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

## Summary of final report

## Notified: 3 March 2022

## Overview

1. The Competition and Markets Authority (CMA) has found that the anticipated acquisition (the Merger) by Cellnex UK Limited, part of the Cellnex group (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) as a result of horizontal unilateral effects arising from overlaps between the Parties 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. The CMA has decided that a divestiture by Cellnex of those macro sites which overlap with CK Hutchison sites would be an effective and proportionate remedy to address the SLC and the resulting adverse effects that we have found.

## Background

### *The reference*

3. 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.

***The Parties***

4. 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.

5. In the UK, Cellnex is an owner and operator of sites containing passive infrastructure used by mobile communication providers, primarily the UK's four mobile network operators (MNOs) but also other mobile communication providers.

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

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

8. 3UK and another MNO, BT/EE, have an infrastructure-sharing joint venture (JV) 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.

***The Merger***

9. 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 non-UK transactions have completed.

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

    *(a)* The entire issued share capital of 3UK's passive infrastructure assets outside of the MBNL JV (held by 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 host, or will 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 – 7,500] 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.

11. In addition, following the dissolution of the MBNL JV, scheduled to take place in 2031, 3UK will transfer legal title to a subset of the MBNL Sites to Cellnex, 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***

12. 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.

13. In order to provide their services, MNOs have UK-wide networks of physical infrastructure to support the combination of wireless and fixed 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 structures 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' equipment.

14. MNOs obtain access to 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.

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

## Our findings

### *Relevant merger situation*

16. An anticipated merger must meet 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).

17. 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.

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

18. 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 of at least 25% in the supply of access to developed macro sites and ancillary services to MNOs and other wireless communication providers in the UK, which will increase further as a result of the Merger.

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

20. Therefore, we have 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.

## ***Competitive effects***

### *Counterfactual*

#### *Scope of the assessment*

21. In order 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. This is not a statutory test but rather an analytical tool used to answer the question of whether a merger gives rise to an SLC.

22. 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.

23. We need to determine what the most likely conditions of competition would have been absent the Merger. The fact that CK Hutchison’s non-UK assets cannot now be sold to an alternative purchaser if the Merger does not go ahead because they have already been sold to Cellnex does not prevent us from considering counterfactual scenarios involving the sale of these assets.

24. So we have considered 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.

25. On this point, we consider that the sale of the non-UK and 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 non-UK assets – would not have been done in its current form. As a result, the sale of the non-UK assets can be considered a consequence of the Merger within the meaning of our guidance.

26. On that basis, we conclude that our assessment of the counterfactual can consider the full set of strategic options open to CK Hutchison at the time it entered into the overall commercial transaction with Cellnex, which involved both the UK and non-UK assets. These options included an alternative purchaser acquiring CK Hutchison's UK assets either alone or as part of a wider portfolio including some or all of its other European passive infrastructure assets.

*Our assessment of the counterfactual*

27. We have found that, in both the UK and other jurisdictions, many owners of passive infrastructure assets have sought to realise an uplift in the value of those assets through some form of commercialisation of them.

28. CK Hutchison reorganised its European passive infrastructure assets into a separate tower company between 2019 and 2020 in order to realise an uplift in their value. It also identified a need to invest in 3UK, its UK MNO, including in the rollout of its 5G network. It submitted to us that the Merger would raise the necessary proceeds for this investment.

29. In our view, both the uplift in value and the realisation of some or all of that value as cash proceeds provided CK Hutchison with a strong incentive to commercialise its passive infrastructure assets.

30. 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.

31. The evidence available to us shows that CK Hutchison had a range of credible opportunities to commercialise its assets. We found 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, including in the UK. 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 investors in such assets and CK Hutchison's UK assets represented one of a limited number of opportunities for investors to acquire a substantial interest in the UK market.

32. CK Hutchison itself considered various options to realise the uplift in the value of its passive infrastructure assets and generate cash proceeds. Some options were not mutually exclusive and could have been pursued sequentially.

33. In this assessment 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. Instead, we have considered the options available over an extended period of time, during which CK Hutchison's commercial incentives would be to find a way to realise an uplift in value from its passive assets and obtain cash proceeds if it could. We have seen no evidence that the sales process that CK Hutchison ran was considered by it to be a 'one shot' process that excluded the pursuit of other options (either individually or in combination) at later points in time and we do not consider that it would have been.

