnex is an owner and operator of sites in the UK containing passive infrastructure used by wireless communication providers.¹ Cellnex, which is

¹ Passive infrastructure is the non-electronic elements of a site (eg tower structures) that mobile network operators or other wireless communication network providers attach their equipment to. Please refer to paragraphs 37 to 48 for further details on the different types of site referred to in this Decision.

headquartered in Spain, entered the UK market in 2016, through its acquisition of Shere Group Limited (**Shere**), a telecommunications infrastructure operator that operated sites containing passive infrastructure in the Netherlands and the UK. As part of this acquisition, Cellnex acquired 1,004 wireless telecommunications sites, 540 of which are in the UK. The turnover of Cellnex for the financial year ending 31 December 2018 was £794.6 million worldwide and £[✂] million in the UK.²

18. Arqiva is an owner and operator of sites in the UK containing passive infrastructure used by wireless communication providers, headquartered in Winchester. Arqiva's parent company, the Seller, has three main business segments: (i) telecommunications and machine-to-machine data services; (ii) terrestrial broadcasting; and (iii) satellite and media.³ The turnover of Arqiva for the financial year ending 30 June 2019 was £268.4 million (all of which was generated in the UK).ⁱⁱ

Transaction

19. Following an internal restructuring to take place prior to completion of the Merger, the Seller will transfer 7,113 macro sites containing passive infrastructure into Arqiva, the target.⁴ The Seller will retain 1,491 sites, also containing passive infrastructure, with the intention that they will be used predominately for the Seller's broadcasting business.⁵
20. Cellnex is acquiring 100% of the shares of Arqiva from the Seller for the consideration of £2 billion [✂].⁶
21. A Share Purchase Agreement was signed by the Parties on 8 October 2019⁷ and the Parties publicly announced the transaction on the same day.⁸ The transaction is conditional upon CMA clearance.⁹
22. The Parties submitted the rationale for the transaction is, for Cellnex, to expand in Europe by way of acquisition rather than by organic growth

² The Parties' Final Merger Notice submitted to the CMA on 20 February 2020 (**FMN**), paragraph 6.1.

³ FMN, paragraph 2.3.

⁴ FMN, paragraph 2.8.

⁵ Broadcasting telecommunications and wireless telecommunications should be distinguished. As per Ofcom's [Communications Market Report](#), 4 July 2019, broadcasting telecommunications generally encompasses the transmission of television, audio-visual and radio content. Whereas wireless telecommunications covers communications transmissions that are received by mobile (cellular) devices.

⁶ FMN, paragraph 2.24.

⁷ FMN, paragraph 2.28.

⁸ [Cellnex acquires Arqiva's Telecoms division](#).

⁹ Annex 1, FMN, paragraph 4.1.1.

including expansion of rural coverage and 5G. For the Seller, a key objective is to use sale proceeds to reduce the capital leverage of its group companies.¹⁰

23. The Merger is not being notified in any other jurisdiction.

Procedure

24. The Merger was considered at a Case Review Meeting.¹¹

Jurisdiction

25. Each of Cellnex and Arqiva is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
26. The UK turnover of Arqiva exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
27. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
28. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 25 February 2020 and the statutory 40 working day deadline for a decision is therefore 22 April 2020.

Industry Background

29. The Parties supply passive infrastructure. These structures can take several forms, such as purpose-built towers, rooftops, water towers, pylons, lamp posts or other street furniture.¹²
30. Passive infrastructure differs from **active telecommunications equipment** (or infrastructure) which MNOs or other wireless communication providers in the UK co-locate (ie attach) onto the Parties' passive infrastructure to provide voice and data cellular services.
31. Suppliers of passive infrastructure are referred to as wireless infrastructure providers (**WIPs**). In addition to the Parties, other WIPs active in the UK

¹⁰ FMN, paragraph 2.54 to 2.57.

¹¹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

¹² The Parties also provide fences, shelter, fibre ducts and access roads where required. FMN, paragraph 2.6.

include, amongst others, Wireless Infrastructure Group (**WIG**), Freshwave Group (also referred to as Spyder, following acquisitions by Digital Colony between 2018 and 2019 of Spyder, StrattoOpencell, and iWireless Solutions)¹³ (**Freshwave**), Atlas Towers and Shared Access.

32. WIPs supply passive infrastructure sites to MNOs and other wireless communication providers (**non-MNO customers**), such as Western Power and PageOne. In addition to their individual activities, the MNOs have set up two infrastructure sharing joint ventures to manage their shared networks. Mobile Broadband Network Limited (**MBNL**) is a JV between BT/EE and Three, and Cornerstone Telecommunications Infrastructure Limited (**CTIL**)ⁱⁱⁱ is a JV between Vodafone and Telefonica (MBNL and CTIL together referred to as the **MNO JVs**).
33. In addition to being users of passive infrastructure sites, the MNOs and MNO JVs also act in some circumstances as suppliers of passive infrastructure sites, supplying sites to their shareholder MNOs (ie **self-supply**) and, in some limited cases, to other MNOs and non-MNOs. The role of MNOs and MNO JVs as suppliers of passive infrastructure is considered further in the frame of reference (paragraphs 82 to 109).
34. The CMA considers that, broadly, there are two key categories of sites accommodating passive infrastructure, namely macro sites and micro sites.
 - (a) Macro sites provide broad coverage and are generally characterised as sites containing tower structures, or assets such as rooftops or pylons. Inputs in relation to macro sites can include developed and undeveloped sites. Developed sites already host or are ready to host active telecommunications equipment. Undeveloped sites (also referred to by Cellnex as greenfield sites and by Arqiva as ground-rent sites) do not yet have the infrastructure required to host active telecommunications equipment, and are supplied without such infrastructure (which customers then construct themselves).¹⁴ Sites may also be Built-to-Suit (**BTS**), which involves constructing passive infrastructure to the specification of a customer. The Parties supply developed sites, undeveloped sites and also sites that are BTS.¹⁵
 - (b) Micro sites are 'sub-macro' level solutions that provide infill coverage and densification in high use areas (such as in urban locations) and allow MNOs to improve network coverage and capacity. There are two main types of micro site: **small cells** (which are primarily deployed outside, eg

¹³ [Introducing the Freshwave Group](#), 18 February 2020.

¹⁴ FMN, paragraph 2.36.

¹⁵ FMN, paragraph 18.34.

on street furniture like lampposts and bus shelters) and distributed antennae systems (**DAS**) (which are primarily deployed inside, eg in stadiums or shopping centres). The Parties only overlap in outdoor small cells,^{16iv} and therefore DAS systems are not considered in detail in this decision. Where the term 'small cells' is used in this decision, it refers to outdoor small cells.

35. In relation to macro sites, customers also purchase ancillary services which include site installation and rigging, site sharing, site operation and decommissioning.¹⁷ Typically, customers either purchase these from the site provider (eg the Parties), self-supply, or contract out these services. Neither Cellnex nor Arqiva bid to provide ancillary services on sites which they do not supply.

Industry developments

36. The CMA's investigation observed certain ongoing industry developments, which the CMA has taken into account in assessing the nature of competition within the markets at issue. In particular:
- (a) The roll-out of **5G networks**: the Parties submitted that, to facilitate the deployment of 5G networks, most existing macro sites will require capital expenditure due to the requirement of either an additional tower or the strengthening of the existing tower in order for active 5G equipment to be installed. The Parties further submitted that the 5G roll-out will lead to greater reliance on micro sites than on macro sites, increasing the number of potential sites, since sites such as rooftops and street furniture are likely to become more strategically important for the development of MNO networks.¹⁸
 - (b) The Shared Rural Network (**SRN**) Government initiative: the SRN is an initiative led by DCMS in relation to macro sites, to eradicate rural mobile coverage 'not-spots' (ie areas with no mobile phone coverage) and, thereby, to provide 95% of the UK with good 4G coverage from at least one operator.¹⁹ The Parties submitted that the initiative will increase shareable developed sites between the MNOs to approximately 34,000.²⁰

¹⁶ Arqiva disposed of its DAS portfolio to WIG in October 2018 and is no longer active with respect to DAS: FMN, paragraph 4.2.

¹⁷ FMN, paragraph 13.38.

¹⁸ FMN, paragraph 21.9.

¹⁹ The MNOs have committed £532 million to increase inter-operator site sharing to address partial not-spots, which are areas where currently there is coverage only from at least one MNO but not all.

²⁰ FMN, paragraph 13.21.

- (c) The Electronic Communications Code (the **Code**): the Code was reformed in 2017 to counter landowners raising rents to levels that inhibited the development of telecommunications infrastructure by MNOs. The Code is intended to enable WIPs and MNOs to acquire certain rights (**Code Powers**), to negotiate more easily with landowners to acquire or rent undeveloped land to build macro sites/towers. The Parties, the four MNOs and other WIPs hold Code Powers.²¹ The Parties also submitted that Code Powers allow for considerably simplified planning procedures for the construction of towers.²²

Market overview

Macro sites

37. By way of context to its assessment in relation to macro sites, the CMA has considered the competitive supply process for developed macro sites and BTS sites,²³ the relevant parameters of competition for such sites, and the level at which these parameters are flexed.

Competitive process

38. For both developed macro sites and BTS sites, customers make purchases through tenders or bilateral negotiations. Alternatively, customers may choose to self-supply. Tenders can be for a contract to supply specified sites or for framework agreements, in which customers acquire an option to nominate a certain number of sites for development by the winning bidder. For example, the recent MBNL RfP tender process, which commenced in 2018 (the **MBNL RfP**), awarded frameworks which will allow particular companies to compete for sites currently provided by other suppliers from its current providers or new demand going forwards.²⁴ Purchasing in this market can therefore be characterised as being 'lumpy', in that there are particular tenders that constitute a very large portion of customers' demand every few years,²⁵ with only smaller purchasing opportunities occurring on a more regular basis.

²¹ FMN, 13.11 and Ofcom's website: '[Consultation; Proposal to apply code powers to Cellnex](#)', 18 November 2019.

²² FMN, paragraph 13.23-13.24.

²³ Given the CMA's conclusions in relation to undeveloped sites in paragraphs 71 to 74 the CMA did not need to address in detail how the market works for this proposition.

²⁴ FMN, paragraph 15.86; [§].

²⁵ The CMA notes part of the 'lumpiness' arises in particular because Arqiva supplies such a large volume of sites to large customers, and the purchasing opportunities for the wider market in significant part arise around the renewal and renegotiation points of these contracts.

Parameters of competition

39. Third parties told the CMA that the following parameters of competition are important in this industry: (i) price; (i) capital and operating expenditure; and (iii) quality of service.²⁶
40. The CMA believes that the available evidence shows that, alongside price and service, suppliers compete by investing in new sites,²⁷ through:
 - (a) Inorganic expansion through the acquisition of asset portfolios, including developed sites and sites which could be used for BTS;
 - (b) Organic expansion into new areas, by winning contracts to develop new BTS sites as requested by an **anchor tenant**; and
 - (c) Developing new operating models. For example, Arqiva submitted that [REDACTED].²⁸

National versus local flexing of parameters of competition

41. The CMA assessed whether each of these key competitive parameters are flexed at a national or local level.
42. Arqiva submitted that rate cards determine the prices it charges for site access, use, installation, maintenance, and other associated services. These rate cards²⁹ also set out specified service levels that Arqiva must adhere to.³⁰
43. Arqiva submitted that it has [REDACTED] agreements for existing customers, and [REDACTED] which it uses as a starting point to determine an overall price for each customer. Arqiva submitted that its site pricing [REDACTED],³¹ although some of the evidence available to the CMA suggests that Arqiva takes into account the

²⁶ These include: (i) terms offered by suppliers; (ii) the experience, market standing and/or expertise of the supplier; (iii) expedience when constructing or providing a new site; (iv) availability of a tower within capacity in a specific area; (v) the size of coverage area; (vi) adequate space for equipment on 'racks' (ie the sections of towers where active equipment is installed); (vii) access for maintenance, repair and installation, and speed of access; (viii) absence of radio or electrical interference; (ix) competence to undertake a service with particular importance to Construction (Design and Management) Regulations and other legal requirements; and (x) security of equipment. [REDACTED].

²⁷ These investments can take many forms, both in terms of direct financial outlays relating to the acquisition of assets, but also the costs of resources (eg staff employed to negotiate, acquire and maintain marketing rights), short-run losses associated with aggressive pricing to win anchor tenants, and the investment of management attention.

²⁸ The Parties submitted that, [REDACTED]. FMN, paragraph 18.44.

²⁹ Rate cards set out how site prices vary depending on characteristics of the site in question (for example, whether it is a rooftop, tower or pylon site, and whether it is in an urban or rural area).

³⁰ FMN, Paragraph 15.13; Parties' response to the CMA's Request for Information dated 20 November 2019, submitted to the CMA on 04 December 2019, paragraph 74.

³¹ FMN, Paragraph 15.14.

degree of local competition across all local areas in setting its [REDACTED] rate cards. While internal documents indicate that Arqiva has considered [REDACTED], Arqiva's analysis demonstrated that Arqiva had limited incentive to price in this way in the near future.³²

44. Cellnex submitted that it has typically priced sites in the UK [REDACTED].³³ However, Cellnex submitted that there is no pricing variation based on whether competitors have other sites in the area.
45. The CMA considers that investment is a parameter of competition that is set centrally and affects local areas in a uniform way. Some investments are by their nature decided at a single level for each firm, for example, each firm will employ centralised teams at their head offices which seek out new opportunities across the UK. In some cases, the assets acquired to compete for new opportunities (such as marketing rights) are acquired or constructed in single, large packages that cover wide geographic areas, rather than one-by-one in individual local areas.^{34v} More broadly, the overarching elements of the Parties' corporate strategies relating to expansion appear to be set centrally and have a uniform effect across all local areas.³⁵
46. In this case, the CMA believes, based on the evidence gathered during its investigation, that price, quality, range, service (**PQRS**) and investment are largely set centrally and uniformly on a national basis, with some limited flexing in response to competitive conditions at more local levels.

Small cells

47. The Parties currently supply infrastructure suitable for situating small cells (as with macro cells, the Parties do not supply the active telecommunications equipment). The CMA understands that the primary model for the procurement of small cell sites is as follows:
 - (a) Suppliers of small cell infrastructure first seek to acquire access to assets on which small cells can be situated, and may bid in competitions run by asset owners to gain such access. These include competitions for access to local authority-owned assets in a number of London boroughs, as well other collections of assets suitable for small cell deployment, referred to in this decision as competitions for 'concessions'.

