



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

**Submission in relation to the CMA's Provisional
Findings and**

**Submission in relation to the CMA's Notice of
Possible Remedies**

by Company B

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1 Introduction

London Economics (LE) are pleased to submit, on behalf of Company B, this response to the UK Competition and Markets Authority's Provisional Findings and Notice of Possible Remedies in relation to the anticipated acquisition by CELLNEX UK LIMITED of the passive infrastructure assets of CK HUTCHISON NETWORKS EUROPE INVESTMENTS S.À R.L .

LE have been supporting Company B in making a competition analysis of recent market developments taking place in the telecommunications towers space in the UK.

In May 2021, Company B submitted a brief analysis conducted by LE, where we concluded that the Cellnex acquisition of the Hutchinson infrastructure assets in the UK merited considerable scrutiny from the CMA, in view of the following issues:

1. The market is already a highly concentrated market in which Cellnex, in particular, is developing a very powerful market position. .
2. Long-term, build-to-suit commitments exacerbate the market power of the larger TowerCos and foreclose access to customers to independent TowerCos for the foreseeable future. This type of agreements can result in further significant detriment to future competition.
3. Another potential negative ramification of the acquisition would be the break-up of MBNL (EE Three network share) if Cellnex were to own the Three towers. This could weaken the competitive position of EE (owned by BT) since it would now be at a competitive disadvantage to Vodafone and O2 which have Cornerstone network share. The result would be weaker competition in the downstream MNO market.

In summary, our May 2021 note put forward the following theory of harm: deterioration in the terms offered to customers in the supply of access to macro sites in the UK. In particular:

- the Merger would lead to a significant concentration in marketable macro sites (i.e. both active and potentially active sites) in the UK;
- the Merger would remove a key driver of competitive pricing amongst wireless infrastructure providers when negotiating future tenders for long-term supply contracts; in particular, self-supply by MNOs or by joint ventures of MNOs, works as a competitive constraint on Cellnex; a large share of self-supply would be lost as a result of the proposed transaction and with it the corresponding competitive constraint on Cellnex
- the Merger would reduce competition and therefore potentially lead to rent increases, reduce quality of service and access to sites

As per our submission of May 2021, we very much welcome the CMA's Provisional Findings of December 2021 and we fully agree with the CMA's provisional view that Cellnex's proposed acquisition of the UK passive infrastructure assets of CK Hutchison Networks entails significant risk of anti-competitive effects in the affected markets in the UK. (Please see chapter 2)

Furthermore, Company B welcomes and fully supports the CMA's Notice of Proposed Remedies, considering that a substantial divestment remedy must be imposed on the parties to prevent the transaction from resulting in a substantial lessening of competition. (please see chapter 3)

Finally, Company B would like to indicate to the CMA their very keen interest in acquiring a part of the divested assets, including, but not necessarily limited to all the divested sites in Northern Ireland, a market where Company B has already significant built capacity, recognised expertise and impeccable service track record, which make it a particularly credible competitor. (Please see chapter 4)

2 Submission by Company B on the CMA's Provisional Findings

Company B welcomes the CMA's Provisional Findings and fully agrees with the CMA's provisional view that the Merger would lead to a substantial lessening of competition in the market for the supply of access to developed macro sites and ancillary services to MNOs and other wireless communication providers in the UK.

In relation to market definition, we second the CMA's interpretation that the physical infrastructure to support the combination of wireless and fixed telecom technologies which are used to deliver mobile telecommunications services to users in the UK "includes various types of tower structures which host MNOs' antennae, services such as power supplies and the land on which these are located." (para 22)

We agree with the CMA's provisional conclusion 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.

We consider, however, that in their analysis, the CMA has primarily considered the impact of the merger on MNOs and we suggest that the CMA could also have taken into account the scope for additional potential negative effects of the merger, namely on users other than MNOs, not all of which are necessarily wireless communication services providers. For example, Company B contracts infrastructure services also to Radio Stations, Wireless Broadband providers, Emergency Services providers including Coast Guards, Police Services, the Defence Forces, Security Companies, Taxi Companies, Multinationals, Government Agencies, among others.

