

# Anticipated acquisition by Cellnex UK Limited of the passive infrastructure assets of CK Hutchison Networks Europe Investments S.À R.L

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

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### Introduction

1. Cellnex UK Limited (**Cellnex**) has agreed to acquire the passive infrastructure assets in the UK of the CK Hutchison group (**CK Hutchison**) (the **Merger**). CK Hutchison and Cellnex are together referred to as the **Parties**.
2. Cellnex is an owner and operator of sites in the UK containing passive infrastructure (elevated structures to which telecommunications equipment can be attached) used by wireless communication providers. Cellnex's customers are mainly mobile network operators (**MNOs**). Cellnex's passive infrastructure is also used by other communication providers.
3. CK Hutchison is a multinational conglomerate headquartered in Hong Kong. In the UK, CK Hutchison's telecommunication division operates as an MNO, namely 3UK. 3UK and BT/EE have an infrastructure sharing joint venture (**MNO JV**) to manage their shared networks, namely Mobile Broadband Network Limited (**MBNL** or the **MBNL JV**). 3UK also owns certain passive infrastructure assets outside of the MBNL JV.
4. The Parties overlap in the supply of access to passive infrastructure assets, specifically developed macro sites, and ancillary services to MNO and non-MNO customers in the UK.
5. On completion of the Merger:
  - (a) Cellnex will acquire ownership of 3UK's unilaterally owned passive infrastructure sites in the UK, including 2,600 sites under construction (the **Unilateral Sites**).

- (b) Cellnex will obtain the 'economic benefit' to which CK Hutchison is currently entitled in respect of approximately 7,500 sites that sit within the MBNL JV (ie sites owned by 3UK, BT/EE, or by those companies jointly as part of the joint venture) (the **MBNL Sites**). Cellnex will also be responsible for bearing certain costs associated with these interests.
6. In addition, once the MBNL JV (whose term runs to the end of 2031) is dissolved and 3UK receives its share of sites and assets from the JV, 3UK will transfer up to half of the MBNL Sites (subject to a minimum of 3,000 and a maximum of approximately 3,750) to Cellnex (the **Transfer Sites**).
7. The Unilateral Sites, MBNL Sites and Transfer Sites are together referred to as the **Transaction Sites**. Cellnex and the Transaction Sites are together referred to as the **Merged Entity**.
8. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Cellnex, the Unilateral Sites, the MBNL Sites and the Transfer Sites is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover and share of supply tests are met. With regard to the MBNL Sites in particular, the CMA believes that Cellnex will be able to indirectly influence commercial and strategic policy decisions for the MBNL Sites, giving it the ability to exercise material influence over the MBNL Sites. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## **Counterfactual**

9. The CMA considered the competitive effects of the Merger against a counterfactual in which CK Hutchison pursued alternative methods to extract value from the Transaction Sites. While the CMA is not required to reach a view on all aspects of the alternative courses of action that CK Hutchison could have pursued absent the Merger, it believes, on the basis of the evidence currently available, that there is a realistic prospect that it would have sold the Transaction Sites to another purchaser. The CMA believes that this gives rise to a counterfactual in which there would have been stronger competition between Cellnex and the Transaction Sites as compared to the prevailing conditions of competition.

## **Competitive Assessment**

10. The Parties overlap in the supply of access to developed macro sites and ancillary services to wireless communication providers in the UK.

11. The CMA assessed whether the Merger may be expected to result in a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to the supply of access to developed macro sites and ancillary services to wireless communication providers in the UK. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA assessed (a) Cellnex's existing position; and (b) the impact of the Merger on Cellnex's market position.
12. The CMA found that the size and reach of a supplier can be an important competitive capability. In particular, having a large geographic footprint is a competitive advantage because a supplier with a wider geographic footprint is more likely to have a suitable site for a customer. Several third parties also submitted that a larger geographic footprint is likely to increase the bargaining power held by a tower operator, with one submitting that the ability to dictate prices increases with the number of sites owned by a particular supplier.
13. The CMA's investigation found that Cellnex has a very strong existing market position in the supply of access to developed macro sites to wireless communication providers in the UK. Cellnex is the largest independent tower company in the UK with a current share of supply for access to developed macro sites in the UK of around [80-90]% by number of developed macro sites, with the Transaction Sites currently not being in the market, as they are held by CK Hutchison and MBNL for their own self-supply.
14. This is consistent with Cellnex's internal documents, as well as third party views, which confirm that Cellnex is the largest independent tower company in the UK. Cellnex's bidding data also shows that Cellnex won almost all contracts that it bid for in 2020 (excluding opportunities abandoned by customers).
15. The CMA estimated that the acquisition of the Unilateral Sites would represent a [20-30]% increment to Cellnex's share of sites, and that the acquisition of the Unilateral Sites and the Transfer Sites would represent a [30-40]% increment to Cellnex's share of sites. The CMA considers that in the counterfactual, these sites would have been acquired by another purchaser, which would have brought about a significant additional constraint on Cellnex.
16. The CMA also believes that the Merger may further strengthen Cellnex's position, as a result of its acquisition of material influence over the MBNL Sites. The CMA believes that Cellnex's material influence over the commercial and policy decisions for the MBNL Sites could, for example, impact BT/EE's ability to upgrade the MBNL Sites to 5G, reducing the constraint that BT/EE's self-supply currently exercises on Cellnex, and would exercise on the Merged Entity post-Merger.

17. Consequently, the CMA believes that Cellnex already has a strong market position, which would be strengthened as a result of its acquisition of a very large number of additional sites together with its ability to exercise material influence over the MBNL Sites.
18. Having considered the impact of the Merger on Cellnex's market position, the CMA also assessed the current and future constraints on the Merged Entity from:
  - (a) independent WIPs;
  - (b) self-supply and supply by MNO JVs; and
  - (c) Build-to-Suit (**BTS**) sites.
19. The CMA believes that other independent WIPs pose only a limited constraint on Cellnex. The share of supply estimates also show that following the acquisition of the Unilateral Sites and the Transfer Sites, the next-largest largest competitor would have a share of supply of [5-10]%, with the shares of supply of the remaining competitors being below 5%. The CMA also found that expansion plans by WIPs are limited and that opportunities for large scale organic growth are limited for competitors with fewer existing sites.
20. The CMA also considered the constraint from MNOs (namely, Telefonica, Vodafone, Three and BT/EE) as well as CTIL (the Vodafone / O2 MNO JV). In *Cellnex / Arqiva*, the CMA had found that MNO and MNO JV self-supply constrained Cellnex, but that the strength of the constraint depended on the customer concerned. In *Cellnex / Arqiva*, the CMA also found that Cellnex was materially constrained by the threat of self-supply by MNOs, particularly given that MNOs have a preference to self-supply where they have their own sites. However, the CMA found that the nature of the constraint meant that it was not among the most immediate sources of competition to Cellnex and that self-supply should be characterised as a 'price ceiling', at least in the near-term.
21. In this case, the CMA considers that self-supply by MNOs and MNO JVs continues to constrain Cellnex to some extent. As set out at paragraph 16, the CMA considers that as a result of the Merger, BT/EE's self-supply constraint on Cellnex might be weakened.
22. The CMA considered whether other MNOs and MNO JVs may make their sites available to customers, thereby becoming a stronger constraint, individually or collectively, on the Merged Entity. On the basis of third-party submissions, the CMA believes that the MNOs and MNO JVs will predominantly continue to use their sites to self-supply. With regard to CTIL in

particular, the CMA believes that it is likely to prioritise serving its shareholders rather than operating as an independent tower company that is neutral as to which customers occupy its sites.

23. The CMA also assessed the constraint posed by BTS sites. Third parties submitted that there are several advantages in using an existing site compared to a BTS site. The CMA also found that the bidding data shows that Cellnex predominantly wins contracts using existing sites, rather than BTS sites. While some WIPs submitted that they use BTS sites more than existing sites to fulfil customer tenders, the CMA considers that this is likely as a result of their more limited geographic footprint, meaning that they are more likely to need to create new sites to fulfil customer needs.
24. The CMA therefore believes that there will be insufficient competition from other suppliers (including WIPs, MNOs and MNO JVs) or from BTS sites post-Merger to constrain the Merged Entity.

## **Decision**

25. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of access to developed macro sites and ancillary services to wireless communication providers in the UK.
26. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 20 July 2021 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.