³² [REDACTED].

³³ Although [REDACTED]. Parties' partial response to CMA's request for information 2 dated 18 December 2019, submitted 10 January 2020, Question 2, paragraph 3.

³⁴ For example, Cellnex acquired 221 High Towers from BT (RFP in August 2018), and is [REDACTED].

³⁵ FMN, paragraph 2.26 states that Arqiva's strategy activities are conducted at a national, not regional level.

- (b) Suppliers then market these assets to MNOs, which are seeking to install active infrastructure in particular locations where their networks require densification. Suppliers compete to win contracts for the deployment of small cells on the assets to which they have access. Suppliers may share some of the revenues received from MNOs with the asset owners.
48. The locations of small cell opportunities will vary, depending on where assets are available and where MNOs' networks require densification. However, decisions on whether to bid to access assets are centrally made by infrastructure suppliers. The CMA has also received evidence that Arqiva does not currently vary pricing [REDACTED], although (similar to the considerations set out in 41 to 46 above relating to macro sites), the CMA considers that Arqiva may take into account the degree of local competition in aggregate when setting PQRS at the national level. The CMA notes that Cellnex only has a limited number of small cell sites, [REDACTED].

Counterfactual

49. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.³⁶
50. The Parties submitted that the counterfactual for the Merger should be the pre-existing conditions of competition,³⁷ with Cellnex submitting that its business strategy [REDACTED].³⁸
51. The CMA notes that Cellnex has pursued certain opportunities for organic growth. This includes expansion through BTS offerings³⁹ such as [REDACTED].⁴⁰

³⁶ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

³⁷ FMN, paragraph 11.3.

³⁸ Appendix 8 to the FMN.

³⁹ Arqiva Internal Document, Annex 1007 to the FMN, 'Bid Board – MBNL site provision RFP', page 10. This Arqiva document describes Cellnex as 'keen for further UK expansion and is pursuing a number of opportunities which includes new-build sites.'

⁴⁰ [REDACTED] and Part A of Cellnex's response to s109 dated 30 January 2020, page 1.

Cellnex's 2020 Budget (post-acquisition of Arqiva) highlights both organic and inorganic growth.⁴¹

52. In light of the available evidence, the CMA believes it appropriate to assess the impact of the Merger relative to the prevailing conditions of competition. The CMA also notes that these conditions are not static. Given the evolving nature of the market, in particular in light of key market developments described in paragraph 36 above,⁴² the CMA believes that the prevailing conditions of competition involve an environment where both Parties (and other market players) would have continued with levels of investment and expansion commensurate with their pre-Merger business plans.

Frame of reference

53. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁴³
54. The Parties overlap in the supply of access to developed macro sites (in all types of tower asset) and ancillary services, as well as outdoor small cell sites to MNOs and non-MNO customers in the UK. Arqiva only provides undeveloped sites to a limited number of customers, although Arqiva has extensive holdings of these sites.⁴⁴ The Parties will also overlap in [REDACTED],⁴⁵ [REDACTED].
55. Finally, the Parties overlap in the supply of access to undeveloped sites. However, as the CMA did not find any prima facie concerns in respect of the supply of access to undeveloped sites, the CMA did not conduct an in-depth assessment in relation to this overlap, and it is not addressed further in this decision.

⁴¹ [REDACTED]. [REDACTED].

⁴² Appendix 8 and Appendix 9 to the FMN. Furthermore, the CMA notes: (i) the introduction of the Code (as discussed further in paragraph 36(c)) which the CMA currently does not consider that it will impact as to the static/dynamic nature of the market; and (ii) the SRN (as discussed further in paragraph 36(b)).

⁴³ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁴⁴ FMN, paragraph 2.12-2.13.

⁴⁵ As described in paragraph 40 above.

Product scope

56. The CMA considered whether:
- (a) macro sites and micro sites (including small cells) should be assessed as part of the same product frame of reference;
 - (b) macro sites should be segmented by reference to: (i) existing developed sites and BTS; (ii) developed sites and undeveloped sites; (iii) site access and ancillary services; and (iv) supply by WIPs and MNOs/MNO JVs; and
 - (c) within micro sites, whether the frame of reference for outdoor small cells (the only area of overlap between the Parties) should (i) be widened to include indoor and/or DAS solutions and/or (ii) include self-supply.

Segmentation between macro sites and micro sites

57. In *Macquarie / National Grid Wireless Group*, the Competition Commission (**CC**) defined the relevant product market as the provision of site access and ancillary services to MNOs and wireless communication service providers.⁴⁶ Previous decisions of the CMA, Office of Fair Trading (**OFT**) and CC do not address small cells specifically.
58. The Parties submitted that the CMA does not need to conclude on whether or not macro sites and small cell sites form part of the same market as on either basis no competition issues arise. The Parties submitted the narrowest downstream candidate market is for the provision of site access to developed sites and ancillary services to MNOs and non-MNO customers in the UK.⁴⁷
59. The Parties further submitted that:
- (a) Developed sites can be split broadly into macro sites and micro sites (which include small cell sites and DAS);⁴⁸
 - (b) Small cells and DAS have different customer uses and are primarily complementary to macro sites – macro sites generally provide broad coverage, while small cells can be used to solve network capacity issues by allowing for network densification, particularly in dense urban areas;⁴⁹

⁴⁶ [Macquarie UK Broadcast Ventures Ltd / National Grid Wireless Group](#) (ME/2982/07, 11 March 2008).

⁴⁷ FMN, paragraph 13.5.

⁴⁸ FMN, paragraph 13.28.

⁴⁹ FMN, paragraph 12.10.

- (c) Macro sites and micro sites are substitutable to a certain degree, and that substitutability is most likely in urban areas, as well as to a limited extent in rural areas to provide additional capacity in villages;⁵⁰ and
 - (d) Macro sites can also be used for network densification using new '**Massive MIMO**' (multiple input multiple output) technology which can be used as an alternative to a number of smaller cells to provide capacity.⁵¹
60. Third parties that responded to the CMA's Merger investigation submitted that:
- (a) Due to the relative costs and coverages of the different types of sites, small cells are typically cost efficient where coverage is required in an area of up to 300 square meters, but macro sites would be used to fill coverage gaps in areas bigger than this;⁵² and
 - (b) Macro sites are unlikely to be substitutable with micro sites because:
 - (i) Small cells have lower radio power, capacity, coverage reach and ability to deliver multiple technologies and spectrum than macro sites, meaning that a high number of small cells would be required to replace one macro site and small cells are not suitable for coverage beyond 300 square metres.⁵³
 - (ii) DAS systems are not interchangeable with macro sites as they are used for very specific deployment scenarios and incur a higher deployment cost.⁵⁴
61. The CMA observes some limited evidence of a degree of demand-side substitutability:
- (a) One third party told the CMA that '[t]here is an increasing degree of demand-side substitutability between macro and micro-sites, as DAS and small cells are particularly well suited to increase coverage especially in dense urban areas and will play an important role in the "densification" of 5G networks compared to 4G.'⁵⁵

⁵⁰ FMN, paragraph 13.32. The Parties submitted, as an example, that Vodafone is utilising small cell technology in rural villages in Wales to boost coverage.

⁵¹ FMN, paragraph 13.29.

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

(b) This is supported by an internal document from Arqiva which indicates that macro sites may also be used for densification by customers; for example, [REDACTED].⁵⁶

62. The CMA believes that, to the extent there may be demand-side substitutability, consistent with the Parties' submissions, this is likely limited to urban network densification, which may be more common once 5G networks are rolled out.
63. With regards to supply-side substitutability, the CMA believes that assets used for macro and micro sites are different. For example, macro sites such as towers and rooftops are larger than small cell sites such as street furniture. From a structural point of view, small cell sites would not be suitable to host antenna equipment usually deployed on macro sites, as antennas hosted on macro sites are larger and require higher locations. Moreover, such antennas are characterised by higher output power (and thus electromagnetic emissions) which cannot be placed on typical small cell sites, since the latter are generally at human height. Moreover, not all providers active in the supply of macro sites are active in the supply of micro sites, such as [REDACTED] and [REDACTED]. Similarly, providers active in the supply of micro sites such as [REDACTED] do not supply macro sites. The suppliers that are active in both areas do not necessarily hold the same position in both; for example, Cellnex's activities in the small cell market has been limited compared to its established presence in the macro market. Considering the Parties' bidding data, the CMA has not observed cases where, for the same opportunities, one Party has proposed a macro solution and the other has proposed a small cells or DAS solution.⁵⁷
64. On the basis of the evidence summarised above, the CMA believes that it is appropriate to assess macro sites and micro sites as separate frames of reference.

Segmentation among macro sites

Existing developed sites and sites that are BTS

65. Customers are able to co-locate equipment onto existing developed sites or to opt for a BTS solution, whereby a new macro site is built. As referenced in paragraph 34 above, the Parties can use undeveloped macro sites as an

⁵⁶ [REDACTED].

⁵⁷ CMA Analysis of the Parties' Bidding Data.

input for the provision of BTS solutions or sites which are acquired on an *ad hoc* basis.^{vi}

66. The Parties submitted that Cellnex currently provides BTS solutions whilst [REDACTED].⁵⁸ Cellnex typically develops new sites following a request for BTS from an anchor tenant. Such requests may either be submitted to Cellnex directly or Cellnex may offer a BTS solution in response to a customer tender.⁵⁹
67. The Parties submitted that BTS is an effective substitute for the provision of access to existing developed sites but that BTS may be comparatively less feasible when competing for large contracts which also have tight time constraints (such as the recent MBNL RfP).⁶⁰ Where existing sites require upgrading in order to provide site access to other tenants, particularly for the deployment of 5G networks, the Parties also submitted that the cost of upgrading the structure may not be substantially different from the cost of building a new structure.⁶¹
68. From a demand-side perspective, some customers told the CMA that they do consider it important whether a site is already constructed as it affects the cost-competitiveness and the time to access/deploy the site. For example, one third party noted that it is more efficient and less costly to use a developed site, than to opt for BTS, when looking to expand or amend a network.⁶² However, in relation to whether BTS is substitutable with co-locating active equipment on an existing developed site, a number of third parties scored a BTS option highly (between 7 to 10 out of 10) on substitutability.⁶³
69. The Parties' internal documents also indicate that customers consider BTS as an alternative to the Parties' existing developed sites.⁶⁴
70. On the basis of the evidence set out above, the CMA believes that it is appropriate to include existing developed sites and BTS sites within the same frame of reference.

⁵⁸ FMN, paragraph 18.44.

⁵⁹ FMN, paragraph 18.34.

⁶⁰ Parties' written submission to the CMA dated 16 March 2020: 'Parties' Submission in Response to the CMA's Putative 'Dynamic' Theory of Harm', 16 March 2020, paragraph 1.3.1(b).

⁶¹ Parties' written submission to the CMA dated 16 March 2020: 'Parties' Submission in Response to the CMA's Putative 'Dynamic' Theory of Harm', 16 March 2020, paragraph 2.4.2.

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED]. [REDACTED]. [REDACTED].

Developed sites and undeveloped sites

71. In addition to developed macro sites, the Parties overlap in the supply of undeveloped macro sites to customers (such as Cellnex's [REDACTED] 'greenfield' sites), which customers then develop themselves.⁶⁵ The Parties submitted that, on a conservative basis, segmenting sites on the basis of developed and undeveloped sites would be appropriate for the purposes of determining the narrowest plausible downstream candidate market.⁶⁶
72. As noted in paragraph 55 above, the CMA did not find any prima facie concerns in respect of the supply of access to undeveloped sites. However, the CMA considered whether developed and undeveloped sites should also be considered within a single product frame of reference in order to fully assess the competitive interactions between the Parties' activities.
73. From a demand-side perspective, the CMA believes the supply of undeveloped sites is a different level in the value chain from the supply of developed sites, and is not in itself directly substitutable.⁶⁷ One third party said that it does not consider undeveloped sites as substitutable to towers and rooftops.⁶⁸
74. On the basis of the evidence set out above, the CMA believes that it is appropriate to define separate frames of reference for developed and undeveloped sites.

Structure type

75. The Parties submitted that sites can take many forms, all of which are to some extent substitutable with each other.⁶⁹
76. The CMA gathered evidence from third parties about the attractiveness of different types of asset relative to towers. Some third parties told the CMA that towers are typically the preferred asset by customers but other types of assets such as rooftops and street furniture are substitutable.⁷⁰ In the round, third

⁶⁵ The Parties submitted that some of their undeveloped sites are non-marketable – see FMN, paragraph 18.18 and Arqiva's response to Question 26 of the CMA's Request For Information dated 20 November 2019.

⁶⁶ FMN, paragraph 13.11.

⁶⁷ That is, as an alternative to using a developed site supplied by the Parties (either an existing developed site or one constructed for the customer through BTS), a customer would need to source an undeveloped site and construct its own tower on the site.

⁶⁸ [REDACTED].

⁶⁹ The Parties submitted that telecommunications equipment can be attached to almost any elevated structure, for example purpose-built towers, rooftops, other parts of buildings, water towers, pylons or lamp posts and other street furniture.

⁷⁰ [REDACTED]; [REDACTED]; [REDACTED].

parties considered that a broad range of asset types are generally substitutable for traditional tower structures. TV towers and rooftops were seen as strong substitutes to traditional tower sites. Monopoles,⁷¹ alternative towers⁷² and pylons were also seen as relatively attractive substitutes. Street furniture was considered a less strong but still potential substitute to tower sites.

77. On the basis of the evidence set out above, the CMA believes that it is appropriate to include all structure types within the same frame of reference.⁷³

Ancillary services

78. In *National Grid / Crown Castle* and *Macquarie / NGW*, the OFT/CC considered segmentation between site access and ancillary services. In both cases, the OFT identified separate product markets for site access and for ancillary services.⁷⁴ In the latter case, the CC noted that some suppliers bundled ancillary services with site access, while others did not.⁷⁵
79. The Parties submitted that considering a separate market for ancillary services would not be appropriate since the Parties provide ancillary services only as part of site access, in relation to sites they themselves operate; the Parties do not offer these as standalone services.⁷⁶ Moreover, the Parties submitted that customers that do not purchase ancillary services can either self-supply these services or use third party contractors.
80. The CMA notes that, based on the evidence provided by the Parties, the Parties compete for the provision of ancillary services only insofar as they compete for site access, as both Parties provide ancillary services only to their own site access customers. Further, the Parties' internal documents indicate that customers take into account the full lifetime costs of the sites they lease, including ancillary services.⁷⁷

⁷¹ A form of radio antenna often mounted perpendicularly over a conductive surface.

