ANTICIPATED ACQUISITION BY CELLNEX UK LIMITED OF THE PASSIVE INFRASTRUCTURE ASSETS OF CK HUTCHISON NETWORKS EUROPE INVESTMENTS S.À R.L.

Summary of provisional findings

Notified: 16 December 2021

Overview

1. The Competition and Markets Authority (CMA) has provisionally found that the anticipated acquisition (the Merger) by Cellnex UK Limited (Cellnex) of the passive infrastructure assets in the UK of the CK Hutchison group (CK Hutchison) may be expected to result in a substantial lessening of competition (SLC) in the supply of access to developed macro sites and ancillary services to mobile network operators (MNOs) and other wireless communication providers in the UK.

2. This is not our final decision and we invite any interested parties to make submissions on these provisional findings by Friday 14 January 2022.

3. Alongside these provisional findings, we have published a notice of possible remedies which sets out our initial views on the measures that might be required to remedy the SLC that we have provisionally found. We invite submissions on these initial views by Friday 7 January 2022.

4. We will take all submissions received by these dates into account in reaching our final decision.

Background

The reference

5. On 27 July 2021, the CMA, in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated acquisition by Cellnex of the passive infrastructure assets in the UK of CK Hutchison (together, the

Parties) for further investigation and report by a group of CMA panel members.

6. In exercise of its duty under section 36(1) of the Act, the CMA must decide:

   (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation within the meaning of section 23 of the Act. We have provisionally found that the Merger will result in the creation of a relevant merger situation;

   (b) whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services. We have provisionally found an SLC and a summary of our findings is set out below; and

   (c) what action we might take for the purposes of remedying, mitigating or preventing any SLC or resulting adverse effect we have identified. This is the subject of the notice of possible remedies we have published alongside these provisional findings, in which we have discussed whether to prohibit the Merger, or whether any other measures could effectively remedy the SLC we have provisionally found.

7. In addressing the questions above, we have considered a range of evidence from the Parties, their customers and rivals through submissions, responses to information requests and hearings.

The Parties

8. Cellnex is a wireless telecommunications infrastructure and services company headquartered in Spain and operating across Europe, including in Austria, Denmark, Spain, Sweden, Switzerland, Italy, the Netherlands, France, Ireland, Poland, Portugal and the UK.

9. In the UK, Cellnex is an owner and operator of sites containing passive infrastructure used by mobile communication providers, primarily the UK's four MNOs although its passive infrastructure is also used by other communication providers who are not MNOs (see Industry Background chapter for details of these).

10. Cellnex entered the UK market in 2016 through its acquisition of 540 sites and passive infrastructure from Shere Group Limited. In 2020, through its acquisition of Arqiva Services Limited (Arqiva), Cellnex acquired 7,113 developed macro sites and became the largest wireless infrastructure provider (WIP) in the UK.

11. Cellnex's turnover in 2020 was £1,550 million worldwide and £250 million in the UK.

12. CK Hutchison is a multinational conglomerate headquartered in Hong Kong and listed on the Hong Kong Stock Exchange. Its activities include ports and related services, retail, infrastructure and telecommunications. In the UK, CK Hutchison operates an MNO, 3UK.

13. 3UK and another MNO, BT/EE, have an infrastructure-sharing joint venture to manage their shared networks, Mobile Broadband Network Limited (MBNL). MBNL was established in 2007 and operates [7,500-8,500] macro sites. 3UK also owns passive infrastructure assets outside of the MBNL JV.

14. In 2020, CK Hutchison's worldwide revenue was £40.5 billion and its UK telecommunications operations revenue was approximately £2.4 billion.

The Merger

15. The Merger is one of six transactions whereby Cellnex is acquiring passive infrastructure assets from CK Hutchison: as well as in the UK, Cellnex has acquired assets in Austria, Denmark, Ireland, Italy, and Sweden. The five European transactions have now completed.

16. Between 2019 and July 2020, CK Hutchison conducted an internal reorganisation of its telecommunications division in Europe. It set up CK Hutchison Networks Holdings Limited to group its European tower assets into separately managed entities or divisions which manage the passive infrastructure assets in their respective countries.