Some of these users are much smaller players than the UK's MNOs and therefore they are likely to be even more at risk of suffering from the much greater market concentration that the proposed merger would result in.

In our opinion, the narrower focus taken by the CMA has an impact on the considerations that the CMA makes in relation to possible remedies, as discussed in the following chapter.

3 Submission of Company B on the CMA's Notice of Possible Remedies

In line with the CMA's practice, Company B supports the view that structural remedies are preferable to behavioural remedies in the circumstances of the presently proposed merger.

Company B is supportive both of a prohibition of the Merger and of allowing the Merger conditionally on a substantial divestiture of sites by the Parties. A substantial divestiture of sites would be likely to counteract the negative effects of the merger since these would arise, to a large extent, precisely because of the joint holding of the sites of the two Parties.

We note also that in para 20 of the Notice on Possible Remedies, the CMA considers that, to be effective in remedying the provisional SLC, any divestiture package would need to restore competition to the level that would have prevailed absent the Merger and be appropriately configured to be attractive to potential purchasers of the divestiture package.

However, we believe that the particular approach recommended in para 22 may be too restrictive in terms of the divestiture solutions that it appears to allow. In para 22 the CMA considers that: "Given the nature of the provisional SLC, in particular that an SLC has been found on a national basis, to be effective any such divestiture would need to provide a purchaser with the means to compete effectively and independently at a national level, replicating the competitive capabilities of the CK Hutchison sites absent the Merger."

As a relatively small player in the market, Company B does not support the CMA's view that the divested assets ought to be purchased by a single large buyer. We do not believe that this would be the only way or even the most effective (or fair) way to promote the development of effective competition in the affected markets.

We believe that the CMA is focusing their analysis of possible remedies on the perspective of the MNOs. From an MNO perspective, according to how we understand the CMA's view, it may seem preferable to have a few large competing providers of national-spanning infrastructure. However, this may not be, and almost certainly is not, the preferred supply market structure from the perspective of other buyers of these infrastructure services. For buyers such as Radio Stations, Emergency Services providers including Coast Guards, Police Services, the Defence Forces, Security Companies, Taxi Companies, certain Multinationals, and certain Government Agencies (to name just a few of the types of customers that Company B, for example, contracts infrastructure services with), contracting with smaller-sized infrastructure providers may well be preferable.

With that caveat, we comment next on the divestiture options.

The CMA suggests two main alternatives for the scope of the divestiture package:

- Subset of the CK Hutchison macro sites proposed to be acquired by Cellnex
- Cellnex developed macro sites and ancillary services

The CMA has invited views from interested parties on the following:

(a) Whether divestiture is likely to be an effective remedy, including whether a divestiture of sufficient scale and scope, comprising appropriate assets, can be identified and whether the risk profile of divestiture can be effectively managed, such that divestiture should be preferred to prohibition of the Merger;

Response from Company B

We believe that a substantial divestment such that the new entity is roughly no larger, in terms of market share, than the no-Merger situation would adequately address the danger of an SLC.

We believe further that such a divestment may well be preferable to a prohibition of the Merger. This, however, may depend on the remedy that is eventually achieved. A preferable situation is most likely, in our opinion, if the divestment is not restricted to creating a new entity which effectively merely re-creates the highly concentrated market structure that already existed pre-Merger.

A divestment where some of the smaller players in the market are allowed to grow would, in our view, create the conditions for a more dynamic competitive environment, beyond that which could be achieved merely with a prohibition.