⁷² Alternative towers include, but are not limited to, water towers, gas towers and church towers.

⁷³ The CMA has done this by considering shares of tenancies rather than shares of sites (which will account for the attractiveness of the site portfolio: companies with more attractive sites all else being equal will have acquired more tenancies). The CMA has also taken into account the evidence of the relative attractiveness of the profile of rival site portfolios, including the types of sites they can offer, in its competitive assessment. Further, the CMA has also accounted for differentiation in the quality of assets in each local area by assigning weights to sites based on the type of structure on them in its local analysis. Further, the CMA takes into account the variation in the substitutability between different types of site in its competitive assessment.

⁷⁴ *National Grid Transco plc / Crown Castle UK Holding Ltd* (ME/1164/04), para 7.

⁷⁵ *Macquarie UK Broadcast Ventures Ltd / National Grid Wireless Group* (ME/2982/07), para 4.41.

⁷⁶ FMN, footnote 49.

⁷⁷ See for example [X].

81. On the basis of the evidence set out above, the CMA believes that it is appropriate to include site access and ancillary services within the same frame of reference.

Self-supply and supply by MNO JVs

82. When identifying the relevant product market, the CMA will also consider whether self-supply by potential customers of the merging companies should be included in the relevant frame of reference. The CMA will generally include self-supply if the ability of customers to choose this option affects the profitability of a price rise by the hypothetical monopolist.⁷⁸ In this case, the CMA has assessed whether supply by MNOs and MNO JVs should be included within the same frame of reference as supply by WIPs, considering separately where this is for the purposes of self-supply, supply to other MNOs/MNO JVs, or supply to non-MNO customers.

- *MNO/MNO JV self-supply*

83. The Parties submitted that the constraint imposed by self-supply was recognised by the OFT in *National Grid/Transco*, which noted that in each local area there are likely to be ‘various countervailing factors, including the buyer power of MNOs and the alternatives open to them, and generally low barriers to entry to prevent significant competition concerns arising within these localities.’⁷⁹ The Parties submitted that self-supply is substitutable with WIP provision, noting that the MNO JVs are the two largest tower operators in the UK,⁸⁰ and further submitting that ‘when a wireless communication customer is considering a new site, it will consider sites operated by an MNO, an MNO JV or by a WIP that are responsive to its height and location criteria, or it will consider self-provision (ie construction of new sites).’⁸¹

84. The Parties further submitted that customers have a clear preference for self-supply, citing in particular statements put to them in previous commercial interactions by [redacted].⁸² The Parties also submitted that CTIL and MBNL and the non-MNOs have [redacted], and submitted (but did not further evidence) that this demonstrates they are using self-supply.⁸³ The Parties further submitted that

⁷⁸ *Merger Assessment Guidelines*, paragraph 5.2.20.

⁷⁹ Parties’ written submission dated 9 March 2020: ‘Comments on the CMA’s update to the CMA note concerning local analysis assessment dated 4 March 2020’, paragraph 33. *National Grid Transco plc / Crown Castle UK Holding Ltd (ME/1164/04)*, paragraph 19.

⁸⁰ FMN, paragraph 8.

⁸¹ FMN, paragraph 10.

⁸² Parties’ response to the CMA’s Issues Letter, submitted to the CMA on 2 April 2020, paragraph 2.29.

⁸³ Parties’ response to the CMA’s Issues Letter, paragraph 2.35.3. Parties’ response to the CMA’s Issues Letter, Paragraph 2.44, figures provided for Arqiva but not Cellnex.

non-MNOs have a propensity to self-supply, citing particular non-MNO customers that currently do have access to their own sites.⁸⁴

85. The CMA notes that positions taken in previous cases are not necessarily determinative, particularly where those cases were investigated some time ago (in 2004 in the case of *National Grid/Transco*) and concern markets that have been subject to considerable commercial and regulatory change in the intervening period.
86. The CMA found that the MNOs have the majority of their existing tenancies on sites controlled by their respective JVs.⁸⁵ However, the CMA considers that the magnitude of self-supply is not of itself probative of the degree to which it forms an effective substitute to WIP provision if customers tend to use WIP provision in scenarios where self-supply is less viable or less attractive. The CMA considered evidence which directly assesses this question.
87. Internal documents confirm that the Parties consider the MNOs' ability to self-supply as a competitive constraint, but provide mixed evidence as to the strength of this constraint. In particular:
- (a) A March 2018 Arqiva document [REDACTED],⁸⁶ [REDACTED].⁸⁷ This document also includes [REDACTED]. [REDACTED].⁸⁸
 - (b) An August 2018 Arqiva document [REDACTED].⁸⁹
 - (c) Another [REDACTED] document [REDACTED].⁹⁰ In the same document [REDACTED].⁹¹
 - (d) An April 2019 Arqiva document [REDACTED].⁹² The same document [REDACTED].⁹³

⁸⁴ Parties' response to the CMA's Issues Letter, paragraph 2.42. The Parties also submitted evidence that non-MNOs are [REDACTED]. The parties also submitted that fixed telecommunications providers previously using Arqiva and Cellnex towers to provide microwave backhaul are now using fibre links, and this constitutes self-supply: Parties' response to the CMA's Issues Letter, Paragraph 2.42-2.56. The CMA considers that this is not self-supply of developed sites, and whilst it may represent a potential additional outside option for a very particular group of customers and therefore of merit to the CMA's considerations in the round, the Parties did not put forward evidence to indicate this was a competitive constraint more broadly.

⁸⁵ [REDACTED]; [REDACTED].

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

⁸⁹ [REDACTED].

⁹⁰ [REDACTED].

⁹¹ The Parties submitted that the analysis pre-dates the Code and assumes no changes to the JV structure and the continuation of the contemporaneous rural grid structure: Parties' response to the CMA's Issues Letter, paragraph 2.30.1. The CMA has considered the Code in paragraph 36, and the JV structure as regards the Shared Rural Network in paragraphs 99 to 101.

⁹² [REDACTED].

⁹³ [REDACTED].

(e) Various Arqiva internal documents reflect Arqiva's perception that [REDACTED] sought to leverage the threat of self-supply in its contract negotiations with Arqiva. [REDACTED].⁹⁴ [REDACTED].⁹⁵

88. The CMA believes that the evidence set out above demonstrates that the constraint from self build is such that it provokes Arqiva to devote resource to modelling the MNOs' costs, and that self-supply may provide an immediate, direct and significant constraint in some areas.
89. However, particularly in the short term, the CMA notes the documents cited above consistently recognise that the degree of substitutability between Arqiva and self-supply depends on the relative prices, and therefore Arqiva's margin. In particular, [REDACTED].⁹⁶ [REDACTED],⁹⁷ [REDACTED].⁹⁸
90. In the longer term, the CMA considers that MNOs and their JVs have considerable control over the nature of their demand as well as the capability to configure their networks to reduce their dependence on particular providers given that it is feasible for them to construct new sites in areas where there are no good alternatives, and the internal document evidence (as set out above) indicates that Arqiva has considered this to be a threat. Particularly given the long lead up time to contract renegotiations over which these threats may be more salient to Arqiva, this leverage may increase the extent to which Arqiva will consider self-supply (including via own-build) to be an alternative option for MNO customers.
91. Taking the evidence summarised above in the round, the CMA considers, on a cautious basis, that the evidence of Arqiva benchmarking its pricing against the MNO's costs for self-build does not necessarily support the position that self-supply is a meaningful constraint. Instead, this evidence could suggest self-supply should be characterised as a 'price ceiling', at least in the near-term.
92. In this context, the CMA also considered third party evidence on the degree to which self-supply constrains WIPs' pricing.
- (a) Two MNOs told the CMA that they would first seek to negotiate with WIPs where their JV had no sites in the area before deciding to self-supply, with one noting difficult and frequent planning permission limitations relevant to

⁹⁴ [REDACTED].

⁹⁵ [REDACTED].

⁹⁶ [REDACTED].

⁹⁷ [REDACTED].

⁹⁸ [REDACTED].

self-supply.⁹⁹ However, one MNO told the CMA that it considers self-supply to be one factor which would constrain the Merged Entity in relation to the supply of access to macro sites.¹⁰⁰

(b) Non-MNOs typically indicated that they would weigh up self-supply and WIP supply, but where they did not have their own sites nearby they would choose a WIP's site. For example, one third party told the CMA that it would choose to self-supply only where there was not a nearby WIP developed site available or due to specific coverage requirements.¹⁰¹ Another third party stated that non-MNOs were typically less likely to self-supply than MNOs.¹⁰²

93. Overall, the CMA acknowledges that there is a constraint from self-supply, but considers that the nature of this constraint means that it is not among the most immediate sources of competition to the merging companies. The CMA further notes that the strength of this constraint is likely to vary depending on the customer concerned. The CMA therefore believes it more appropriate to assess the impact of self-supply in the competitive assessment as an out of market constraint relevant to certain large customers (and in particular, the MNOs and a proportion of non-MNOs).

- *Site sharing between MNO JVs*

94. The CMA considered whether the MNOs/MNO JVs compete with WIPs by supplying to non-shareholding MNOs.

95. The Parties submitted that 'the MNOs and MNO JVs do share sites between themselves, and indeed that cross-JV sharing accounts for a greater share of [total] sites than Cellnex' has, according to the CMA's figures.¹⁰³ The Parties further submitted an example whereby the Home Office has had its demand fulfilled by EE.¹⁰⁴

96. The CMA assessed the scale of site sharing between the JVs, and concluded that it was small in magnitude. In particular, the CMA found that CTIL and MBNL have less than [5-10]% of their tenancies on each other's sites.¹⁰⁵ However, the CMA notes that considering all tenancies may capture historic

⁹⁹ [REDACTED]. [REDACTED].

¹⁰⁰ [REDACTED]. A further MNO highlighted cost and flexibility advantages and disadvantages to both options. [REDACTED].

¹⁰¹ [REDACTED].

¹⁰² [REDACTED].

¹⁰³ Parties' response to the CMA's Issues Letter, paragraph 2.50.

¹⁰⁴ Parties' response to the CMA's Issues Letter, paragraph 2.42.1.

¹⁰⁵ Calculation based on the share of [REDACTED] tenancies supplied by [REDACTED]; [REDACTED].

wins which are not representative of current competition. The CMA found that [REDACTED] had supplied [REDACTED] per year in total to [REDACTED] and [REDACTED] in 2018-2019,¹⁰⁶ and [REDACTED] had supplied [REDACTED] to [REDACTED] and/or its shareholding MNOs in the same period.¹⁰⁷

97. In general, according to information provided by third parties, the CMA considers that MNOs will not typically consider choosing a site from the JV in which they do not participate.¹⁰⁸

98. The Parties' internal documents indicate that Arqiva has considered inter-JV sharing as a possible constraint, although the CMA considers the evidence to be mixed and to suggest that any such constraint is limited. In particular:¹⁰⁹

(a) [REDACTED].¹¹⁰

(b) Internal documents early on in the MBNL RfP process indicate that Arqiva analysed the constraint from CTIL, [REDACTED], which the CMA considers limits the constraint posed by MBNL having an option to share sites operated by CTIL. Further, the analysis showed that while [REDACTED].¹¹¹ [REDACTED].¹¹² The CMA consider that this indicates CTIL's sites are capacity constrained. Therefore, any constraint imposed by CTIL on the Parties in the MBNL RfP was limited.

(c) An Arqiva internal document [REDACTED]. However, the document noted that [REDACTED].¹¹³¹¹⁴

99. The Parties also submitted that, in the context of the SRN, 'MNOs recently announced plans to collaborate to improve coverage in rural areas, including by sharing their existing sites to address partial rural "not-spots" and constructing new sites to address total "not-spots"'.¹¹⁵ Third parties indicated to the CMA that the impact of the SRN on inter-JV sharing is as yet unclear,

¹⁰⁶ [REDACTED].

¹⁰⁷ [REDACTED].

¹⁰⁸ [REDACTED].

¹⁰⁹ The Parties also submitted that CTIL will pose a greater competitive threat in the future given the stated intention of its shareholding MNOs to monetise its assets. Consistent with this, some internal documents imply CTIL could be a greater competitive threat going forwards: [REDACTED]. The CMA has considered these arguments in paragraphs 195 to 214.

¹¹⁰ [REDACTED].

¹¹¹ [REDACTED].

¹¹² [REDACTED].

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ FMN, paragraph 15.62.4.

although one third party considered that the model for supply in not-spots may not be dissimilar to how MNOs currently purchase sites.

100. The CMA considers that the SRN is likely to reduce WIP demand in partial not-spots, but not that JVs will compete with WIPs for those sites that WIPs would be likely to supply access to in the counterfactual. The CMA considers that the SRN will also facilitate inter-JV sharing in total not-spots, but that it is insufficiently certain whether the SRN makes it any more likely that JVs will supply these sites, and whether they will do so in competition with WIPs, for the CMA to account for this in its competitive assessment.
101. On the basis of the evidence set out above, the CMA believes that the MNO JVs do not currently represent a material constraint on WIP supply to MNOs other than their shareholding MNOs. Further, the extent to which they will do so in the future is highly uncertain. The CMA has therefore excluded inter-JV supply from the frame of reference, but has considered inter-JV supply as an incremental constraint in the competitive assessment.
- *MNOs/MNO JVs supply to non-MNO customers*
102. Finally, the CMA considered the ability of MNOs/MNO JVs to compete with WIPs to supply non-MNO customers.
103. The Parties submitted that the MNOs and MNO JVs can and do provide site access to non-MNO customers.¹¹⁶ The Parties submitted that:
- (a) Arqiva estimates that it provides a relatively small proportion of the sites that its non-MNO customers require. The Parties infer from this that Arqiva's non-MNO customers are using other sources for site access, including MNOs and MNO JVs. For example, in Arqiva's view, it would not be possible for the non-MNO customer [redacted] without using some MNO and MNO JV sites.¹¹⁷
- (b) Cellnex has identified that [redacted] CTIL towers, [redacted] EE/H3G [Three] towers, [redacted] Telefonica towers and [redacted] Vodafone tower have an Airwave antenna as well as the MNO's equipment.^{118vii}

¹¹⁶ Parties' written submission dated 9 March 2020: 'Comments on the CMA's update to the CMA note concerning local analysis assessment dated 4 March 2020', paragraph 2.

¹¹⁷ Parties' written submission dated 9 March 2020: 'Comments on the CMA's update to the CMA note concerning local analysis assessment dated 4 March 2020', paragraph 12.