17. In the UK, in October 2020 CK Hutchison incorporated CK Hutchison Networks (UK) Limited (TowerCo) to hold 3UK's passive infrastructure assets outside of the MBNL JV.

18. For the UK transaction, Cellnex, as buyer, and CK Hutchison Networks Europe Investments S.À R.L., as seller, entered into a sale and purchase agreement on 12 November 2020.

19. On completion of the Merger, Cellnex will acquire:

(a) the entire issued share capital of TowerCo which includes the following passive infrastructure assets):

(i) [100-200] developed macro sites that were previously owned by UK Broadband, a wholly-owned subsidiary of 3UK (the UKB Sites);

(ii) 2,600 monopoles which currently host 3UK active wireless telecommunications equipment. The monopoles that have been constructed at completion will transfer to Cellnex at that time. The legal title in the remaining monopoles will transfer to Cellnex once they have been built; and

(b) the economic benefit of the interests to which 3UK is entitled in respect of [7,000-8,000] macro sites in the MBNL joint venture (the MBNL Sites). Cellnex will also bear the costs associated with these interests. At completion, the Parties will enter into three agreements which specify the nature of the economic benefit and associated costs and set out the legal framework for their transfer and oversight.

20. In addition, following the dissolution of MBNL, scheduled to take place in 2031, 3UK will transfer legal title to a subset of the MBNL Sites, subject to a minimum of 3,000 sites and a maximum of half of the number of MBNL Sites to Cellnex (the Transfer Sites). The exact number and identity of the Transfer Sites will be determined at the termination of the MBNL joint venture.

Industry background

21. Mobile communications services are a vital part of most people's lives in the UK, both for work and leisure. Consumers buy mobile services either from one of the UK's four MNOs (BT/EE, O2, Vodafone or 3UK) or from a mobile virtual network operator (MVNO) such as Sky or Virgin Mobile, that uses an MNO's network.

22. In order to provide their services, MNOs have UK-wide networks of physical infrastructure to support the combination of wireless and fixed telecom technologies which are used to deliver their services. The physical infrastructure includes various types of tower structures which host MNOs' antennae, services such as power supplies and the land on which these are located. These towers or sites are referred to as 'passive' infrastructure while the antennae and other electronic equipment that the towers host are 'active'.

23. The number and location of passive sites hosting the MNOs' active equipment is one factor that impacts the MNOs' geographic coverage and network capacity, both of which are important to their customers. For this reason, MNOs (and non-MNOs which use this equipment) plan the location and number of their sites carefully. They are also subject to legal permissions and restrictions from local planning authorities in relation to site location.

24. Each MNO uses around 18-19,000 macro sites across the UK. MNOs self-supply the majority (up to three-quarters) of the sites that they use, including

through joint ventures: MBNL, as described above, and Cornerstone Telecommunications Infrastructure Limited (CTIL), a joint venture between O2 and Vodafone. WIPs provide the remaining quarter and also supply the MNO joint ventures. CTIL commercialised its activity in early 2021 and now operates as a WIP.

25. Customers obtain their passive infrastructure from three main sources:

(a) Sites that are leased or owned and operated by the MNO itself;

(b) Sites that are leased or owned and operated by the MNO in a JV with another MNO; and

(c) Sites supplied by third party WIPs.

26. Both (a) and (b) above are known as 'self-supply' by the customer and where a new site is built, it is known as self-build. Where a new site is built by a WIP for a customer, this is known as build to suit (BTS).

27. While their mobile networks are mature the MNOs continue to develop their coverage and capacity, including, since 2019, rolling out the latest generation of mobile technology, 5G.

28. MNOs also require new sites when landlords require passive infrastructure operators to 'quit' a site location. MNOs are also active in the delivery of the UK Government's programme to increase mobile provision in rural areas, the Shared Rural Network, and this has driven some demand for new sites.