(b) the scope of any divestiture package including:

(i) the extent of developed macro sites and ancillary services that would need to be divested in order to achieve an effective remedy;

(ii) what additional assets, operations and agreements would need to be included in any divestiture package including whether a stand-alone business would need to be divested, or whether a package of passive infrastructure assets and associated contracts and other operations could constitute the basis of an effective disposal;

Response from Company B

Company B does not wish to take a position on the specific divestment conditions that the CMA should impose. However, for a competitor with an established market position such as Company B, although being a small competitor, we do not feel that additional assets, operations and agreements would need to be included in the divestment package. The main value of the divested assets for any acquiring competitors lies in the sites themselves.

(c) whether there are risks that a suitable purchaser is not available or that the Parties will divest to a weak or otherwise inappropriate purchaser;

Response from Company B

We have noted above, and we reiterate here, that we do not believe that the divested sites must all be purchased by the same party. The risk to which the CMA refers above is largely linked to that restrictive view of the divestment solution. A consideration of a wider range of divestment options would open up the possibility of attracting a wider range of suitable purchasers.

(d) whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture.

Response from Company B

Company B does not consider this to be a material risk. Customers do not typically leave tower sites easily.

4 Company B are potential acquirers of divested sites

Company B own and operate transmission sites for the wireless and broadcast industries in the UK. They have built up an extensive network of transmission sites over many years in business. As part

of this network, they own, manage and develop high-capacity telecommunications towers and licence antenna space on these to the full spectrum of wireless service providers. They have grown a portfolio of UK transmission sites through organic growth and smaller acquisitions.

4.1 Company B are interested in making substantial acquisitions in this market

Company B are suitable purchasers of divested sites.

They are particularly well positioned to acquire potentially all of the sites that the parties are eventually compelled to divest in Northern Ireland. They have a long-standing commitment to Northern Ireland. They can demonstrate to the CMA that they have the funding in place to do so and that they have an adequate market position to make them an effective competitor going forward.

As a prospective purchaser Company B in NI is therefore particularly well placed to meet the conditions imposed by the CMA, namely:

- (a) is independent of the Parties;
- (b) has the necessary capability to compete;
- (c) is committed to competing in the market; and
- (d) will not create further competition concerns.

We believe that conditions (a), (c) and (d) above are straightforwardly met by Company B. Company B is fully independent from the Parties; it has a long and successful track record of operating in the Northern Ireland market; and it is small enough that no reasonable competition concerns could be raised in respect of it acquiring divested sites. We also believe that Company B has the necessary capacity to compete effectively in the Northern Ireland market, as per our brief discussion in the sub-section below.

Company B are in a position to purchase some, but not all of the divested towers of the parties in Great Britain.

4.2 Company B have the capacity to compete effectively in this market

Company B would like to suggest to the CMA that the divested towers should not be required by the CMA to be all acquired by the same entity.

We understand the CMA's argument that a single purchaser would be in a strong position to compete with the two remaining larger players in this market. However, we believe that the CMA is considering mainly the competition between TowerCos for the business of MNOs and that, since MNOs are large buyers, they have a comparable bargaining position to that of the larger TowerCos.

However, for other types of buyer, this may not be the case. For example a local broadcaster would be in a more equitable bargaining position in contracting for infrastructure with a smaller TowerCo than with a TowerCo of the size that the CMA appears to envisage for its divestiture remedy. With the development of 5G-associated technology uses, IoT and connected devices, the CMA must not

merely anticipate large buyers to be looking for this type of infrastructure. It is entirely possible that localised demand and/or small start-ups might be looking for this type of infrastructure in the near future. For such customers, the presence of only 3 very large TowerCos rather than at least some smaller players, would put them at significant disadvantage when bargaining for access conditions.

Furthermore, smaller TowerCos would almost surely be quicker and nimbler in offering tailored solutions to a variety of users and potentially more innovative than the large TowerCos with their very small number of very large customers.

4.3 Company B have the financial capacity to make substantial acquisitions in this market

Finally, we would like to submit to the CMA that Company B have secured substantial funding which enable them to make a significant acquisition of divested sites. This funding is in place and fully confirmed and we would be happy to provide the CMA with further assurances in this regard, if desired.