¹¹⁸ Parties' written submission dated 9 March 2020: 'Comments on the CMA's update to the CMA note concerning local analysis assessment dated 4 March 2020', paragraph 13.

(c) [REDACTED].¹¹⁹

104. The CMA found that a wide range of non-MNO customers do not purchase a material proportion of their sites from CTIL, EE or Three.¹²⁰ For example, in the particular case of one large non-MNO customer, the CMA received evidence showing that it sourced less than [5-10]% of its demand from MNOs and MNO JVs in revenue terms.¹²¹
105. Two MNOs or MNO JVs provided data to the CMA showing that they have a comparatively small number of non-MNOs on their infrastructure, and that they had supplied a very small number of tenancies between 2018 and 2019,¹²² in comparison to the total number the CMA identified as having been supplied in these years, having collected data from WIPs.¹²³
106. Based on the evidence set out above, the CMA believes that MNO JVs are not currently material suppliers of non-MNOs, and non-MNO demand is chiefly fulfilled through WIPs. Although MNO JVs may provide a small number of tenancies to third parties, the CMA believes that their current primary function is to service their existing site portfolios in relation to their shareholder MNOs. As such, the CMA considers that the MNO JVs should also be excluded from the frame of reference for non-MNO customers, although the CMA has considered inter-JV supply as an incremental constraint in the competitive assessment.

- *Conclusion on self-supply and supply by MNO JVs*

107. On the basis of the evidence and analysis set out above, the CMA believes that it is appropriate to exclude self-supply, site sharing by MNOs/MNO JVs and supply by MNO JVs to non-MNO customers from the frame of reference. The CMA has nevertheless considered the constraint from each of these options in paragraphs 194 to 213 of the competitive assessment.

Segmentation among micro sites

Small cells and DAS

108. Within micro sites, the Parties only overlap in small cells. The CMA considered whether the frame of reference for small cells should be widened to include (i) indoor solutions and/or (ii) DAS solutions. Given that DAS

¹¹⁹ Parties' response to the CMA's Issues Letter, paragraph 2.58.2.

¹²⁰ [REDACTED].

¹²¹ [REDACTED]. [REDACTED].

¹²² [REDACTED]; [REDACTED].

¹²³ [REDACTED]. [REDACTED].

solutions are primarily used in indoor environments, and have only exceptionally been deployed outside, the reasons for including or excluding indoor and DAS solutions within the frame of reference overlap significantly.

109. The Parties submitted that there is a degree of substitutability, albeit limited, between small cells and DAS, with DAS being deployed outdoors only exceptionally and small cells being installed indoors only in limited circumstances.¹²⁴ The Parties submitted that it was not necessary to conclude on the precise frame of reference, as no competition concerns arose on any plausible basis.
110. The European Commission (**EC**) has previously considered whether to define separate product markets for small cells and DAS in *Commscope / TE BNS*, although it ultimately left the market definition open.¹²⁵
111. The CMA concluded that it would not be appropriate to include either indoor or DAS solutions within the frame of reference for small cells, in particular for the following reasons:
- (a) From a demand-side perspective, indoor and outdoor solutions serve different needs. Outdoor solutions address MNOs' need for densification in urban areas; indoor solutions improve coverage and capacity in special indoor environments. This is consistent with the position set out in the Parties' internal documents.
 - (b) From a supply-side perspective, some third parties supported the view that the technologies required for small cells and DAS solutions were different and others highlighted that it would not be efficient or cost-effective to use DAS solutions for outdoor use.
 - (c) While the Parties' internal documents sometimes use the term 'small cells' to capture both (outdoor) small cells and (indoor) DAS solutions, the Parties' documents also consistently reflect that the competitor set for each differs. For example, [REDACTED].¹²⁶
112. Based on the evidence set out above, the CMA believes that the appropriate frame of reference is small cells (excluding indoor/DAS solutions), although the CMA has not needed to conclude on this point, given that no competition concerns arise on any plausible frame of reference.

¹²⁴ FMN, paragraph 13.66.

¹²⁵ [COMMSCOPE / TE BNS](#) (M.7563), June 2015.

¹²⁶ [REDACTED].

Self-supply by MNOs and MNO JVs

113. As with macro sites, the Parties submitted that MNOs and MNO JVs can and do self-supply outdoor small cells, and that this acts as a competitive constraint in the supply of access to small cell sites.¹²⁷
114. The CMA acknowledges that MNOs and MNO JVs may self-supply in the provision of access to small cell sites, and that one MNO JV, CTIL, has successfully bid for the rights to access local authority-owned sites for small cell deployment in the City of London.
115. The CMA also notes, however, that in an internal assessment of Cellnex's product offering, Cellnex noted that it had a number of competitive advantages over MNO self-supply (which the CMA believes could apply to WIPs in general), including [REDACTED].¹²⁸ Small cell deployment and associated business models in the UK remain at a nascent stage and the ability and willingness of MNOs and MNO JVs to self-supply access to small cell sites to fulfil future demand remains unclear and may vary amongst MNOs.
116. The CMA therefore believes that there may be grounds to exclude self-supply by MNOs and MNO JVs from the frame of reference for the supply of access to small cell sites. The CMA has not needed to conclude, however, given that no competition concerns arise even on a narrower frame of reference which includes supply by WIPs only.

Conclusion on product scope

117. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
- (a) The supply of access to macro sites; and
 - (b) The supply of access to small cell sites.
118. However, it was not necessary for the CMA to reach a conclusion on these product frames of reference, since, as set out below, no competition concerns arise on any plausible basis.

¹²⁷ Parties' response to the CMA's Issues Letter, paragraphs 4.35-4.39.

¹²⁸ [REDACTED].

Geographic scope

Supply of access to macro sites

119. The OFT and CC have previously considered that there are both local and national elements to competition for the provision of site access and ancillary services to MNOs and other wireless communication service providers. In *National Grid / Crown Castle* the OFT noted a ‘strong localised element to supply and demand’ for mobile tower sites.¹²⁹ However, the OFT and CC in *Macquarie / NGW* considered that competition was predominantly national in nature, since tower operators enter into framework agreements with MNOs and other wireless communication service providers wishing to roll out coverage across the UK.¹³⁰
120. The Parties submitted that: (i) towers in one locality were not substitutable with towers in another; and (ii) pricing tended to be based on national rate cards with only minimal adjustments made to reflect local factors; and (iii) the Code reforms would increase competition at a local level.¹³¹
121. As context for the assessment, the CMA has considered the Parties’ business strategies. This is set out in detail in paragraphs 37 to 48 above. An assessment of these strategies shows that the Parties operate nationally, as do most of their competitors. The Parties source a range of potential site locations across the UK, and their investment plans in relation to expanding the range of areas in which the Parties’ are present over the longer term are set centrally. Although the Parties monitor competition at a local level, important elements of their offering are set centrally and applied across their national portfolio of sites, such as prices in the form of national rate cards.

Demand-side substitution

122. The available evidence indicates that there is a substantial national element to customers’ purchasing considerations.
- (a) Certain competitions for contracts take place in two stages; suppliers compete to win national frameworks eg the MBNL RfP, and then compete against other suppliers on the framework to supply sites.

¹²⁹ [National Grid Transco plc / Crown Castle UK Holding Ltd](#), paragraph 9.

¹³⁰ [Macquarie UK Broadcast Ventures Ltd / National Grid Wireless Group](#), paragraph 52.

¹³¹ FMN, paragraph 13.44.

(b) Evidence from the Parties' internal documents indicates that a broad range of sites with national coverage is helpful in winning large tenders.¹³²

123. However, some evidence indicates there is a degree of localised demand. Third parties indicated that demand is locally driven given the need to address coverage/capacity in a particular local area,¹³³ and that where sites are being used for backhaul, a line of sight between their existing sites and a prospective site is required. These localised elements could, in principle, result in some variation in the extent to which customers consider different suppliers' propositions to be substitutable. The CMA has therefore considered whether such variation is material, particularly within the context of the supply-side substitution described further below.

Supply-side substitution

124. Consistent with the framework for assessment set out in CMA Guidance,¹³⁴ the CMA has considered the ability of suppliers to service a range of different areas that are not necessarily substitutable from a demand-side perspective, and, in particular, the ability and incentive to quickly (generally within a year) shift capacity between these different areas.¹³⁵

125. The evidence set out in paragraphs 65 to 70 shows that customers consider BTS to be an effective substitute to any given developed site, and that suppliers are able, using their BTS propositions, to enter local areas in which they do not currently have assets. As a consequence, the CMA considers that the same suppliers compete to supply in all local areas, and the conditions of competition between their offerings are sufficiently similar across all local areas to aggregate the local supply of these products and analyse them as one national market.

126. For completeness, and noting that customers may not in all circumstances consider BTS to be an effective substitute, the CMA has, in addition, considered whether the Parties engage in local flexing of competitive parameters in response to local competition.

127. The CMA set out the evidence in relation to this in paragraphs 37 to 48. The evidence shows that the Parties have national rate cards and, although the Parties do monitor the degree of local competition for larger purchases, this appears to influence prices only in aggregate, by determining the total value

¹³² See for example [redacted].

¹³³ [redacted]; [redacted]; [redacted].

¹³⁴ [Merger Assessment Guidelines](#).

¹³⁵ In line with the [Merger Assessment Guidelines](#), paragraph 5.2.17.

of the bid.¹³⁶ Thus, whilst there may be variation in prices across local areas, the available evidence indicates that variations in local pricing tend to be related to the differing characteristics of each site, such as its height and the configuration, rather than local competitive conditions (which tend to be taken into account in aggregate).¹³⁷

128. The evidence set out above indicates that there is limited local flexing of the Parties' offerings and the conditions of competition between suppliers can be considered to be sufficiently similar in each area. To the extent there is any local flexing on pricing, this is not generally a response to local competitive conditions. Therefore, the CMA believes that the extent of local flexing is limited and that local competition is not a material factor in driving the limited variation that is observed. There is no evidence that local flexing by the Parties in response to competition would become more likely post-Merger.¹³⁸

Conclusion on supply of access to macro sites

129. On the basis of the evidence summarised above, the CMA believes that while there are some elements of local variation in the Parties' offerings, these are not often in response to local competitive conditions. To the extent that there is any local flexing in response to local competitive conditions, the CMA considers that these are much less material than the parameters which are flexed nationally. Furthermore, there is evidence that suppliers can quickly enter areas in which they do not have existing sites by using their BTS offerings. For the purposes of this Merger investigation, the CMA therefore considers it appropriate to assess the impact of the Merger on the basis of a national frame of reference.

Supply of access to small cell sites

130. The Parties submitted that (as for macro sites) there are both national and localised elements to supply and demand, but that it was not necessary to conclude on the precise geographic frame of reference, as no competition concerns arose on any plausible basis.¹³⁹
131. The EC considered the geographic scope of micro sites in *Commscope / TE BNS* but, ultimately, left the market definition open.¹⁴⁰

¹³⁶ [REDACTED]. Parties' response to the CMA's request for information 1, dated 20 November 2019, paragraph 75.

¹³⁷ [REDACTED].

¹³⁸ See paragraph 87(c) above, [REDACTED]. However, [REDACTED].

¹³⁹ FMN, paragraph 13.71.

¹⁴⁰ *COMMSCOPE / TE BNS* (M.7563), June 2015, paragraph 23.

132. The Parties' deployed small cell sites do not currently overlap in any local areas. Cellnex's assets are located at non-urban motorway service stations, whereas Arqiva's assets are primarily on street furniture of London boroughs. However, Cellnex is current bidding for TfL's Telecommunications Commercialisation Project, which will offer the winning bidder the opportunity to commercialise London streetscape assets for small cell deployment. This could give rise to potential overlaps across London.
133. As set out in paragraph 48 above, Arqiva competes primarily with nationally uniform PQRS parameters, although it may take into account local characteristics in setting the level of these parameters. Whilst individual opportunities will be location-specific, the CMA also received evidence that other suppliers will compete to provide a wide range of suitable sites, across the UK. One third party told the CMA that its key focus is to grow its portfolio, both in London and other large cities, as MNOs prefer to engage with established suppliers with a footprint across the UK.¹⁴¹ Both the Parties' internal documents¹⁴² and third party submissions recognise London as a key area for small cell deployment, particularly during this early phase of market development.
134. On the basis of the evidence, the CMA believes that it is appropriate to assess the impact of the Merger in relation to access to small cell sites on a national basis, although the CMA has focused on London, as the key area of potential future overlap and small cell deployment, in its competitive assessment. The CMA has not needed to conclude on the geographic frame of reference, however, given that no competition concerns arise on any plausible frame of reference.

Conclusion on geographic scope

135. For the reasons set out above, the CMA has considered the impact of the Merger in the following geographic frames of reference:
- (a) The supply of access to macro sites on a national basis; and
 - (b) The supply of access to small cell sites on a national basis.

Conclusion on frame of reference

136. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:

¹⁴¹ [REDACTED].

¹⁴² For example, Arqiva's strategic vision in small cells is [REDACTED].

- (a) The supply of access to macro sites in the UK; and
- (b) The supply of access to small cell sites in the UK.

Competitive assessment

Horizontal unilateral effects

137. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.¹⁴³ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in each of the frames of reference mentioned in paragraph 136.

Theory of harm one: Supply of access to macro sites in the UK

138. The CMA has assessed whether the Merger results in an SLC in macro sites at the national level, such that the loss of Cellnex as a competitive constraint against Arqiva (and vice-versa) would lead customers to experience a deterioration in the Parties' terms of their offering (eg worse prices). The CMA assessed evidence from shares of supply to frame this assessment, and then considered evidence from internal documents, bidding data and third parties in forming a view of the competitive constraint between the Parties and from competitors.

Shares of supply

139. The CMA collected data on shares of supply based on the total number of tenancies¹⁴⁴ that a supplier currently has (ie its **share of supply 'by stock'**), as well as suppliers' shares of wins as a proportion of recent competitive interactions (ie its **share of supply 'by flow'**).
140. The CMA considers that shares of supply by stock may provide some insight into the competitive significance of the Parties and their competitors in two main ways. First, internal documents show that there are some benefits to being a large supplier, such as economies of scale.¹⁴⁵ Therefore, a small share by stock may be consistent with a supplier exerting a limited

¹⁴³ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

¹⁴⁴ A tenancy is defined as unique customer-site combinations; that is, a point-of-presence.