Provisional findings

Relevant merger situation

29. An anticipated merger must meet the following two criteria to constitute a relevant merger situation (RMS) pursuant to section 23 of the Act:

(a) first, there must be arrangements in progress or in contemplation which will, if carried into effect, lead to two or more enterprises ceasing to be distinct; and

(b) second, either the UK turnover of the enterprise which is being acquired exceeds £70 million, or the enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, together supply or acquire at least 25% of all those particular goods or services of that kind supplied in the UK or in a substantial part of it. The

merger must also result in an increment to the share of supply or acquisition (the share of supply test).[1]

30. With regard to the second criterion, the combined turnover of TowerCo and the MBNL Sites (including the Transfer Sites) in the UK in 2019 exceeded £70 million. The share of supply test is also satisfied as Cellnex has a pre-Merger share of supply in excess of 25% in the supply of access to developed macro sites in the UK, which will increase further as a result of the Merger.

31. In terms of the first criterion:

(a) The sale and purchase agreement between Cellnex and CK Hutchison Networks Europe Investments S.À R.L. of November 2020 provides that Cellnex will acquire the entire issued share capital of TowerCo upon completion of the Merger, resulting in Cellnex and TowerCo ceasing to be distinct.

(b) The ancillary agreements to the sale and purchase agreement provide that Cellnex will acquire the economic benefit of the MBNL Sites. We consider that the arrangements in the round amount to material influence over the MBNL Sites, as defined by section 26 of the Act as being able 'directly or indirectly … materially to influence the policy of a body corporate … without having a controlling interest in that body corporate', resulting in Cellnex and the MBNL Sites ceasing to be distinct. We have reached this provisional view having regard to the overall context of the Merger and the commercial reality of the arrangements, the contractual agreements between the Parties and the wider commercial relationship between the Parties.

(c) The ancillary agreements to the sale and purchase agreement provide that Cellnex will acquire the Transfer Sites on dissolution of MBNL, resulting in Cellnex and the Transfer Sites ceasing to be distinct.

32. The acquisition of TowerCo, the economic benefit of the MBNL Sites and subsequent acquisition of the Transfer Sites are interlinked and inter-conditional, therefore we consider that the Merger constitutes a single commercial transaction and results in a single RMS.

33. Therefore, we have provisionally found that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of an RMS under the Act.

[1] The Act, section 23.

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Competitive effects

Counterfactual

Scope of the assessment

34. To assess the effects of the Merger, we have considered the prospects for competition with the Merger against what would have been the competitive situation without the Merger: this is the counterfactual.

35. This is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC: we select the most likely conditions of competition as the counterfactual against which to assess the merger. These may be the prevailing conditions of competition or conditions of competition that involve stronger or weaker competition between the merger firms. If two or more possible counterfactual scenarios lead to broadly the same conditions of competition, we do not need to select the particular scenario that leads to the counterfactual.

36. CK Hutchison told us that, if the Merger were blocked by the CMA, the appropriate counterfactual would be that it would continue to own and operate its UK passive infrastructure assets as at present. CK Hutchison also told us that all of its passive infrastructure assets elsewhere in Europe had been sold and the counterfactual could therefore only be assessed in relation to any transaction relating to the UK alone.

37. We consider that, with regard to the approach to the counterfactual assessment, the question we need to answer is not, as CK Hutchison submitted, what the factual situation would be if the Merger does not proceed' or what the counterfactual would be if the Merger was blocked by the CMA.

38. We need to determine what the most likely conditions of competition would have been absent the Merger (which formed part of the broader commercial transaction). The fact that the non-UK assets cannot now be sold to an alternative purchaser if the Merger does not go ahead (because they have already been sold) does not prevent us from considering counterfactual scenarios involving the sale of non-UK assets.

39. We also do not consider, as suggested by CK Hutchison, that the fact that the Parties structured the transactions such that the sale of assets outside the UK could proceed independently of the sale of the UK assets is determinative for our assessment of the counterfactual.

40. The key question is whether the sale of the remainder of CK Hutchison's passive infrastructure assets to Cellnex would have proceeded absent the Merger agreement to sell the UK assets to Cellnex.

41. On this point, we consider that the sale of the EU assets and the UK assets formed part of an overall commercial transaction between the Parties. The evidence shows that, in the absence of agreement to acquire the UK assets, the overall deal between CK Hutchison and Cellnex – including in relation to the EU assets – would not have been done in its current form. As a result, the sale of the EU assets can be considered a consequence of the Merger within the meaning of our guidance.

42. On that basis, we consider that it is open to us to consider a counterfactual that would have included the sale of both the EU assets and the UK assets to an alternative purchaser.

