

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

Cornerstone Telecommunications Infrastructure Limited ("CTIL") Response to the CMA's Provisional Findings

1. Introduction

1.1 CTIL does not have any comments on the provisional conclusion of the CMA that the Merger may be expected to result in a substantial lessening of competition, or on the Notice of Possible Remedies. However, we do have concerns regarding some inconsistencies in the wording of the Provisional Decision regarding the alleged existence of and/or threat of a duopoly in the market. We would ask the CMA to clarify that it has not concluded that there currently exists a duopoly between Cellnex and CTIL, nor does CTIL currently have a "similar presence" to Cellnex in the provision of third party/WIP services. Moreover, we regard the finding that there could be a duopoly created as a result of the merger as being highly speculative and unsafe for the reasons explained below.

2. Characterisation of CTIL's current market presence and references to a 'duopoly'

2.1 The Provisional Findings distinguish between MNO self-supply and WIPs, with WIPs operating the "*remaining quarter*" of sites that are not operated by MNOs (including through MBNL and CTIL). As we confirmed in our responses to the CMA, CTIL derives [redacted] of revenue from third party/WIP activities, with [redacted]. In terms of WIP activities as defined by the CMA, we would therefore [redacted].

2.2 As a result, it is fundamentally incorrect to refer to CTIL as the "*largest WIP*". Indeed, we would note that elsewhere in the Provisional Findings, the CMA states that "*CTIL has started to operate like a WIP*"^[1] (emphasis added) and "*CTIL can be expected to compete strongly with the Merged Entity in future*"^[2] (emphasis added), reflecting the position that CTIL is [redacted].

2.3 Given this, it is inaccurate to refer to the existence of a 'duopoly' between CTIL and the Merged Entity. Indeed, importantly, the Provisional Findings do not make clear that the reference to a duopoly relates to the CMA's forward looking assessment "*which looks at the market over the longer term, including after Cellnex gains control of the Transfer Sites*" and in which the CMA acknowledges that "*given the very recent commercialisation of CTIL, we have yet to see evidence of the effect of competition between large WIPs with extensive portfolios of sites, or of customers using this as a negotiation strategy when renewing large contracts.*" Despite this, the CMA makes reference to the Merger "reinforcing" the "CTIL-Cellnex duopoly"^[3] and in its press release states that "*the only other supplier with a similar presence is CTIL*". This suggests to the public that CTIL currently operates as a WIP with a third-party presence similar to Cellnex, which does not reflect the information submitted by CTIL during the merger review or the CMA's own findings. We believe it is the CMAs position that there is no duopoly today and we would appreciate this being made clear in the drafting. We also believe that it is highly speculative to conclude that there will be a duopoly in the future, as it is based on inconsistent assessment of the different operators.

2.4 In particular, we would also flag that the CMA has attributed significant future market share to CTIL on the basis of its self-supply activities but has not included BT/EE's share of sites.

2.5 Given that most of CTIL's activities [redacted], it is misleading to include CTIL's self-supply share without including that of BT/EE. BT/EE already offers some third party tenancies when access is requested and would be expected to increase these if there was demand, regardless of any broader plan to commercialise. Furthermore, given the long-term view taken by the CMA [redacted]. The CMA has previously considered in its Cellnex / Arqiva decision whether self-supply should be included in the

^[1] Paragraph 3.28

^[2] Paragraph 86

^[3] Paragraph 8.76

assessment of the WIPs supply and considered, like in the Provisional Findings that while self-supply constrained independent towers companies to some extent, it was not among the most immediate sources of competition to the merging parties.

3. Conclusion

- 3.1 As drafted, the Provisional Decision is misleading as to CTIL's current and future position in the market and as to the structure and operation of competition. We would therefore strongly request that the CMA clarifies its position that there is no existing duopoly in the market and eliminates the inconsistencies highlighted above in its final decision. We would be happy to discuss this with you further as required.