¹⁴⁵ For example, [§].

competitive constraint. Second, a small share of stock implies that there is likely to be a limit to the degree of overlap between the Parties' existing assets at the local level. However, the Parties' internal documents also highlight long contracts¹⁴⁶ and high switching costs,¹⁴⁷ which together imply that customer switching is likely to be infrequent and that shares by stock may only provide limited insight into the competitive significance of smaller suppliers within the context of an industry where there has been recent entry and expansion, or where entry and expansion are expected in the future.

141. The CMA has therefore also considered shares of supply by flow based on 2018-2019 data. The CMA has considered evidence on shares of supply calculated on both bases below.¹⁴⁸

- *Shares of supply by stock*

142. Shares of supply by stock both excluding and including self-supply by MNOs and MNO JVs are presented in Table 1.¹⁴⁹

¹⁴⁶ The average length of macro site contracts bid for by Arqiva is [REDACTED]: Parties submission to the CMA dated 16 March 2020, Annex 3 Updated RFI 2 Q22 (bidding data) - Arqiva.

¹⁴⁷ [REDACTED].

¹⁴⁸ The CMA understands that there may be additional, smaller, players. However, the Parties estimate that the total number of sites accounted for by WIPs other than the Parties and WIG are of the order of 300. The total number of sites identified by the CMA in their dataset for parties listed as "Other" exceed this number and therefore the scope for the CMA's estimates to overstate the Parties' shares is likely to be minimal. The CMA considers that this set of providers is a reasonable basis on which to assess closeness of competition.

¹⁴⁹ The Parties submitted shares of supply by (i) number of developed sites, and (ii) number of tenancies based on their best estimates for competitors. As the CMA's data have been gathered directly from third parties, it considers that these estimates are more reliable than the Parties' estimates.

Table 1: Shares of supply by ‘stock’ considering number of tenancies

	Volume	Share	
		Including MNO/JV supply	Excluding MNO/JV supply
Arqiva	[X]	[20-30]%	[80-90]%
Cellnex	[X]	[0-5]%	[0-5]%
<i>Combined</i>	[X]	[30-40]%	[80-90]%
Airwave	[X]	[0-5]%	[0-5]%
Atlas Towers	[X]	[0-5]%	[0-5]%
Britannia Towers	[X]	[0-5]%	[0-5]%
Freshwave	[X]	[0-5]%	[0-5]%
Shared Access	[X]	[0-5]%	[0-5]%
WIG	[X]	[0-5]%	[5-10]%
Cornerstone (including Vodafone and O2)	[X]	[30-40]%	-
BT & EE	[X]	[10-20]%	-
Three	[X]	[10-20]%	-
Total	[X]	100%	100%

Source: CMA analysis of data provided by the Parties and third parties.

143. Based on the estimates presented in Table 1, when self-supply is excluded, Arqiva is the largest competitor by share of supply by stock, with a share of [80-90]%. Cellnex’s share of supply by stock is small at [0-5]% and therefore the increment brought about by the Merger is limited on this basis.
144. Whilst the Parties have a high combined share of supply by stock, this is almost entirely attributable to Arqiva’s existing share, and the CMA considers that a sizeable proportion of these tenancies won are unlikely to have been subject to close competition between the Parties given:
- (a) the limited degree of geographic overlap between the Parties’ developed sites; and
 - (b) the fact that the Parties have overall not competed closely in BTS in recent years, as Arqiva has not actively marketed BTS sites in recent years.
145. In addition, Table 1 demonstrates that, insofar as Arqiva faces competitive constraints from WIPs, Cellnex is one of several constraints of broadly similar overall size. The table shows that [X]’s share of supply is around [X] larger than Cellnex’s, and there are five others in a similar range. Furthermore, whilst the CMA considers there are limits to the degree to which self-supply provides an incremental constraint on the Parties in areas where customers have been able to choose between the Parties’ sites as discussed in paragraphs 82 to 107 above, the CMA nevertheless considers that the MNO JVs’ market positions are relevant to the competitive assessment. When

included in the shares of supply, MNO JVs' shares are comparable to Arqiva's existing share, and the increment brought about by the Merger becomes very small.

146. The CMA considers that shares of supply by stock may understate the competitive significance of suppliers which have recently entered or expanded (such as Cellnex and certain other players including Shared Access), as they include tenancies that were won several years ago. The CMA has therefore also considered shares of supply by flow.

- *Shares of supply by flow*

147. The CMA considered shares of supply by flow, both excluding and including¹⁵⁰ instances where customers come to the end of their lease and choose to renew with their incumbent supplier. The CMA considers that while including renewals allows it to consider the fullest potential extent of competition in recent years, excluding renewals gives a better indication of competition for customers seeking new sites where the relevant supplier is not the incumbent supplier, where high switching costs impact the competitiveness of non-incumbent suppliers.

148. Shares of supply by flow, including and excluding renewals, are presented in Table 2.

¹⁵⁰ Where data has permitted.

Table 2: Shares of supply by ‘flow’

	<i>Incl. renewals</i>		<i>Excl. renewals</i>	
	<i>Volume</i>	<i>Share</i>	<i>Volume</i>	<i>Share</i>
Arqiva	[REDACTED]	[90-100]%	[REDACTED]	[20-30]%
Cellnex	[REDACTED]	[0-5]%	[REDACTED]	[10-20]%
<i>Combined</i>	[REDACTED]	<i>[90-100]%</i>	[REDACTED]	<i>[40-50]%</i>
Airwave	[REDACTED] ¹⁵¹	[0-5]%	[REDACTED]	[10-20]%
Atlas Towers	[REDACTED]	[0-5]%	[REDACTED]	[10-20]%
Britannia Towers	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Freshwave	[REDACTED]	[0-5]%	[REDACTED]	[5-10]%
Shared Access	[REDACTED]	[0-5]%	[REDACTED]	[5-10]%
WIG	[REDACTED]	[0-5]%	[REDACTED]	[10-20]%
Total	[REDACTED]	100%	[REDACTED]	100%

Source: CMA analysis of data for wins of for developed sites or BTS sites in 2018 and 2019 provided by the Parties (FMN Table 4) and third parties. The CMA understands that the figures provided to the CMA from [REDACTED] and [REDACTED] do not include renewals and renegotiations.^{152 viii}

149. When including renewals,¹⁵³ the data show that [90-100]% of Arqiva’s wins are renewals, and therefore are likely to be subject to limited competition from WIPs, including Cellnex. However, to the extent that these tenancies were subject to competition, there are six other WIPs of comparable size to Cellnex, implying that the constraint lost due to the Merger would, in any case, be small.
150. When excluding renewals, Cellnex and Arqiva have combined shares of supply of [40-50]% of the new sites won between 2018 and 2019, including an increment attributable to Cellnex of [10-20]%. On this basis, the CMA notes that the increment brought about by the Merger is more significant, but that three other suppliers (Airwave, Atlas Towers and WIG) with shares within a similar range to Cellnex will remain post-Merger, alongside a tail of smaller suppliers.
151. The CMA has considered whether these shares by flow may understate (or overstate) the competitive significance of the Parties or other suppliers in the future, in the sections that follow.

¹⁵¹ The CMA notes that one third party stated that it won [REDACTED] tenancies in 2018-19 (Source: [REDACTED]) but also that it has [REDACTED] tenancies in total (Source: [REDACTED]). This could represent new tenancies won which have not yet been added to sites. The CMA has not modified this data, on the basis that it is unlikely to materially influence the analysis.

¹⁵² The CMA has not included acquisition of tenancies from other players in these figures, such as the Cellnex acquisition of tenancies on the 220 BT high towers. For clarity, the CMA notes that one third party recently acquired [REDACTED] sites with tenancies on them from [REDACTED], but these sites are also not included in the share of flow. The reason is that these do not represent business won by the players, but a transfer of a revenue stream as part of a broader transaction to acquire assets.

¹⁵³ While the CMA did not have data on renewals for a small number of competitors, given their smaller base of existing customers, the CMA considers inclusion of their renewals would have a very limited impact on the overall share.

- *Conclusions on shares of supply*

152. The CMA considers that the shares of supply indicate that:

- (a) Arqiva is a large and well-established supplier, with a high share of supply by both stock (especially where self-supply is excluded) and flow. The very high proportion of renewals suggests that Arqiva often faces limited competition from WIPs (most likely because of high switching costs, although there is also limited geographic overlap with the existing sites of other providers).
- (b) WIG is the next-largest player considering shares of supply by stock. Although it is considerably smaller than Arqiva, it is either comparable to or materially larger than Cellnex depending on the basis for calculating share of supply.
- (c) Cellnex is a small player in terms of historical sites and a relatively new supplier to the UK, but its higher share of supply by flow indicates it has been able to win a comparable number of sites in the last two years to more established players like WIG and Airwave, indicating it may be a more relevant significant threat to Arqiva for new tenancies in future than it has been in the past.
- (d) Both shares of supply by stock and flow indicate there are several alternative credible suppliers to the Merged Entity, including alternative suppliers that are of a comparable size to Cellnex on both bases. Excluding self-supply, WIG is the next-largest player based on shares of supply by stock [redacted], and larger than Cellnex on both a share of stock and share of flow basis. [redacted], Airwave and Atlas Towers have comparable shares of supply by flow to Cellnex, and Shared Access has a comparable share of supply by stock.

153. For the reasons set out above at paragraph 82 to 107, the CMA also believes that shares of supply excluding self-supply are liable to overstate the competitive significance of the Parties for some customers.

Closeness of competition

- *Parties' submissions*

154. The Parties submitted that:

- (a) Cellnex and Arqiva are not close competitors for existing sites and are not particularly close competitors for new macro sites;¹⁵⁴ and
- (b) The MBNL RfP is evidence that Cellnex is not a close competitor to Arqiva since Cellnex was not a 'nationwide' competitor against a substantial part of Arqiva's site portfolio.¹⁵⁵

- *Internal documents*

155. Certain internal documents submitted by Arqiva indicates that Arqiva considers Cellnex to be one of few credible competitors. For example:

(a) One Arqiva document states that [REDACTED].

(b) A further Arqiva document [REDACTED].¹⁵⁶

156. However, in many Arqiva documents a variety of actual and potential competitors are identified without any particular prominence given to Cellnex and certain documents discussing competitors do not mention Cellnex. For example:

(a) One Arqiva document [REDACTED].¹⁵⁷

(b) Another Arqiva document [REDACTED]. [REDACTED].¹⁵⁸

(c) Another Arqiva document in relation to the Emergency Services Network procurement [REDACTED].¹⁵⁹ [REDACTED].

157. Cellnex only identifies Arqiva as a competitor in a limited number of its documents. For example:

(a) One Cellnex document [REDACTED].¹⁶⁰

(b) Another Cellnex document, [REDACTED].¹⁶¹ However, the same document indicates that Cellnex may consider the MNO JVs also to be a significant constraint, [REDACTED].¹⁶²

¹⁵⁴ FMN, paragraph 15.36 and 18.8.

¹⁵⁵ FMN, paragraph 15.69.

¹⁵⁶ [REDACTED].

¹⁵⁷ [REDACTED].

¹⁵⁸ [REDACTED].

¹⁵⁹ [REDACTED].

¹⁶⁰ [REDACTED].

¹⁶¹ [REDACTED].

¹⁶² [REDACTED].

158. The CMA also considered the available evidence in relation to Cellnex's expansion plans absent the Merger, including through 'organic' growth,¹⁶³ in order to assess to what extent Cellnex's position and market performance to date might understate its competitive significance.
159. The CMA has found only very limited evidence that Cellnex may engage in higher levels of organic growth absent the Merger.¹⁶⁴ In particular, the CMA did not identify any Cellnex documents which set out detailed long-term strategic plans as regards the UK,¹⁶⁵ and Cellnex's internal documents generally support the position that [REDACTED]. For example, one Cellnex internal document, which sets out the M&A Strategy of Cellnex when entering a country, [REDACTED],¹⁶⁶ [REDACTED].¹⁶⁷
160. The CMA has not identified evidence indicating that Cellnex is differentiated from other players that could also expand. Other suppliers, such as Shared Access¹⁶⁸ and Atlas Towers, are identified in Arqiva's internal documents as being well positioned to expand.¹⁶⁹ Moreover, the CMA considers that Freshwave Group (owned by investment firm Digital Colony) and WIG, acquired by Brookfield Infrastructure in December 2019, may also be well-positioned to expand, particularly in light of recent investment.
161. The CMA therefore believes that the Parties' internal documents broadly support the position that the Parties do not consider each other to be particularly close competitors. The internal documents also support the position that Cellnex's strategy, absent the Merger, would have been focused on incremental growth and, therefore, the extent of competition from Cellnex would not be materially different in future.

¹⁶³ One Arqiva document [REDACTED].

¹⁶⁴ For example, a Cellnex public statement that 'Organic growth is of course our preferred option since we entered the UK market, and as anticipated we are involved in several projects that will see the light soon. We will keep the market updated on these and others that are continuously monitored, as the prospects evolve and opportunities in the transport and indoor coverage segments come to fruition': [Cellnex strengthens position in UK with £100mn BT high towers deal](#), June 2019.

¹⁶⁵ [REDACTED].

¹⁶⁶ [REDACTED]. The CMA notes that the portfolios of towers were acquired from MNOs, and given the model by which MNOs have to date operated in the UK and Cellnex's belief that it could expand the tenancy portfolio on these towers referenced on the same slide, the CMA considers that it may be the case that Cellnex brought or strengthened options to the market for at least some players prior to these transactions. As such, these acquisitions may be best treated at least in part as organic expansion.

¹⁶⁷ See for example, [REDACTED].

¹⁶⁸ [REDACTED].

¹⁶⁹ [REDACTED].

- *Bidding data*

162. The CMA collected bidding data covering all recent opportunities for which the Parties either considered participating or participated. The Parties submitted further analysis of this data, as set out in Table 3.

Table 3: Provision of access to macro sites (since 2016), Parties' analysis¹⁷⁰

	<i>Arqiva</i>	<i>Cellnex</i>	<i>Total</i>	<i>Total excl. opportunities abandoned by customer</i>
Bid	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Considered bidding	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Ongoing	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

163. The Parties further submitted that the data demonstrate that Cellnex is not a close competitor to Arqiva and, in particular, that:

- (a) the Parties generally do not compete against each other;¹⁷¹ in recent years the Parties [REDACTED] competed against each other [REDACTED] (the [REDACTED]); and
- (b) in the MBNL RfP, Cellnex was not considered to be the key constraint.¹⁷²

164. The CMA considered each of these issues in turn.

Frequency of bids against each other

165. The CMA notes that the bidding data does not show that the Parties have frequently bid against each other. The CMA considered whether the drivers of infrequent bidding in the past will continue into the future.