Our assessment of the counterfactual

43. We have noted a broader industry trend, in both the UK and other jurisdictions, in which owners of passive infrastructure assets have sought to realise an uplift in value through some form of commercialisation of them.

44. In pursuit of this objective, CK Hutchison reorganised its European passive infrastructure assets into a separate tower company in 2019. This enabled it to explore a range of opportunities for commercialisation available to it.

45. It also identified a need to increase funding of 3UK, its mobile network in the UK, including the rollout of its 5G network. In our view, this meant that CK Hutchison preferred an option that would raise the necessary cash proceeds for this investment.

46. In our view, this provided CK Hutchison with a clear incentive to commercialise its passive infrastructure. We have seen no evidence to suggest that CK Hutchison gave serious consideration to continuing to own and operate its UK passive infrastructure assets as it had before.

47. We considered the options available to CK Hutchison to achieve its objectives absent the Merger. We considered the credibility of the alternative options available to it, in order to inform our view of the overall likelihood of a counterfactual in which CK Hutchison's passive infrastructure would have been operated in direct competition with that of Cellnex.

48. The evidence available to us shows that CK Hutchison had a range of credible opportunities to commercialise its assets. We note that passive infrastructure assets are generally considered to be attractive and highly

marketable assets, and we have identified a number of businesses with a strong interest and established track record in investing in such assets. Other owners of similar assets have found ways to realise an uplift in their value and have taken various approaches to doing so, including outright sale, obtaining minority investments or establishing joint ventures. In addition, the UK is an attractive market for such assets and CK Hutchison's assets represented one of a limited number of opportunities for investors to acquire an interest in them.

49. CK Hutchison considered various options to realise the uplift in the value of its passive infrastructure assets. Some options were not mutually exclusive and could have taken place sequentially.

50. We are not limited to considering alternative scenarios that would have occurred at exactly the same time as the developments that gave rise to the Merger. In this case, we have considered the options available to CK Hutchison over an extended period of time. This is because there is no indication, in the evidence we have seen, that the sales process that CK Hutchison ran was considered to be a 'one shot' process that excluded the pursuit of other options (either individually or in combination) at later points in time.

51. We have found that credible alternative purchasers were interested in acquiring the assets within the sales process that CK Hutchison ran. We also note that CK Hutchison's alternative options were not limited to the outcome of the sales process that was run and that, had that sales process not resulted in an acceptable outcome, CK Hutchison would have had a variety of alternative ways in which it could have realised its commercial objectives. In particular, it could have run another sales process and/or made changes to the proposed transaction structure so as to appeal to a wider range of potential acquirers of the assets.

52. On the basis of the available evidence, we consider that a sale of CK Hutchison's UK assets (either individually or as part of a wider package of assets) to an alternative purchaser with the incentive to operate them in direct competition with Cellnex's passive infrastructure assets would have been the most likely alternative option for it absent the Merger. Such a sale could have been effected either within the original sales process or through a modified and/or extended sales process that we consider would, in light of the underlying commercial incentives of CK Hutchison, have taken place in the short- to medium-term (ie within approximately three years of CK Hutchison's decision to sell its passive infrastructure assets to a third party).

53. Accordingly, any alternative purchaser would have obtained control over CK Hutchison's UK assets in the substantively same sequence as envisaged by the Parties pursuant to the terms of the Merger, that is (a) the Unilateral Sites on completion of the transaction; and (b) legal title to the Transfer Sites on dissolution of MBNL, scheduled for 2031 and within the timeframe considered in our assessment of the competitive effects of the Merger.

54. The evidence available to us shows that CK Hutchison gave some consideration to other options.

55. Given that CK Hutchison focussed on the sale of its passive infrastructure assets, the evidence available to inform our assessment of these options is more limited.

56. CK Hutchison considered some options to be less attractive than a sale of the UK assets and some may have raised practical difficulties. On the other hand, the evidence available to us also shows that these alternatives were broadly regarded as credible options by market participants, and we believe they could have been given more detailed consideration by CK Hutchison (in light of its commercial objectives) had it encountered difficulties in securing the sale of the UK assets.