34. We have found that credible alternative purchasers were interested in acquiring the assets within the timeframe of the sales process that CK Hutchison ran. We also note that its alternative options were not limited to the outcome of the sales process that it ran and that, had that sales process not resulted in an acceptable outcome, it 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 the wider range of potential acquirers of the assets.

35. 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 outcome absent the Merger.

36. Our view is that such a sale could have been made either within CK Hutchison's original sales process or through a modified and/or extended sales process that it would have had strong incentives to pursue and would have taken place in the short- to medium-term.

37. We consider that, absent the Merger, even if alternative purchasers had not been willing to transact [✂], CK Hutchison might have been willing to transact [✂] and which it might have accepted.

38. We consider that 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: the Unilateral Sites on completion of the transaction; 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.

39. The evidence available to us shows that CK Hutchison gave some consideration to options other than a sale. However, given that it focussed on a sale, the evidence available to inform our assessment of these other options is more limited.

40. The evidence also shows that CK Hutchison considered some options to be less attractive than a sale of the UK assets and some may have raised practical difficulties so could ultimately not have been pursued. However, we found that these alternatives were regarded as credible options by other market participants, and we believe they could have been given more detailed consideration by CK Hutchison (in light of its incentives) had it encountered difficulties selling the UK assets.

41. 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.

42. While we consider it is more likely that CK Hutchison would have sold its UK assets, either through the original sales process or a modified and/or extended sales process, we consider that, in the absence of a sale, other options could have been pursued that would, if successfully executed, have resulted in CK Hutchison's passive infrastructure assets in the UK being operated in competition with Cellnex.

*Conclusion on counterfactual*

43. We have assessed the likelihood of CK Hutchison realising its strong incentives to achieve a significant uplift in the value of its UK passive infrastructure assets and realise cash proceeds. We have found that it had a number of different options available to it to do so.

44. We also assessed the incentives of potential buyers to find an approach which worked, the existence and credibility of potential counterparties with

whom CK Hutchison could engage and the strategic and commercial incentives which CK Hutchison had to do so.

45. We considered the likelihood that CK Hutchison would instead be unable to pursue any of the options we have identified, or that, having done so, it would nonetheless have preferred to retain the UK passive infrastructure assets in their current form.

46. We 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 it to commercialise its passive infrastructure assets.

*Market definition*

47. Market definition provides 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 and contains the most significant competitive alternatives available to the customers of the merged companies.

48. On the basis of the Parties' submissions on product market definition and our own assessment, we found 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.

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

*Conclusion on market definition*

50. We therefore 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*

51. 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 first consider in more detail the nature of competition in this market.

52. MNOs are the main customers for developed macro sites, although there are also other types of customers. 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, becoming more of a direct competitor of WIPs.

53. In this market, customers typically sign up to long-term (around ten to 20 years) 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 tenancies they may require over the term of the agreement. In return, long-term contracts provide suppliers with predictable, committed revenues for the duration of the contracts.

54. We found that the drivers of choice of macro sites are similar amongst MNOs and other customers. The evidence available to us shows that these are geographic location of sites, price, scale of the supplier and its track record.

   *(a)* 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)* Prices of existing sites in a WIP's portfolio are primarily agreed in long-term national framework contracts with suppliers, which are periodically renewed. These agreements are an important focus of our competitive assessment.

   *(c)* Suppliers with a large number of existing sites are likely to be present in more locations and therefore are likely to be better placed to meet customers' needs with an existing site. Beyond this, we have not seen sufficient evidence to suggest that scale will significantly affect other aspects of suppliers' competitiveness in this market.

   *(d)* A supplier's track record is important to customers, in particular when they require the building of new sites, but this is unlikely to be linked only to the supplier's existing scale in the UK.

55. We assessed the implications of these factors, which determine how competition works in this market for existing sites and for new site opportunities. In doing so, we took into account of the fact that while Cellnex may have been the only large WIP competing to retain sites in the past, it is likely to face competition from CTIL when large contracts come to be renewed in the future.