166. The Parties attributed the low number of bids by Cellnex to:

- (a) the profile of Cellnex's opportunities being generally bilateral negotiations (rather than tenders in which multiple companies compete);

¹⁷⁰ Parties' Submission, Analysis of Bidding Data dated 16 March 2020 V2, Table 1.

¹⁷¹ The Parties also submitted that there is no evidence that Cellnex would compete more aggressively in the future.

¹⁷² Parties' response to the CMA's Issues Letter, paragraph 2.64.

(b) the comparatively low number of existing sites held by Cellnex, which the Parties stated implies it has been invited to only a handful of opportunities;¹⁷³

(c) BTS opportunities being relatively infrequent and the fact that Cellnex has rarely been invited to compete for these.¹⁷⁴

167. In relation to (a), the CMA considers that bilateral negotiations do not lend themselves to bidding data analysis, because it may not be clear when providers are competing against each other (customers may have different ways of fulfilling the same demand or seek to progress the same opportunity at different times). Noting that Arqiva's profile of bids is affected by the same issue, the CMA considers that the lack of instances identified in the bidding data of competition between the Parties may reflect the fact that competition in this industry occurs in ways other than head-to-head competition, rather than necessarily a lack of competition between the Parties. The CMA has therefore taken this into account in considering the weight that should be placed on this data.

168. In relation to (b), the CMA acknowledges that the number of overlaps is likely to be relatively small as a proportion of Arqiva's estate. The CMA considered whether data from the Parties' bids on opportunities to acquire new sites (together with data on bids they had considered making) implied the degree of overlap (and therefore competition) would increase in future.

169. The Parties submitted that the scope for such acquisitions in the future is very limited.¹⁷⁵ Further, the Parties stated that Cellnex has bid on a very small proportion of opportunities it considered and that it was unlikely for there to be a large number of sites coming onto the market in the future which Cellnex could purchase.

170. The CMA considers that Cellnex's recent expansion has been material: having acquired a business with less than [§] sites in 2016, following recent acquisitions (most significantly the BT High Towers award on 4 June 2019) Cellnex now has [§] sites and [§].^{vii} Further, the CMA considers that the

¹⁷³ The Parties likewise submitted that for Arqiva in particular, the vast majority of the contracts ... involve bilateral negotiations over existing sites' and so the Parties 'in the majority of cases will only be negotiating with a single player.' The Parties' response to the CMA's Issues Letter, paragraph 2.115.

¹⁷⁴ Parties' response to the CMA's Issues Letter, paragraph 2.64.1.

¹⁷⁵ Parties' response to the CMA's Issues Letter, paragraph 2.1.

bidding data demonstrate that there are many sites (at least [REDACTED], from [REDACTED] different opportunities¹⁷⁶) which could potentially be brought into the market.

171. However, the CMA notes that even including Cellnex's recent acquisitions (which may not fully be reflected in the bidding data), the geographic overlap between existing sites is small as a proportion of the Parties' total sites; that other providers have similarly expanded recently (as set out in paragraphs 147 to 151 above); and that Cellnex would likely face competition to acquire any existing sites that come to market in future (so it is not necessarily the case that these sites would be acquired by Cellnex).¹⁷⁷ Accordingly, the CMA considers that available evidence does not support the position that Cellnex would be a materially different competitive presence as a result of inorganic expansion in future, absent the Merger.
172. In relation to (c), the CMA considers that the [REDACTED] may provide it with an avenue to compete for more Arqiva business through BTS in the future. However, competition will remain from other suppliers in BTS that are monitored in Arqiva documents, including Shared Access and Atlas Towers.¹⁷⁸ Opportunities will therefore remain for other suppliers to [REDACTED], and [REDACTED].
173. Taking these points in the round, the CMA considers that the bidding data imply that the Parties very rarely compete head-to-head frequently, and that while there is some scope for them to compete more often, it did not appear that Cellnex was likely to expand to the degree that it will become a particularly significant competitor to Arqiva in future, when taking into account the scope for other competitors to expand.

Strength of competitive constraint exerted on each other

174. The CMA notes that the Parties have [REDACTED] bid against each other for the same known opportunity [REDACTED]: [REDACTED]. The CMA acknowledges that a single tender may not reflect the full range of competition in the market. Nevertheless, given that the tender involved key customers and was particularly high value, the CMA assessed the extent to which the Parties placed a competitive constraint on each other in this tender.

¹⁷⁶ These are opportunities which, according to the Parties bidding data (Parties submission to the CMA dated 16 March 2020, Annex 2 - Cellnex and Annex 4 - Arqiva) are yet to be awarded to any company. The [REDACTED] contracts are with: [REDACTED]. This is a lower bound because: (i) some of the sites were presented as ranges from which the CMA took the lower estimate, and (ii) other opportunities are likely to arise in the future.

¹⁷⁷ Expansion by other players is discussed further in paragraphs 208 to 213. For example, one third party told the CMA that [REDACTED]. [REDACTED].

¹⁷⁸ [REDACTED].

175. The MBNL contract is an agreement lasting for [REDACTED] years for a significant number of sites ([REDACTED] in stage 4, although the process ultimately concluded [REDACTED]: around [REDACTED]¹⁷⁹ and [REDACTED]¹⁸⁰). The new agreement with Arqiva was signed in December 2019; and [REDACTED].¹⁸¹
176. The Parties submitted that Cellnex did not win a single site from Arqiva, Cellnex did not exercise any meaningful constraint on Arqiva, and that Cellnex was not viewed as a credible competitor.¹⁸²
177. The CMA notes evidence that Arqiva's offer [REDACTED]. Its final offer constituted a [REDACTED],¹⁸³ [REDACTED].¹⁸⁴ The CMA considers that Cellnex imposed a meaningful constraint on Arqiva through its bid in this specific tender, which [REDACTED]: [REDACTED].¹⁸⁵ Furthermore, Arqiva's internal documents show that [REDACTED].¹⁸⁶ Based on the evidence [REDACTED],¹⁸⁷ the CMA considers that the 'competitor' noted in these documents would likely have been Cellnex.¹⁸⁸
178. Nevertheless, the CMA notes that other providers also provided a material competitive constraint to Arqiva in this tender. The tender attracted [REDACTED],¹⁸⁹ and Arqiva's internal documents demonstrate that it monitored a range of competitors in relation to the tender.¹⁹⁰ [REDACTED], suggesting that [REDACTED] was also a significant competitive alternative for MBNL.¹⁹¹ Furthermore, although [REDACTED].¹⁹² Therefore, while the CMA considers that evidence surrounding this tender indicates the Merger may eliminate one significant competitor, it also demonstrates that other viable alternatives remain.

¹⁷⁹ CMA analysis based on FMN submissions at paragraph 15.92 and data from [REDACTED].

¹⁸⁰ CMA analysis based on FMN submissions at paragraph 15.92 and data from [REDACTED].

¹⁸¹ This represents around [20-30]% of the annual number of sites awarded, based on 2018-19 data.

¹⁸² Parties' response to the CMA's Issues Letter, paragraph 2.69.

¹⁸³ [REDACTED].

¹⁸⁴ Arqiva's response to the CMA's Request For Information 3, Question 2(b), paragraph 12.

¹⁸⁵ [REDACTED].

¹⁸⁶ [REDACTED].

¹⁸⁷ [REDACTED].

¹⁸⁸ The CMA notes that although [REDACTED] [REDACTED]. In this context, the CMA notes an Arqiva internal document which states that [REDACTED]. Therefore, the CMA considers that despite substantial disparity in offer score between Arqiva and the competitor benchmark it was presented with, when the options to MBNL across the full range of sites are considered, Arqiva and competitors would have been in close competition (with MBNL ultimately selecting Arqiva's offer).

¹⁸⁹ [REDACTED]. Parties' response to the CMA's Issues Letter.

¹⁹⁰ [REDACTED].

¹⁹¹ [REDACTED].

¹⁹² [REDACTED].

179. The Parties further submitted that, [REDACTED],¹⁹³ [REDACTED].¹⁹⁴
180. The CMA considers, [REDACTED],¹⁹⁵ that [REDACTED] and ultimately reflects the competitive constraint exercised by Cellnex on Arqiva for MBNL's business. [REDACTED].¹⁹⁶ A third party submitted that [REDACTED].¹⁹⁷
181. The CMA considers that, whilst the elimination of Cellnex as one competitive constraint does immediately reduce the options for MBNL [REDACTED], this reduction should be considered in the context of the other remaining viable alternative suppliers that would be available to provide a similar constraint in future.

Conclusion on bidding data

182. Overall, the CMA considers the bidding data to show there to be limited current competition between the Parties and that other credible alternative suppliers will remain post-Merger. While the CMA found the Parties competed closely in relation to [REDACTED], it considers that even evidence surrounding [REDACTED] shows that there are other viable alternatives to the Parties post-Merger.

- *Third party views*

183. The CMA collated views on the competitive strength of suppliers of access to macro sites and in particular: (i) the degree to which competitors see other firms as a credible constraint; and (ii) the degree to which customers see each firm as an attractive option for future demand.¹⁹⁸ The average score for each supplier is provided in
184. Table 4.¹⁹⁹ The distribution of ratings provided by third parties are presented visually in Figure 1.
185. The CMA notes that the ratings set out below in Table 4 are based on relatively low numbers of responses (11 in total) from third parties. The CMA has therefore generally treated these data with caution, and considered

¹⁹³ Parties' response to the CMA's Issues Letter, paragraph 2.94.

¹⁹⁴ Parties' response to the CMA's Issues Letter, paragraph 2.70. Furthermore, the Parties submitted that [REDACTED]. The CMA considers, in the context of a time-lag in this industry to supply the relevant sites and the absence of evidence that the full [REDACTED] sites will not be supplied, that these facts do not lead to less weight being placed on Cellnex's competitive position going forwards.

¹⁹⁵ [REDACTED].

¹⁹⁶ [REDACTED].

¹⁹⁷ [REDACTED].

¹⁹⁸ The CMA asked each respondent to assign a score between 1 and 10 to a specified list of suppliers in the industry, with 10 representing the strongest constraint. The CMA used a prompted list, which included the following firms: Arqiva, Atlas Towers, Cellnex, Britannia Towers, Ontix, Shared Access, Freshwave, WIG and Others (please add).

¹⁹⁹ The median score attached to each competitor is very similar to their mean score and so has not been included in the table.

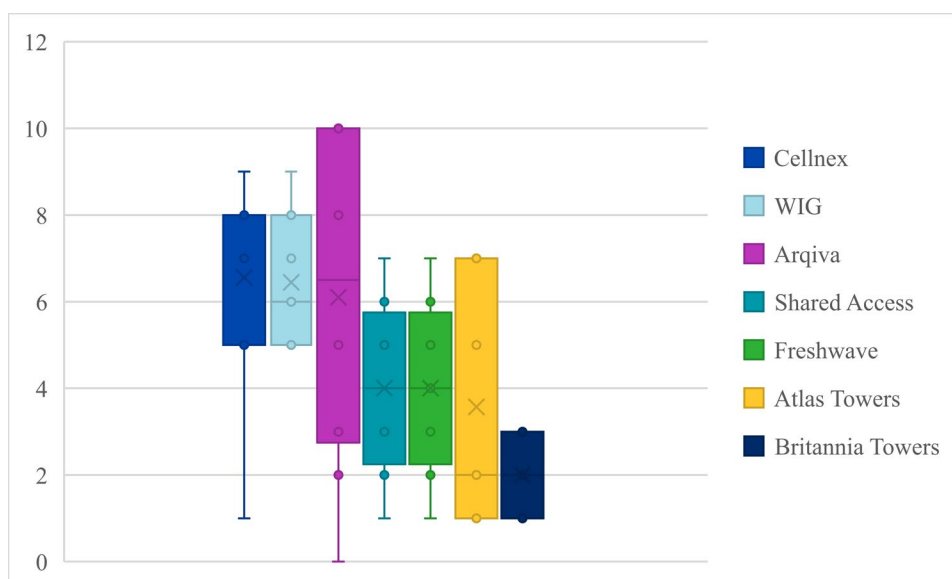
carefully how much weight can be placed on them (particularly where the data are not supported by any other evidence available to the CMA).

Table 4: Third parties' ratings of competitors' strength (mean and median)

	Arqiva	Cellnex	WIG	Freshwave	Shared Access	Atlas Towers	Britannia Towers
Mean	6.2	6.6	6.6	4.0	4.0	3.6	2.0
Median	7	7.5	6	4	3	2	2
Number of responses	11	10	9	8	8	7	6

Source: CMA analysis of 11 third party responses to this element of CMA questionnaire. Where a party did not provide a rating for a particular firm, the CMA did not include any score for that figure in the averages above (rather than, for example, treating them as having provided a rating of 0). The CMA excluded data points where third parties included ratings for themselves. The CMA excluded any third parties which received fewer than 5 ratings; however, the CMA has taken into account these views in our qualitative analysis below.

Figure 1: Third parties' ratings of competitors' strength (distribution)



Source: CMA analysis of third parties' responses

Note: The mean ratings for each supplier is denoted with an 'X'. The median rating is denoted with a horizontal bar inside the coloured box. The coloured box represents the central 50% of ratings. The vertical 'whiskers' represent the highest 25% and lowest 25% of ratings.

186. Table 4 above shows that third parties tend to view the Parties as two of the three WIPs considered most attractive as an option for meeting future demand on a forward-looking basis. While Cellnex was considered to be the strongest future competitor, when considering the median (ahead of Arqiva), it was considered to be jointly the strongest with WIG when considering the mean, with Arqiva considered to be third.

187. Figure 1 above shows that there was greater variation in the ratings given to some suppliers compared to others. The variation was particularly broad for

Arqiva and indicates that third party views (along with the qualitative comments discussed below) are mixed. This also indicates that the Parties' are not considered particularly close competitors by some third parties, which generally rated Cellnex highly.