57. On that basis, while we consider it is more likely that CK Hutchison would have sold its UK assets to a third party, either through the original sales process or a subsequent sales process, we consider that, in the absence of such a sale, other options could have been used to pursue its broader commercial objectives. Each of these options would have resulted in CK Hutchison's passive infrastructure assets in the UK being operated in competition with Cellnex.

58. Overall, given the wide range of credible options available to CK Hutchison to realise the value of its UK assets and the strong incentive on it to do so, we do not believe that the evidence available to us supports the stated position of the Parties that the only possible way that it could pursue its commercial objectives was through a sale to a single possible counterparty, Cellnex.

Provisional conclusion on counterfactual

59. We provisionally conclude that the most likely counterfactual in this case is one in which there would have been stronger conditions of competition between Cellnex and the owner of CK Hutchison's UK assets. This is because we consider that the most likely outcome, absent the Merger, is that CK Hutchison's UK passive infrastructure assets would have been operated in direct competition with Cellnex's passive infrastructure assets. This outcome

would be achieved through the successful pursuit by CK Hutchison of one or more of the options that were available to CK Hutchison to commercialise its passive infrastructure assets and which are set out above.

Market definition

60. The purpose of market definition is to provide a framework for the CMA's analysis of the competitive effects of the merger. The relevant market (or markets) is that within which the merger may give rise to an SLC. It contains the most significant competitive alternatives available to the customers of the merged companies.

61. On the basis of the Parties' submissions on product market definition and our own assessment, we have considered that the effects of the Merger should be considered within the market for the supply of access to developed macro sites (including BTS sites) and ancillary services to MNOs and other wireless communication providers.

62. Also, on the basis of the Parties' submissions and our own assessment, we consider that the geographic market is national.

63. We therefore provisionally conclude that the relevant market for the assessment of the Merger is the supply of access to developed macro sites and ancillary services to MNOs and other wireless communication providers in the UK.

Competitive assessment

Nature of competition

64. The market for the supply of access to developed macro sites is complex and has a number of unusual features. Before we assess the impact of the Merger on competition, we therefore first consider in more detail the nature of competition in this market.

65. MNOs represent the main customer group for developed macro sites, although there are also other types of customers who we refer to as non-MNOs. The MNO joint ventures (CTIL and MBNL) are also major customers of WIPs, as well as supplying their own sites and, in CTIL's case, now operating as a WIP itself.

66. In this market, customers typically sign up to long-term framework contracts which provide certainty to customers on the price and service levels they are likely to receive for both their existing and any additional sites they may

require from the same supplier over the term of the agreement. In return, long-term contracts provide suppliers with predictable, committed revenues for the duration of the contracts.

67. We found that the drivers of choice of macro sites are similar amongst MNOs and non-MNOs. These are: geographic location of sites; price; churn allowance; the scale of the supplier and their track record.

(a) The evidence available to us shows that the geographic location of a site is important since the location will determine the coverage that can be provided and the extent to which the site can be incorporated into the rest of the network without disruption, or the extent of any disruption.

(b) We found that prices of existing sites in a WIPs' portfolio are primarily agreed in long-term framework contracts with suppliers, which provide customers with certainty on the price and service levels they are likely to receive for both their existing and any additional sites they may require from the same supplier over the term of the contract. Therefore, the renegotiation of these prices when contracts expire is an important part of our competitive assessment.

(c) The available evidence shows that the existence of a churn allowance (which allows customers to vacate a proportion of sites during the term of the framework contract without financial penalty) and the proportion of sites that fall under the churn allowance are key factors in negotiations over framework contracts. In particular, churn allows customers, in particular MNOs, to evolve their networks in ways which they cannot predict at the outset of a contract and to maintain some competitive pressures on their existing suppliers during the term of the contract.

(d) The evidence also shows that scale and track record contribute to suppliers' competitiveness, alongside other factors, particularly for large contracts. We have found that there are a number of reasons why larger suppliers are stronger competitors, including the greater likelihood of having a site in the right location, customers preferences for dealing with larger suppliers, economies of scale and the ability to secure future commitments to new sites.

68. We have assessed the implications of these factors, which determine customers' choice of sites, on how competition works in this market.

69. In considering how competition can be expected to work in this market, we have taken into account recent developments in the market: while Cellnex may have been the only large WIP competing to retain sites in the past, it is

likely to face competition from another large WIP, CTIL, when large contracts come to be renewed in the future.