56. This situation, in which a large WIP faces competition from several other large WIPs, has not arisen in the UK before. This makes it more challenging for third parties, who have no experience against which to assess how an owner of the CK Hutchison Assets would compete with Cellnex in practice, to provide informed views on the impact of the Merger.

57. We also found that switching macro sites is costly and, as a result, does not occur often or unless tenants are required by a landlord to quit. As a result of the existence of high switching costs, being a customer's current supplier of existing sites provides a significant incumbency advantage over rivals seeking to attract those customers to alternative sites.

58. However, while a customer running a tender for supply of a large number of sites is unlikely to want or be able to migrate all of its existing sites away from its current supplier, we have seen evidence that it will use the threat of switching some sites to alternative suppliers to improve the terms that it receives for all sites from its current supplier. Customers may also make use of a site churn allowance to reduce their dependency on their current supplier by switching a proportion of sites to another supplier over the term of the contract.

*Competitive assessment*

59. We assessed the Merger's impact on competition, using the counterfactual set out above of stronger conditions of competition between the owner of the CK Hutchison Assets (these are the Transaction Sites under alternative ownership in the counterfactual) and Cellnex.

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

60. In light of our counterfactual and the long-term nature of framework contracts, as set out above, 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 which is scheduled to be in 2031.

61. We have considered a wide range of evidence from several sources in order to come to a view on the impact of the Merger in the market. We have placed limited weight on the lack of explicit customer concerns because of our more competitive counterfactual and the fact that the Merger would bring about a permanent change in market structure with potential effects well beyond the duration of any existing customer contracts.

- *Pre-Merger market outcomes*

62. As set out above, we found that a larger supplier would be more likely to have existing overlap sites with any other supplier. Assessing the historical evidence of suppliers' portfolios therefore provides us with a starting point for understanding their relative strength and the overall extent of competition in the market, albeit one that must be supplemented with a consideration of ongoing industry developments. 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.

63. Taking into account CTIL's commercialisation, we found that the market would still be likely to remain highly concentrated by 2031 with the Merged Entity and CTIL each having a share of [40-50]%.

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

64. 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.

65. As a result, the CK Hutchison Assets would represent a significant proportion of the aggregate overlap of sites which are capable of substituting for Cellnex sites. We have found that competition at overlap sites can provide a significant competitive constraint on the price of all sites, provided there is scope to accommodate additional tenants on them.

66. A very significant proportion of the MBNL Sites that overlap and a lesser proportion of the Unilateral Sites that overlap could be used to compete with Cellnex for additional tenants.

67. Beyond this, Cellnex and the owner of the CK Hutchison Assets would not be particularly close competitors when competing on the provision of BTS or for opportunities arising from network redesign as there is only limited evidence

to suggest that scale significantly affects suppliers' competitiveness in this market and as discussed below, BTS supplied by other WIPs and customers' self-build would be strong constraints on the Merged Entity's BTS offering.

68. In the counterfactual, the owner of the CK Hutchison Assets would therefore be a close competitor to Cellnex at those locations where their sites overlap and the Merger would result in the removal of the CK Hutchison Assets and the loss of a significant competitive constraint on Cellnex.

- *Competition from alternative suppliers*

69. CTIL will become an increasingly significant constraint on the Merged Entity in future and will be able to compete for its shareholder MNOs and for other customers with its extensive portfolio of existing sites.

70. Other WIPs exercise some competitive constraint, but they all have a much smaller portfolio of existing sites. The scale and therefore constraint imposed by other WIPs is unlikely to increase significantly in future.

71. We have found that both BTS by WIPs and customers' self-build will be relatively weak constraints on the Merged Entity's existing sites. But we consider that both can exercise a significant constraint on the Merged Entity's BTS offering: there are several suppliers of BTS services that would be well placed to compete with it and it would be further constrained by customers' ability to self-build.

*Conclusion on competitive assessment*

72. We conclude that, subject to our findings on countervailing factors, the Merger may be expected to result in an SLC as a result of horizontal unilateral effects, arising from overlaps between the Parties, in the supply of access to developed macro sites and ancillary services to MNOs and other wireless communication providers in the UK.