188. One customer rated Cellnex higher than Arqiva, submitting that Arqiva's future credibility on macro sites was dependent on transforming the competitiveness of its pricing, making it less attractive for new sites or site relocations, and that Cellnex has been growing in credibility in relation to macro sites and this may continue going forward.²⁰⁰ One competitor stated that Cellnex's current UK asset base is small and that any concerns about the Merger would be greater if Cellnex made further acquisitions.²⁰¹
189. One third party told the CMA that:
- (a) the Merger would remove an important competitive force in the growing WIP market as Cellnex would have continued to grow organically in the UK.²⁰² [REDACTED].²⁰³ The CMA considers, however, that the available evidence (as set out above) generally indicates that there are only limited competitive interactions between the Parties, and that the competitive significance of Cellnex would be unlikely to change significantly absent the Merger.
 - (b) the Merger would lead to a significant concentration in marketable macro sites (ie both active and potentially active sites) in the UK.²⁰⁴ The CMA notes, however, that consistent with the submissions of the Parties and third parties discussed above in paragraphs 65 to 70, BTS sites can be supplied without already having access to undeveloped land and, therefore, that the available evidence indicates that no competition concerns arise in relation to undeveloped sites.
 - (c) the Merger would remove Cellnex, a key driver of competitive pricing amongst WIPs when negotiating future tenders for long-term supply contracts; Cellnex is differentiated from its competitors, for example, by its expertise and experience across the European telecoms market.²⁰⁵ The CMA considers, however, that other suppliers with similar credibility to Cellnex are well-positioned to continue to drive competitive tension. [REDACTED]. Moreover, the CMA has received evidence which indicates that suppliers

200 [REDACTED].

201 [REDACTED].

202 [REDACTED].

203 [REDACTED].

204 [REDACTED].

205 [REDACTED].

without previous experience in the European market are also considered credible, suggesting that Cellnex's expertise and experience across the European telecoms market is not a significant commercial advantage in practice. This is also consistent with the third party views submitted to the CMA; [REDACTED], one third party provided a similar rating for Atlas Towers (7) and Cellnex (8) (compared with a lower rating of 5 for Arqiva), stating that Atlas Towers is building a competitive offering on macro sites.²⁰⁶

190. Some customers raised concerns that the Merger may reduce competition and therefore potentially lead to rent increases, reduce quality of service and access to sites.²⁰⁷
191. However, several other large third parties raised no concerns about the Merger.²⁰⁸ For example, one competitor noted that the Merged Entity may not be dissimilar to Arqiva presently since Cellnex's existing site portfolio is limited;²⁰⁹ one customer noted that self-supply and competing providers will continue to provide a competitive constraint; and a further customer, said that the Merger would not give the Merging Parties an anti-competitive advantage in the UK market.²¹⁰
192. The CMA therefore believes that, while some customers expressed concerns regarding the Merger, overall, the evidence provided by third parties indicates that the Parties are not particularly close competitors and that, as discussed below at paragraphs 194 to 213, sufficient credible alternative suppliers to the Parties would remain post-Merger.

- *Conclusion on closeness of competition*

193. Based on the evidence set out above, the CMA believes that while Arqiva views Cellnex as a credible competitor, the extent of the competitive interaction between the Parties appears to be limited at present. The available evidence also indicates that Cellnex's strategy, absent the Merger, would have been focused on incremental growth, and therefore that the constraint exercised by Cellnex would not have been meaningfully different in future.

²⁰⁶ [REDACTED].

²⁰⁷ [REDACTED].

²⁰⁸ Some customers and competitors said that the Merger would create a stronger entity, although views differed on whether this would assist or reduce competition.

²⁰⁹ [REDACTED].

²¹⁰ [REDACTED].

Competitive constraints

- *Parties' submissions*

194. The Parties submitted that:

- (a) they faced competition from a range of competitors, including for new sites, and that Arqiva had faced competition from a range of different competitors including WIG, WHP and BT/EE; and
- (b) given their significant capacity to self-supply, the MNOs and MNO JVs were close competitors to both Parties; the MNO JVs were expected to self-supply a significant portion of new sites in the coming years and, as such, posed strong competition to the Parties.²¹¹ Moreover, the SRN would provide further impetus for the sharing of the MNO's approximately 37,000 sites and Code Powers were driving down rental costs, facilitating self-supply by MNOs, which was placing a strong competitive constraint on WIPs.²¹²

- *Internal documents*

195. As discussed at paragraphs 154 to 193 above, the Parties discuss a variety of competitors in their internal documents.

196. In particular, several documents of both Parties refer to WIG as a competitor,²¹³ indicating that both Parties consider WIG to be a close competitor. For example, one Cellnex document [REDACTED].²¹⁴ Similarly, as discussed at paragraph 156(b) above, [REDACTED].

197. Arqiva's internal documents also characterise Shared Access as being in a similar competitive position to Cellnex. For example, [REDACTED].²¹⁵

198. Arqiva also discusses Atlas Towers, Britannia Towers and Freshwave in a number of internal documents.²¹⁶ Arqiva's internal documents also show that Arqiva monitors a wide range of other competitors not discussed in detail above, including Aerial Sites, AP Wireless and WHP.²¹⁷ Although Arqiva

²¹¹ FMN, paragraph 18.10-18.11.

²¹² FMN, paragraph 13.23-13.24.

²¹³ See for example, [REDACTED].

²¹⁴ [REDACTED].

²¹⁵ [REDACTED].

²¹⁶ See for example, [REDACTED].

²¹⁷ [REDACTED].

sometimes appears to attach less significance to these suppliers,²¹⁸ the available evidence supports the position that they offer, at least in combination, some competitive constraint.

199. Moreover, as described in paragraph 160 above, the CMA also considers that a number of other WIPs have received investment and are well-positioned to expand in future.
200. The Parties' internal documents consistently reflect the position that self-supply, particularly by MNOs, is a prominent feature of this industry that materially impacts the competitive dynamics within the market. As set out in paragraphs 82 to 107, the Parties' internal documents broadly support the position that the Parties consider the MNOs' ability to self-supply, and for non-shareholding customers to be supplied by the MNO JVs, as a competitive constraint.²¹⁹ The CMA reviewed a large number of documents providing evidence that Arqiva monitors the presence of the MNO JVs and MNOs, [REDACTED].²²⁰ The Parties' internal documents also consistently refer to MNOs and MNO JVs as part of the competitive landscape. For example, some internal analyses include MNOs and MNO JVs when representing market shares;²²¹ and an Arqiva internal document [REDACTED].²²² Arqiva's internal documents also reflect a preference of MNOs for self-supply, and the perceived threat of self-supply (or infrastructure-sharing) [REDACTED].²²³
201. The CMA considers, however, that internal documents provide mixed evidence as to the strength of this constraint. Some internal documents, while still emphasising a consideration of self-supply in Arqiva's decision-making, place lower weight on the credibility of self-supply relative to WIP supply, [REDACTED].²²⁴
202. On balance, weighing up the significant body of evidence that indicates self-supply is a relevant competitive threat to WIPs, the CMA considers that MNOs/MNO JVs will provide some competitive constraint on the Merged Entity, primarily in relation to supply to the MNOs through the threat of self-supply (either through existing sites or by developing new ones). In particular, the CMA considers that the internal documents reflect that the threat of self-supply is a relevant competitive constraint on the Merged Entity and other

²¹⁸ For example, Arqiva does not include the full range of competitors in some monitoring exercises, and where they are included Arqiva has found they are small or competing on the periphery of Arqiva's business.

²¹⁹ For example, one of Cellnex's internal documents [REDACTED].

²²⁰ [REDACTED].

²²¹ [REDACTED].

²²² [REDACTED].

²²³ See for example, [REDACTED].

²²⁴ [REDACTED].

WIPs given the ability and incentive of MNOs to adjust their network infrastructure strategy and therefore demand to reduce their reliance on WIPs and increase self-supply, especially in the longer term.

203. The CMA therefore believes that internal documents indicate that the Parties consider there to be a constraint from a number of credible WIP competitors and, to some extent, from the ability and willingness of MNOs/MNO JVs to supply themselves (as well as third parties in certain circumstances).

- *Bidding data*

204. Analysis of recent bids reveals that other competitors win business from the Parties and are likely to provide a competitive constraint. These include:

(a) WHP, which won the Scottish 4G tender, [REDACTED];²²⁵

(b) WIG, which won a contract, [REDACTED], to acquire assets of Cell CM (a private seller); and

(c) AP Wireless, which won three contracts, [REDACTED], to acquire assets of The Phone Mast Company.²²⁶

205. The CMA also found that other providers exerted a material constraint on pricing in the recent MBNL RfP [REDACTED], as discussed above in paragraphs 162 to 182. [REDACTED]. Therefore, the CMA considers that [REDACTED] has a similar ability to compete on a similar basis to Cellnex, absent the Merger.

206. The CMA therefore believes that the bidding data indicate there is competition from a number of other sources aside from between the Parties.

- *Third party views*

207. The CMA considered third party views on the strength of other suppliers (as set out in paragraphs 183 to 187 above) and the constraint from the MNOs/MNO JVs to supply themselves and third parties. Generally, while third party views are mixed, several third parties rated alternative suppliers such as WIG, Atlas Towers and Shared Access with higher scores than either or both Parties. For example, one competitor considered WIG as a stronger alternative supplier to Cellnex or Arqiva. One customer did not rate Cellnex

²²⁵ Parties' submission to the CMA dated 16 March 2020, Annex 3 Updated RFI 2 Q22 (bidding data) - Arqiva and Annex 1 Updated RFI 2 Q22 (bidding data) - Cellnex. Parties submission to the CMA dated 16 March 2020, Annex 3 Updated RFI 2 Q22 (bidding data) - Arqiva and Annex 1 Updated RFI 2 Q22 (bidding data) - Cellnex.

²²⁶ Parties' submission to the CMA dated 16 March 2020, Annex 2 Updated RFI 2 Q23 (bidding data) - Cellnex. Parties submission to the CMA dated 16 March 2020, Annex 2 Updated RFI 2 Q23 (bidding data) - Cellnex.

but gave each of Arqiva, Shared Access, Spyder and WIG the maximum score.²²⁷

208. Third parties highlighted WIG as a particularly credible alternative to the Parties. One third party told the CMA that it considers that WIG offers a comparable service to Arqiva.²²⁸ Another third party submitted that WIG had increased their credibility following its acquisition by Brookfield. Conversely, one third party told the CMA that WIG is not as commercially viable or competitive as Cellnex, Arqiva or Atlas Towers.²²⁹ However, WIG was also [REDACTED].
209. Table 4 and Figure 1 show that overall, there is a tier of other competitors – Atlas Towers, Britannia Towers, Shared Access and Freshwave – that third parties rated lower than Cellnex, Arqiva and WIG. Shares of supply by flow show that several of these suppliers, although currently smaller than the Merging Parties and WIG, are already winning business in a way that is comparable to Cellnex. Moreover, some third parties also considered that, these competitors could grow in future. In particular:
- (a) **Atlas Towers:** One third party noted that Atlas Towers had the desire to build towers and had the potential to get stronger if scale in the market increased.²³⁰
 - (b) **Freshwave:** One third party submitted that Freshwave might increase its credibility in the future due to expansion of their service offering.²³¹
 - (c) **Shared Access:** One third party noted that coupled with the investment from Goldman Sachs, Shared Access has become more active on new site builds in recent years, suggesting some potential for growth and a degree of market strength.²³² However, another third party submitted that the credibility of Shared Access was limited and likely to remain so in the future.²³³
210. As set out in paragraphs 82 to 107, third parties indicated that self-supply was an option for many customers and some thought it posed an additional constraint on the Parties. The CMA received evidence that MNOs can self-supply and will typically choose this option where they have sites in the area.

227 [REDACTED].

228 [REDACTED].

229 [REDACTED].

230 [REDACTED].

231 [REDACTED].

232 [REDACTED].

233 [REDACTED].

However, the evidence was mixed on the degree to which they self-supply in competition with WIPs, particularly in areas where they do not already have their own sites. In particular, [REDACTED]. However, [REDACTED]²³⁴ [REDACTED]. Third party responses indicated that non-MNOs may be less able to self-supply, although this still remains an option for certain customers.

211. The CMA notes that there are some other alternative suppliers available to customers aside from those considered in detail above. First, customers can purchase from smaller WIPs; third parties indicated that suppliers including AP Wireless, Exchange Communications and various utility companies are also each winning small amounts of business.²³⁵ Second, as discussed in paragraphs 82 to 107, non-MNOs can purchase from MNO JVs, and the MNOs can rely on inter-JV supply (ie purchasing from the JV they are not party to). Although in recent years third party evidence indicates supply by MNO JVs to non-shareholding customers has not been material,²³⁶ the CMA considers that, when taken in the round alongside supply by smaller WIPs, these constraints, particularly when considered in combination, will together represent some constraint on the Merged Entity.

212. The CMA therefore believes that third party evidence indicates that sufficient credible alternative suppliers to the Parties would remain post-Merger.

- *Conclusion on competitive constraints*

213. Therefore, the CMA believes that the Merged Entity will face competitive constraints from a number of alternative credible WIPs to supply MNOs and other non-MNO customers. In addition, the CMA considers that the threat of self-supply is a material constraint, particularly in relation to MNO customers.

Conclusion on horizontal unilateral effects – supply of access to macro sites

214. In light of the evidence set out above, the CMA believes that there is limited competition between the Parties at present. The available evidence does not suggest that Cellnex would have become a more significant competitor in the future. Cellnex is one of several credible alternative suppliers, which are similarly positioned to Cellnex, in terms of their ability and/or incentive to compete and present and to expand in future. The CMA also believes that the Merged Entity would face a material constraint from the threat of self-supply by MNOs, particularly given that MNOs have a preference to self-supply where they have their own sites, internal documents consistently identify MNO

²³⁴ [REDACTED].

²³⁵ [REDACTED].

²³⁶ [REDACTED].

self-supply as a constraint and refer to the threat of MNO/MNO JVs developing their own sites. Moreover, the CMA notes that some non-MNOs can also self-supply, and believes that the Merged Entity would face some (albeit limited) incremental constraint from MNOs/MNO JVs supply to other MNOs and non-MNO customers.

Theory of harm two: Supply of access to small cell sites in the UK

Parties' submissions

215. The Parties submitted that no concerns arise in relation to the supply of access to small cell sites in the UK for the following reasons:²³⁷
- (a) The small cell market is a nascent one and future demand is inherently uncertain.
 - (b) There is a vast array of potential locations for small cell deployment in urban areas, including numerous alternatives to council-owned infrastructure.
 - (c) Arqiva is not a particularly well-placed competitor in this market: its current portfolio of concessions does not confer a competitive advantage; it does not have access to cost-effective backhaul (a key constraint); and its internal documents show it would not compete aggressively in the supply of access to small cell sites in a pre-Merger counterfactual.
 - (d) Cellnex does not represent a particularly strong or unique current or future competitor to Arqiva: its current activities in small cells are *de minimis* ([§§])²³⁸ and there are numerous existing competitors and potential entrants which are equally or better placed to compete for future small cell opportunities.

Framework of CMA's assessment

216. 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,²³⁹ Cellnex's existing small cell sites are very limited and are located at motorway stations.
217. 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.

²³⁷ Parties' response to the CMA's Issues Letter, paragraph 4.4.

²³⁸ FMN, paragraph 13.48.

²³⁹ See further paragraph 224.

This evidence centres on Cellnex's bid for TfL's Telecommunications Commercialisation Project, described in further detail below. If successful, the CMA believes that the contract with TfL could provide Cellnex with a significant opportunity for small cell deployment in London.

218. The CMA has therefore considered a potential competition theory of harm. In line with the approach in its Merger Assessment Guidelines,²⁴⁰ the CMA has considered whether:
- (a) Cellnex would be likely to expand in the absence of the Merger;²⁴¹ and
 - (b) Such expansion would lead to greater competition (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.

Likelihood of Cellnex's expansion in small cells

219. Cellnex is an established small cell provider in a number of European countries,²⁴² and has shown ambitions to expand in the UK for several years.²⁴³ However, Cellnex currently has only [REDACTED] deployed small cell sites in the UK, [REDACTED].²⁴⁴ To date, Cellnex has been unsuccessful in [REDACTED] and has not bid for any opportunities for [REDACTED].
220. Cellnex is currently one of three bidders for the TfL Telecommunications Project. The project involves partnering with TfL to provide mobile coverage at stations and in tunnels (largely via DAS solutions) and includes the commercialisation of 80,000 streetscape assets (street lighting columns and bus shelters) across the whole London Red Route, which can be marketed for small cell deployment to MNOs.²⁴⁵ Arqiva is not one of the bidders for this opportunity. Cellnex's internal documents acknowledge this is a significant opportunity for small cell growth in London.²⁴⁶ The CMA notes that Cellnex, if successful in the bid, would be provided with access to a significant number of

²⁴⁰ [Merger Assessment Guidelines](#), paragraphs 5.4.13 - 5.4.15.

²⁴¹ Although the Merger Assessment Guidelines refer to entry rather than expansion, as Cellnex has some presence in the market, expansion rather than entry is appropriate here.

²⁴² [REDACTED].

²⁴³ For example, Cellnex has held commercial discussions and submitted bids for [REDACTED] small cell opportunities in the UK since 2017. These opportunities have [REDACTED].

²⁴⁴ See paragraph 47 regarding the difference between bidding for concessions (for access to assets), and bidding for deployment of small cells. Annex 1117 to the FMN, 'Cellnex Bidding Data in response to Question 22 of RFI 2' and Cellnex data, Annex 1118 to the FMN, 'Cellnex Bidding Data in response to Question 23 of RFI 2'.

²⁴⁵ TfL, [Connected London](#), page 11; [REDACTED].

²⁴⁶ [REDACTED].

assets for potential small cell deployment and therefore the possibility to expand its position in small cells in the UK, subject to customer demand.²⁴⁷

221. It has, however, not been necessary to conclude on whether Cellnex's expansion through winning this contract would be likely, as (for the reasons set out below) the CMA does not consider that such expansion would lead to greater competition in small cells, such that the loss of the constraint exercised by Cellnex would lead to a realistic prospect of an SLC.

Whether Cellnex's expansion would lead to greater competition

222. The CMA notes that the small cell market in the UK is still at an early stage of development. While third parties and the Parties' internal documents acknowledge that the roll-out of 5G is likely to see greater demand for the deployment of small cells,²⁴⁸ views expressed in the Parties' internal documents and by a number of competitors and customers differed on the time horizon over which the market may develop, and the level of future demand. Ofcom told the CMA that it expects the 5G roll-out will be 'evolution rather than revolution' and that the deployment of small cells on street furniture for this purpose will be incremental, suggesting that the focus for the next three to four years is likely to remain on the use of existing sites.²⁴⁹
223. Nevertheless, within this nascent market, Arqiva has established a position in small cells in the UK, centred on London. It has the largest number of deployed small cell sites in the UK by a significant margin ([REDACTED]) amounting to [60-70]% of estimated total supply by WIPs).²⁵⁰ It has also won the majority of tenders for small cell concessions with London Boroughs. It has engaged in small cell deployment projects with [REDACTED] (albeit some only on a pilot basis).²⁵¹ While Arqiva considered [REDACTED],²⁵² Recent documents indicate that Arqiva will

²⁴⁷ As explained in paragraph 47, suppliers first compete for access to small cell assets, and then seek to market those assets to MNOs for deployment of small cells. The TfL contract is a competition for access to small cell assets; any winning bidder must then market those sites to MNOs in order to secure small cell deployment contracts. The Parties submitted that the TfL Telecommunications Commercialisation Project is an opportunity primarily to provide a connectivity solution to achieve 4G coverage on the London Underground, and that the commercialisation of the overground streetscape assets is ancillary to this main purpose: Parties' response to the CMA's Issues Letter, paragraph 4.46. However, the CMA believes that the opportunity for small cell deployment afforded by the contract is material to its assessment, regardless of whether this is the key motivation for Cellnex's bid.

²⁴⁸ Eg DCMS, [Future Telecoms Infrastructure Review](#), 23 July 2018, page 7; Ofcom, [Enabling 5G in the UK](#), 9 March 2018, paragraph 1.23; BT press release '[BT calls for open, equivalent access to street furniture to boost 4G and 5G coverage](#)', 21 March 2019; [REDACTED].

²⁴⁹ [REDACTED].

²⁵⁰ Number of Arqiva sites as provided by the Parties: FMN, paragraph 2.15. Shares of supply as estimated by the CMA based on information provided by the Parties and third parties.

²⁵¹ [REDACTED]: Parties' response to the CMA's Issues Letter, paragraph 4.6.

²⁵² [REDACTED].

continue to evaluate future small cell concession opportunities on a case by case basis.²⁵³

224. Given Arqiva's established position in small cells, the CMA would be concerned if expansion by Cellnex (in particular through winning the TfL contract) would place a material constraint on Arqiva which would be absent post-Merger (also taking into account the constraint posed by other competitors).
225. However, the CMA has found that, regardless of any prospective expansion by Cellnex (including through winning the TfL contract), there will remain sufficient competition in the supply of access to small cell sites, for the following reasons.
- (a) There are several other actual and potential competitors which are at least as credible as Cellnex. These include at least:
- (i) BT Enterprise (which has deployed small cells for Telefonica and EE and is described in an Arqiva document [REDACTED]);²⁵⁴
 - (ii) Ontix (which was the winner of the Westminster small cell concession and is described in Arqiva documents [REDACTED]);²⁵⁵
 - (iii) Freshwave (particularly through its group company iWireless Solutions, which one third party described as having a much more commercially attractive offer than Arqiva. The CMA also acknowledges the repeated statements made by the group CEO regarding the potential of the small cell market);²⁵⁶
 - (iv) WIG (which was the winner of an Aberdeen city council small cell concession and which an Arqiva internal document described [REDACTED]);²⁵⁷ and
 - (v) BAI (which, in light of its participation in the TfL contract is a potential competitor, and which is referred to in a Cellnex internal document [REDACTED]).²⁵⁸

253 [REDACTED].
254 [REDACTED].
255 [REDACTED].
256 [REDACTED].
257 [REDACTED].
258 [REDACTED].

While the track-record and prospects for expansion of each player varies, this is consistent with the fact that this remains a nascent market, and consistent with Cellnex's own unproven track-record and prospects for growth.

- (b) In addition to competition from other WIPs, the Parties face an additional out-of-market constraint from MNO self-supply, with both Parties' documents noting this as a competitive threat.²⁵⁹ In line with this, the Parties' internal documents also refer to MNOs and MNO JVs as competitors in some instances, [REDACTED]. There is also some evidence that MNOs may be better placed than WIPs for small cell deployment, as one document suggest [REDACTED].²⁶⁰
- (c) The evidence does not suggest that Cellnex is a particularly close competitor to Arqiva. The Parties have [REDACTED], and are not competing against each other in the TfL contract (which Arqiva did not bid for).²⁶¹ Nor do Arqiva's internal documents put materially greater weight on Cellnex than other competitors, typically including Cellnex alongside several of the other actual and potential competitors listed in paragraph (a) above.²⁶²
- (d) While the assets which Arqiva already has access to, and those that Cellnex could gain access to through the TfL contract, appear to be valuable assets for small cell deployment,²⁶³ the CMA found there to be a wide range of other assets that customers would consider utilising (now or in the future). For example, an Arqiva internal document [REDACTED].²⁶⁴ [REDACTED].²⁶⁵
- (e) There appears to be a range of business models and emerging solutions for mobile network densification which offers competitive alternatives to small cell solutions, which may provide an additional out-of-market constraint on Arqiva. For example, some alternative suppliers offer end-to-end solutions that provide access to small cell sites in combination with low-cost access to fibre (whether directly or in partnership with fixed telecoms providers). Given the importance of fibre access for small cell deployment, such suppliers may benefit from a competitive advantage over suppliers like Arqiva that cannot offer fibre access independently.²⁶⁶

²⁵⁹ [REDACTED]: [REDACTED]. [REDACTED].

²⁶⁰ Cellnex Internal Document, Response to s109 Notice dated 27 February 2020, [REDACTED].

²⁶¹ CRA, Analysis of Bidding Data dated 16 March 2020 V2, paragraph 38.

²⁶² See for example, [REDACTED].

²⁶³ [REDACTED].

²⁶⁴ [REDACTED].

²⁶⁵ [REDACTED].

²⁶⁶ The importance of low-cost access to fibre was highlighted by a number of third parties. [REDACTED]. See also public statements by WIG and Freshwave Group regarding the importance of fibre networks to their small cell offerings:

The ability to offer cost-effective solutions was highlighted both by third parties and the Parties' internal documents as a key factor in customers' purchasing decisions.²⁶⁷ Arqiva's internal documents also highlight as competitive threats to their small cell business alternative solutions (ie other than small cells) through which MNOs can expand mobile coverage and capacity (eg [REDACTED]).²⁶⁸

(f) There is some evidence to suggest that Arqiva may be a less strong competitor in the future. Some third parties suggest that Arqiva is seen as expensive relative to alternatives. Arqiva's current London concessions are also time-limited. While Arqiva [REDACTED],²⁶⁹ it will need to bid to reacquire rights to other assets when its concessions expire. Further, the value of these concessions (and the competitive advantage they confer) may lessen in the future, given the UK Government's current recommendation that future concessions are let on a non-exclusive basis.²⁷⁰

(g) The CMA has not received any third-party concerns regarding the effect of the Merger on the supply of access to small cell sites in the UK.

226. Based on the evidence set out above, the CMA believes that, regardless of any prospective expansion by Cellnex (including through winning 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 market's early stage of development means that the future competitive strength of a range of competitors remains relatively uncertain. Nevertheless, within this context, 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.

Conclusion on horizontal unilateral effects – supply of access to small cell sites

227. For the reasons set out above, the CMA believes that, regardless 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

<https://www.wirelessinfrastructure.co.uk/city-of-aberdeen-paves-the-way-for-5g/> and <https://data-economy.com/zayo-begins-new-era-under-ownership-of-digital-colony-and-eqt/>.

²⁶⁷ [REDACTED].

²⁶⁸ [REDACTED].

²⁶⁹ Parties' response to the CMA's Issues Letter, footnote 216.

²⁷⁰ See [DCMS Future Telecoms Infrastructure Review](#), paragraph 208. This says that 'The Government also believes that all future concession contracts should mandate the provision of the assets on an open access basis, under fair, reasonable and non-discriminatory terms.'

the UK, such that any loss of constraint posed by Cellnex would not lead to a realistic prospect of an SLC. 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.

Conclusion on horizontal unilateral effects

228. For the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to:

- (a) The supply of access to macro sites in the UK; and
- (b) The supply of access to small cell sites in the UK.

Barriers to entry and expansion

229. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.²⁷¹

230. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Countervailing buyer power

231. The Parties submitted that MNO/MNO JV customers in the passive telecommunications infrastructure sector have substantial buyer power due to their size and assets. However, the CMA has not had to conclude on countervailing buyer power as the Merger does not give rise to competition concerns on any basis.

Third party views

232. The CMA contacted customers and competitors of the Parties, including actual and potential customers and competitors. As set out above, some customers and competitors raised concerns about the Merger (in relation to macro sites). The CMA's assessment of these concerns is set out in detail

²⁷¹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

above. No third parties raised concerns in relation to the supply of access to small cell sites.

233. The CMA also contacted Ofcom, which noted (based on the materials relating to the Merger that it had reviewed) that it did not hold concerns about the Merger from a competition perspective. Ofcom noted that it generally did not consider Arqiva to hold a significant amount of market power and influence over the downstream MNO market. Ofcom further noted that Cellnex is a moderately small supplier (in terms of market concentration) and that the MNOs in this space are important competitors in the market.²⁷²
234. All third-party comments have been taken into account where appropriate in the competitive assessment above.

Decision

235. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
236. The Merger will therefore **not be referred** under section 33(1) of the Act.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
22 April 2020

END NOTES

ⁱ As explained in paragraph 19, following an internal restructuring to take place prior to completion, the Seller group will transfer into Arqiva Services Limited certain assets to be acquired as part of the Merger, and will transfer out of Arqiva Services Limited certain assets to be retained by the Seller group. References to 'Arqiva' in this decision therefore refer to Arqiva Services Limited as it will exist at the point of completion.

ⁱⁱ The CMA notes that since the Parties submitted the FMN to the CMA, the internal restructuring was completed by the Seller, following which the Seller now has the following three main business segments: (i) telecommunications; (ii) Media Networks; and (iii) machine-to-machine data services. Furthermore, this reflects the turnover attributable to the business that will form Arqiva Services Limited at the point of completion.

ⁱⁱⁱ The brand name for CTIL is 'Cornerstone'.

^{iv} Reference to Arqiva in this footnote should be a reference to the Seller group.

^v The CMA notes that Cellnex acquired the marketing rights to the 221 High Towers from BT; it did not acquire the towers.

^{vi} The CMA notes that this text should refer to the Parties being able to use undeveloped sites which are suitable for macro sites as an input for the provision of BTS solutions or sites which are acquired on an ad hoc basis.

^{vii} The CMA notes that the relevant towers are located on Cellnex's 'greenfield' sites.

^{viii} The CMA notes that Cellnex acquired the marketing rights to the 220 High Towers from BT; it did not acquire the towers.

²⁷² [redacted].