70. We have found that the main focus of competition in this market is for large framework agreements with MNO customers. This will primarily take place between suppliers with extensive portfolios of sites, as they as they are best placed to meet customers' needs across a large number of areas.

71. We have also found that switching macro sites is costly and, as a result, does not occur often. However, although customers are unlikely to want or be able to migrate all of their sites away from their current supplier, they can use alternative suppliers to improve the terms on which they obtain access to sites provided by their current supplier in future and can evolve their networks over time by making use of churn allowances to reduce their dependency on that supplier.

72. Therefore, when a framework contract comes up for renewal, the terms on which the customer will be able to renew the contract with the existing supplier, will be influenced by the competition from other WIPs during the process.

73. The evidence shows that suppliers with a large number of existing sites and previous track record are likely to have a competitive advantage over smaller rivals when competing for this demand.

74. We found that, while there is limited demand for new sites, there is some competition for them, mostly driven by particular catalysts, such as an MNO being forced to vacate an existing site or the need to develop the network for 5G.

Competitive assessment

75. We have assessed the Merger's impact on competition, using a counterfactual of stronger conditions of competition between the owner of the CK Hutchison Assets and Cellnex.

- *Our approach to the assessment of competitive dynamics in an evolving market*

76. In light of the counterfactual against which we have assessed the impact of the Merger, we have undertaken a forward-looking assessment, which looks at the market over the longer term, including after Cellnex gains control of the Transfer Sites.

77. The potential competitive effects of the Merger would be likely to play out in different ways over time. In particular, the sector is characterised by the existence of long-term agreements between suppliers and customers and the Transfer Sites will not come under the full control of Cellnex until the MBNL JV ends (whether in 2031 or earlier if mutually agreed by the JV partners).

78. We have considered the impact of the Merger on the structure of the market and competition over the longer-term, and therefore place only limited weight on the contractual arrangements (even in long-term contracts) in assessing the loss of competition that the Merger will bring about.

- *Pre-Merger market outcomes*

79. As set out above, we have found that the size of a supplier's portfolio of sites is an important determinant of its competitive strength. We have therefore assessed suppliers' historical portfolios of sites as a starting point to understand their relative strength and overall extent of competition in the market.

80. We have found that MNOs have historically self-supplied a significant proportion of their sites through MBNL and CTIL with WIPs providing most MNOs with the remainder of their developed macro sites.

81. Until the commercialisation of CTIL at the beginning of 2021, Cellnex was the only large WIP in the UK, with a share of [80-90]% while the next largest competitor had a share of only [5-10]%, and no other competitor had a meaningful share of supply. Even taking into account CTIL's recent commercialisation, making it the largest WIP, we found that the market still remains highly concentrated.

- *Closeness of competition between Cellnex and the owner of the CK Hutchison Assets*

82. We have found that, in the counterfactual, the owner of the CK Hutchison Assets would be a close competitor to Cellnex. It would be the third largest operator in the market, after CTIL and Cellnex, with a large portfolio of existing sites and an extensive geographic footprint.

83. The CK Hutchison Assets would represent a significant proportion of the aggregate overlap of sites which are capable of substituting for Cellnex sites. Removing the owner of the CK Hutchison Assets, even if the overlaps with Cellnex are small in number, would significantly reduce the competitive constraint provided by the overlap sites. This is because we have found that the prospect of losing even a small proportion of sites within a large contract

can influence the terms which a WIP may offer for all of its sites in the framework agreement.

84. More broadly, Cellnex and the owner of the CK Hutchison Assets would be two of only three national players of scale able to offer a comparable package of services to customers and able to compete for large customer contracts.

85. Although the owner of the CK Hutchison Assets would acquire the Transaction Sites in two stages to 2031, we consider that it would be a strong competitor and exercise an immediate competitive threat through using the Unilateral Sites to attract new customers.

- *Competition from alternative suppliers*

86. CTIL can be expected to compete strongly with the Merged Entity in future. Given its scale, which exceeds that of the each of Cellnex and the CK Hutchison Assets, it will be able to compete to attract large customers, in particular for large contracts, with its extensive portfolio of existing sites and, secondarily, with its BTS solution. CTIL would impose a strong competitive constraint on the Merged Entity.