73. We consider that, while the consequences that might arise from a loss of competition arising from the Merger may not be immediately visible to the MNOs and their customers, even small increases in the costs of passive infrastructure or a deterioration in quality would be likely to persist over many years. The cumulative effect of these, which we would expect to be borne by consumers of mobile services, could be significant.

### *Countervailing factors*

74. Countervailing factors – barriers to entry and/or expansion and/or rivalry-enhancing efficiencies - may prevent or mitigate any SLC arising from a merger.

*Entry and/or expansion*

75. Our competitive assessment has taken into account the future plans of suppliers of macro sites which we consider will be pursued irrespective of whether the Merger proceeds. We also consider whether, in response to the Merger, there may be additional entry or expansion by third parties which would be timely, likely and sufficient to mitigate or prevent the SLC from arising.

76. We have found 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, opportunities for smaller WIPs to be able to expand through either purchase of a large portfolio of existing sites (as Cellnex has been able to do through its transaction with Arqiva and with the Merger) or through meeting demand for new sites using BTS.

77. We conclude 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 and sufficient manner to mitigate or prevent an SLC arising as a result of the Merger.

*Rivalry-enhancing efficiencies*

78. 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.

79. We have concluded that it is not likely that any rivalry-enhancing efficiencies arise from the Merger which would prevent an SLC from arising.

## Remedies

80. Having found an SLC, we are required to consider what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effect resulting from the SLC. In line with our statutory duty, we have sought to

achieve as comprehensive a solution as is reasonable and practicable to address the SLC and any adverse effects resulting from it.

***Remedy effectiveness***

81. We have considered, including consulting with the Parties and third parties, two remedy options to the SLC we have found:

*(a)* Prohibition of the Merger: we would prohibit the acquisition by Cellnex of the passive infrastructure assets in the UK of CK Hutchison so that the Merger would not take place; and

*(a)* The divestiture of a package of developed macro sites and ancillary services.

82. The Parties proposed the divestiture of approximately [1,100-1,300] Cellnex sites which overlap with the Transaction Sites. The Parties identified overlaps of existing sites and have proposed a method for identifying those where the transaction site is, as yet unknown due to being held within the MBNL JV or being an unbuilt site. This is the ‘Proposed Remedy’.

83. We have assessed the Parties’ Proposed Remedy alongside prohibition of the Merger.

84. We have concluded that prohibition would prevent the creation of the RMS and thereby prevent the SLC we have identified from arising. It would therefore be an effective remedy which would comprehensively address the SLC that we identified and prevent any of its adverse effects.

85. We have concluded that the Proposed Remedy would also be effective. This is on the basis of our assessment that:

*(a)* Its scope addresses the SLC we have found, as it includes Cellnex sites at every potential location of overlap with the CK Hutchison sites;

*(b)* it is likely that a suitable purchaser can be found;

*(c)* the divestiture can be completed within our standard divestiture time period; and

*(d)* the risks, for example relating to the transfer of customer contracts and landlord agreements, of a carve-out divestiture can be overcome, including by appointment of a Monitoring Trustee.

### *Remedy proportionality*

86. Having found two effective remedies to the SLC, we have considered the costs and proportionality of each. We have concluded that the Proposed Remedy would be less onerous as it would allow the Merger to proceed.

87. This conclusion included our having regard to the effects of remedial action on any relevant customer benefits (RCBs). Having considered the Parties' submissions on these, we have concluded that there is insufficient evidence that the claimed RCBs are merger-specific. We also do not consider that the Parties have provided convincing evidence of the nature and scale of the claimed RCBs to satisfy the standard set out in our guidance. We note the Parties' submission that the claimed RCBs would materialise if the Merger were to be approved subject to the Proposed Remedy.

### *Conclusion on remedies*

88. We conclude that the Proposed Remedy would be both effective and proportionate to address the SLC and resulting adverse effects we have found.

89. We retain prohibition of the Merger as a fallback remedy, should the Proposed Remedy fail to be implemented within the divestiture period.

## Conclusions

90. We have 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 arising from overlaps between the Parties in the supply of access to developed macro sites and ancillary services to MNOs and other wireless communication providers in the UK.

91. We have decided that a divestiture by Cellnex of approximately [1,100-1,300] macro sites would be an effective and proportionate remedy to address the SLC and the resulting adverse effects that we found.