87. In contrast, we have found that all other rival WIPs are, and will likely remain, small and would therefore impose only a very weak competitive constraint on the Merged Entity.

88. This means that, relative to the counterfactual, the Merger would reduce the number of major suppliers from three to two and thereby create a duopoly.

89. In relation to the constraint from sites built-to-suit by WIPs (BTS) and customers' self-build on the Merged Entity's existing sites, we have found that customers prefer using existing sites over new ones. Building sites can be costly and a lengthy process, and BTS has won very few of the opportunities competed for in recent years. This means that BTS supplied by WIPs and customers' self-build are both weak constraints compared to the existing sites of a large WIP, and in particular customers' self-build is likely to be a constraint of last resort in the absence of better options.

90. In relation to the constraint from BTS by WIPs and customers' self-build on the Merged Entity's BTS offering, the evidence shows they will impose some constraint but are not sufficient to offset the loss of competition resulting from the Merger. Outside of CTIL, rival WIPs have very limited scale and track record, and are unlikely to grow significantly, reducing the attractiveness of their BTS offering.

Our provisional conclusion

91. We have provisionally found that, subject to our findings on countervailing factors, the Merger may be expected to result in a SLC as a result of horizontal unilateral effects in the supply of access to developed macro sites and ancillary services to MNOs and other wireless communication providers in the UK.

Countervailing factors

92. There are two main ways in which countervailing factors may prevent or mitigate any SLC arising from a merger: through the entry and/or expansion of third parties in reaction to the effects of a merger, or through merger efficiencies.

Entry and/or expansion

93. Our competitive assessment has already taken into account the [entry and] expansion plans of suppliers of macro sites which we consider will take place irrespective of whether the merger proceeds.

94. In this assessment, we consider whether, in response to the effects of the Merger, there may be entry or expansion by third parties which would be timely, likely and sufficient to mitigate or prevent the SLC from arising.

95. The Parties submitted that barriers to entry and expansion are low and that there is a wide range of potential providers capable of providing access to developed macro sites.

96. Other WIPs submitted that there are a range of factors which create high barriers to entry and expansion. These include the incumbency advantages related to customers' high switching costs, the economies of scale enjoyed by large WIPs, as set out in our competitive assessment, plus the need for planning permission and other regulations for new passive infrastructure.

97. We consider that, while the barriers to entering the market at small scale are low, as evidenced by the existence of several small WIPs in the UK market, the barriers to expansion are considerably higher. This is because there are few, if any, prospects for smaller WIPs to be able to expand through purchase of a large portfolio of sites, as Cellnex has been able to do through its transaction with Arqiva and with the Merger.

98. On the basis of the available evidence it is our provisional view that barriers to entry and expansion are such that it is not likely that entry or expansion of

sufficient scale would occur in a timely manner to mitigate or prevent an SLC from arising as a result of the Merger.

Rivalry-enhancing efficiencies

99. Our guidance sets out that efficiencies arising from a merger may enhance rivalry with the result that the merger does not give rise to an SLC. In order for us to take efficiencies into account we must expect that they would be timely, likely and sufficient to prevent the SLC from arising, having regard to the effect on rivalry that would otherwise result from the merger, and that the efficiencies must be a direct consequence of the merger.

100. The Parties submitted that Cellnex expects to realise a number of revenue and cost synergies from the Merger. However, the Parties have not submitted that there would be any synergies that would be passed through to customers and that we should consider as rivalry-enhancing efficiencies in our assessment.

101. As such, our provisional view is that it is not likely that any rivalry-enhancing efficiencies arise from the Merger which would prevent an SLC from arising.

Provisional conclusion

102. We have provisionally found that the anticipated acquisition by Cellnex of the passive infrastructure assets in the UK of CK Hutchison may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of access to developed macro sites and ancillary services to MNOs and other wireless communication providers in the UK.

103. We invite any parties to make representations to us on these provisional findings by no later than Friday 14 January 2022. Parties should refer to the notice of provisional findings for details of how to do this.

104. Please email cellnex.CKHUK@cma.gov.uk or write to: Project Manager, Cellnex CKHUK merger investigation, Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ.