

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

[DRAFT] Undertakings given to the Competition and Markets Authority by Cellnex UK Limited, Cellnex Telecom S.A. and CK Hutchison Networks Europe Investments S.À R.L. pursuant to sections 41 and 82 of the Enterprise Act 2002

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 UK Limited, a subsidiary of Cellnex Telecom S.A. of the passive infrastructure assets in the UK of CK Hutchison Networks Europe Investments S.À R.L., a subsidiary of CK Hutchison Holdings Limited (together, the Parties), for further investigation and report by a group of CMA panel members.

On 4 March 2022, the CMA published its report entitled 'Anticipated acquisition by Cellnex UK Limited of the passive infrastructure assets of CK Hutchison Networks Europe Investments S.À R.L.' (the Report).

The Report concluded, *inter alia*, 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 CK Hutchison Networks Europe Investments S.À R.L. (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.

As set out in the Report, the CMA has decided that a divestiture by Cellnex of its existing macro sites and ancillary services that geographically overlap with the CK Hutchison sites to be acquired as a result of the Merger would be an effective and proportionate remedy to address the SLC and the resulting adverse effects that the CMA has found.

Now therefore Cellnex and CK Hutchison give to the CMA the following undertakings under section 82 of the Act, in accordance with section 41 of the Act, for the purpose of remedying, mitigating or preventing the SLC and any adverse effects which may be expected to result from it, as identified in the Report.

1. Commencement and application

1.1 The Undertakings shall come into effect on the Commencement Date.

2. Interpretation

2.1. Words and expressions used and defined in the recitals to the Undertakings have the same meaning as they do in the Undertakings.

2.2. In the Undertakings the word 'including' means including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.

2.3. The headings used in the Undertakings are for presentation purposes and have no legal effect.

2.4. Expressions in the singular include the plural and vice versa and references to persons include corporations.

2.5. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.

2.6. References to recitals, paragraphs, subparagraphs and annexes are references to the recitals to, paragraphs and subparagraphs of, and annexes to, the Undertakings.

2.7. The annexes to the Undertakings form part of the Undertakings.

2.8. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.

2.9. For the purposes of the Undertakings and the annexes, unless the context otherwise requires:

3UK means Hutchison 3G UK Limited;

Act means the Enterprise Act 2002;

Approved Purchaser means a purchaser of the Shares approved by the CMA pursuant to the relevant purchaser approval criteria as set out in Annex 3 to these Undertakings;

BT/EE means British Telecommunications plc's mobile network operator, EE Limited;

Business Transfer Agreement means the agreement for the sale by certain Cellnex Subsidiaries to Sky Newco of the Divestiture Assets;

CMA means the Competition and Markets Authority;

Commencement Date means the date on which the Undertakings are accepted by the CMA;

Compliance Statement means the statement provided by each of Cellnex and CK Hutchison in accordance with paragraph 14.2 of the Undertakings;

Divestiture Assets means certain assets including infrastructure assets, know-how, rights under contracts (including customer contracts, and portfolio management agreements), business records and goodwill, in each case relating to the Overlap Sites and the Unidentified Streetworks Overlap Sites, subject to negotiation with the Approved Purchaser.

Divestiture Package means the Overlap Sites and the Unidentified Streetworks Overlap Sites;

Divestiture Period means the period ending [X] after the Commencement Date or such later date as may be agreed by the CMA;

Divestiture Trustee means a person appointed pursuant to paragraph 13.2;

Effective Divestiture means completion of the sale of Sky Newco to an Approved Purchaser in accordance with the Sale and Purchase Agreement;

Effective Transition means the transfer to Sky Newco of:

(i) Cellnex's property rights in respect of the Overlap Sites and the Unidentified Streetworks Overlap Sites pursuant to the terms of the Site Transfer Agreement, and

(ii) Divestiture Assets pursuant to the terms of the Business Transfer Agreement,

or, until such transfers can be implemented, where necessary, and for the shortest period of time practicable, the entry into alternative arrangements that will transfer to Sky Newco the beneficial interest in or economic benefit of

such property rights, assets and contracts, so that the Approved Purchaser is able to commercialise the Overlap Sites and the Unidentified Streetworks Overlap Sites from Effective Divestiture in all material respects to the same extent as Cellnex is able to do immediately prior to Effective Divestiture

In-Flight Works means on-going maintenance and/or upgrade works to a site within the Divestiture Package in progress at the time of Effective Divestiture;

Interest means any interest conferring control within the meaning of section 26 of the Act which includes the ability, directly or indirectly, to control or materially influence the policy of a body corporate, or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise;

MBNL / MBNL JV means Mobile Broadband Network Limited, a network sharing joint venture between BT/EE and 3UK;

MBNL Sites means (i) [7,000–7,500] sites within the MBNL JV; and (ii) up to [✂] sites [✂];

Merger means the anticipated acquisition by Cellnex of (i) the entire issued share capital of TowerCo pursuant to the sale and purchase agreement between Cellnex UK Limited and CK Hutchison Networks Europe Investments S.À R.L. of 12 November 2020; and (ii) the economic benefit in respect of the MBNL Sites;

Monitoring Trustee means a person appointed in accordance with paragraph 8;

Overlap Sites are the passive infrastructure assets identified in Annex 1 to these Undertakings;

Parties means Cellnex and CK Hutchison;

Proposed Buyer means a potential purchaser of the Shares proposed to the CMA by Cellnex;

Report means the report published by the CMA on 4 March 2022 entitled ‘Anticipated acquisition by Cellnex UK Limited of the passive infrastructure assets of CK Hutchison Networks Europe Investments S.À R.L.’;

Sale and Purchase Agreement means the agreement between Cellnex and

the Approved Purchaser for the sale and purchase of the Shares;

Shares means 100% of the issued share capital of Sky Newco;

Site Transfer Agreement means the agreement between Cellnex and Sky Newco for the sale of Cellnex's property rights in respect of the Overlap Sites and the Unidentified Streetworks Overlap Sites to Sky Newco;

Sky Newco means Cellnex Newco 1 Limited, a company incorporated in England under company number 13955990 formed at the direction of Cellnex UK Limited, which at the date of these Undertakings holds 100% of Sky Newco's issued share capital;

Streetworks Sites means the 2,600 single-operator monopoles which have been built or will be built by or on behalf of TowerCo to host 3UK's active wireless telecommunications equipment;

Subsidiary unless otherwise stated has the meaning given by section 1159 of the Companies Act 2006;

TowerCo means CK Hutchison Networks (UK) Limited, a wholly-owned Subsidiary of CK Hutchison Networks Europe Investments S.À R.L. which holds (or is expected to hold) the following passive infrastructure assets: (i) [100–200] developed macro sites that were previously owned by UK Broadband Limited and (ii) the Streetworks Sites;

Transaction Documents means the Sale and Purchase Agreement, the Business Transfer Agreement, the Site Transfer Agreement, the Transitional Services Agreement and any other agreements which are stated to be "agreed form" documents under those agreements;

Transitional Services Agreement means the agreement to be entered into between Cellnex and Sky Newco in respect of the provision of certain services (including information technology, finance, facilities, delivery of In-Flight Works and procurement) by Cellnex to Sky Newco for a limited period from the date of Effective Divestiture, subject to negotiation with the Approved Purchaser

Undertakings means these undertakings;

Unidentified Streetworks Sites means the Streetworks Sites that are expected to be built within the catchment areas referred to in Annex 2 to these

Undertakings and the location of which had not been identified as at 4 February 2022;

Unidentified Streetworks Overlap Sites means those existing Cellnex sites that overlap geographically with the Unidentified Streetworks Sites (such overlaps being determined in accordance with the principles set out in Annex 2 to these Undertakings); and

Working Day means any day which is not a Saturday, Sunday or bank holiday in England, Wales, Barcelona or Madrid.

3. Divestiture

- 3.1. Cellnex and CK Hutchison each undertake that it shall not complete the Merger unless and until all of the conditions precedent set out in paragraph 3.2 are satisfied.
- 3.2. The conditions precedent referred to in paragraph 3.1 are:
 - 3.2.1. the CMA has notified the Parties of its approval of a Proposed Buyer as the Approved Purchaser (such approval not to be unreasonably withheld);
 - 3.2.2. the CMA has notified the Parties of its approval (such approval not to be unreasonably withheld) of the final drafts of the Transaction Documents; and
 - 3.2.3. an approved Sale and Purchase Agreement has been executed by the parties thereto, and the other Transaction Documents have been executed by (or are otherwise in agreed form between) the parties thereto.
- 3.3. Cellnex undertakes to ensure Effective Divestiture occurs within the Divestiture Period, provided that this undertaking shall not apply to Cellnex if the Parties jointly notify the CMA in writing providing sufficient evidence that the Merger has been abandoned and that any new arrangements between the Parties do not constitute an amended form of the arrangements that were subject to the CMA's reference decision of 27 July 2021 under section 33(1) of the Act.
- 3.4. Subject to paragraph 4, Cellnex undertakes to ensure Effective Transition occurs prior to Effective Divestiture and provisions to this effect shall be included in the Transaction Documents. Cellnex further undertakes that it will

not, without the prior consent of the CMA (such consent not to be unreasonably withheld), make any amendments to the form of the Transaction Documents approved by the CMA pursuant to paragraph 3.2.2, other than correcting typographical errors, completing any missing details or immaterial amendments notified to the CMA.

3.5. [✂]

3.6. If the conditions precedent set out in paragraph 3.2 above are not satisfied, or if a notification meeting the requirements under paragraph 3.3 above is received by the CMA, the Merger shall not proceed and [✂].

4. Unidentified Streetworks Overlap Sites

4.1. CK Hutchison undertakes to use its best endeavours to:

4.1.1. identify, by 31 August 2022, the locations of the Unidentified Streetworks Sites;

4.1.2. inform the CMA and Cellnex's legal advisers by no later than the 20th day of each calendar month of the location of those Unidentified Streetworks Sites for which it has identified the location during the previous calendar month;

4.1.3. should the locations of any of the Unidentified Streetworks Sites not be identified by 31 August 2022:

4.1.3.1. inform the CMA of the reasons for this as soon as it becomes apparent that this will be the case;

4.1.3.2. inform the CMA of how many sites are yet to be identified and when they expect to be identified; and

4.1.3.3. provide a written report to the CMA every two weeks setting out progress towards identifying the locations of the remaining Unidentified Streetworks Sites until such time as CK Hutchison has confirmed that there are no longer any remaining Unidentified Streetworks Sites.

4.2. Cellnex undertakes to:

- 4.2.1. inform the CMA of those Unidentified Streetworks Overlap Sites that have been identified in connection with paragraph 4.1 above within two weeks of being informed of the location of the relevant Unidentified Streetworks Sites by CK Hutchison; and
- 4.2.2. achieve Effective Transition in respect of the Unidentified Streetworks Overlap Sites identified in accordance with paragraph 4.2.1 above, either (i) where practicable, at or prior to Effective Divestiture, or (ii) by the end of the calendar month following the calendar month in which the location of relevant Unidentified Streetworks Site was notified to the CMA and Cellnex in accordance with paragraph 4.1.2.

5. In-Flight Works

- 5.1. Where a site within the Divestiture Package is subject to In-Flight Works at the date of Effective Divestiture, at the discretion of the customer of the site and subject to negotiation between that customer and the Approved Purchaser, Cellnex undertakes that it will either complete the In-Flight Works or carry out the In-Flight Works until a milestone that has been agreed with the relevant customer is achieved (at which point responsibility for completing the In-Flight Works in respect of that site would transfer to Sky Newco).

6. Approved Purchaser

- 6.1. Cellnex undertakes to notify the CMA of one or more Proposed Buyers within ten Working Days of the Commencement Date; and the CMA will advise Cellnex whether any Proposed Buyer is an Approved Purchaser within ten Working Days of such notification.

7. No pre-emptive action

- 7.1. Cellnex, without prejudice to the exercise of its rights under the Transaction Documents, and CK Hutchison each undertake that they shall not take any action that might prejudice the Effective Divestiture and Effective Transition or otherwise impair the ability of the Approved Purchaser to compete effectively with Cellnex in the relevant market.

8. Monitoring Trustee – appointment

- 8.1. Cellnex and CK Hutchison undertake to secure the appointment or retention of an independent Monitoring Trustee to perform the functions set out in paragraph 10 below. CK Hutchison's appointment of a Monitoring Trustee shall terminate after the later of satisfaction of the obligations in paragraphs 4.1 and satisfaction of the conditions precedent in paragraph 3.2.
- 8.2. The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA. Cellnex and CK Hutchison shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out its functions.
- 8.3. The appointment of the Monitoring Trustee and the terms and conditions upon which the Monitoring Trustee is to be appointed must be approved by the CMA. Cellnex and CK Hutchison shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that they propose to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed, Cellnex and CK Hutchison shall provide the CMA with a copy of the agreed terms and conditions of appointment.
- 8.4. If the proposed Monitoring Trustee is rejected by the CMA, Cellnex and CK Hutchison shall submit the names of at least two further persons within two Working Days starting with the date on which they were informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 8.2 and 8.3 above.
- 8.5. The provisions of paragraph 8.6 below shall apply if:
- 8.5.1. Cellnex and CK Hutchison fail to nominate persons in accordance with paragraphs 8.3 or 8.4 above; or

- 8.5.2. those further persons nominated in accordance with paragraphs 8.3 or 8.4 above are rejected by the CMA; or
- 8.5.3. Cellnex and CK Hutchison are unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
- 8.6. The CMA shall nominate one or more persons to act as Monitoring Trustee, and Cellnex and CK Hutchison shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
- 8.7. The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out below in paragraph 10 and that the Monitoring Trustee will monitor the compliance of each of Cellnex and CK Hutchison with their respective obligations under these Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as it reasonably considers necessary to carry out its functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out its functions under these Undertakings.

9. Monitoring Trustee – replacement, discharge and reappointment

- 9.1. Cellnex and CK Hutchison each acknowledge that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require Cellnex and CK Hutchison to replace the Monitoring Trustee.
- 9.2. If the Monitoring Trustee is removed under paragraph 9.1 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has affected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in paragraph 8 above.

10. Monitoring Trustee functions

- 10.1. The functions of the Monitoring Trustee shall include:

- 10.1.1. monitoring compliance by Cellnex and CK Hutchison, their subsidiaries and any successors in title, with their respective obligations under the Undertakings (noting that CK Hutchison's compliance shall only be monitored up to the later of satisfaction of its undertakings in paragraphs 4.1 and satisfaction of the conditions precedent in paragraph 3.2 above);
 - 10.1.2. monitoring the overall divestiture process;
 - 10.1.3. identifying risks and potential mitigations to the divestiture process, including to the timescales for Effective Transition;
 - 10.1.4. oversight of the identification and divestment of the Unidentified Streetworks Overlap Sites;
 - 10.1.5. oversight of the process relating to the migration of customer contracts, including:
 - 10.1.5.1. the obtaining of customer consents;
 - 10.1.5.2. the process and arrangements where the transfer of a customer contract cannot be agreed, to allow the economic benefit of customer contracts to be transferred to Sky Newco and which allow for Sky Newco to commercialise the site;
 - 10.1.5.3. the arrangements relating to In-Flight Works;
 - 10.1.6. oversight of the process relating to the migration of agreements with landlords;
 - 10.1.7. monitoring progress and the potential impacts on timescales for Effective Divestiture and Effective Transition; and
 - 10.1.8. supporting the CMA as it may require in approving the Transaction Documents and any Proposed Buyers as an Approved Purchaser. This would include undertaking due diligence on the Transaction Documents.
- 10.2. The functions of the Monitoring Trustee shall also include:
- 10.2.1. assessing the arrangements proposed by Cellnex and CK Hutchison for compliance with the Undertakings;

- 10.2.2. ascertaining and reporting to the CMA on the level of compliance by Cellnex and CK Hutchison with the Undertakings;
 - 10.2.3. without prejudice to the right of Cellnex and CK Hutchison to contact the CMA, responding to any questions which Cellnex and CK Hutchison may have in relation to compliance with paragraphs 3 to 7 of the Undertakings, in consultation with the CMA;
 - 10.2.4. reporting to the CMA on any changes recommended by the Monitoring Trustee and the steps required to implement them; and
 - 10.2.5. assisting, by providing such information as the CMA may reasonably require, in the consideration of derogation requests or consents relating to the Undertakings.
- 10.3. Cellnex and CK Hutchison each acknowledge that the Monitoring Trustee shall act on behalf of the CMA and be under an obligation to the CMA to carry out its functions to the best of its abilities and Cellnex and CK Hutchison each undertake to comply with any written requests made by the CMA for the purpose of ensuring the full and effective compliance by Cellnex and CK Hutchison with the Undertakings.
- 10.4. Cellnex and CK Hutchison each undertake that it shall cooperate fully with the Monitoring Trustee, and Cellnex and CK Hutchison shall ensure that the terms and conditions of appointment of the Monitoring Trustee reflect and give effect to the duties and functions of the Monitoring Trustee and the obligations of Cellnex and CK Hutchison set out in the Undertakings.
- 10.5. Cellnex and CK Hutchison each undertake that it and each of its affiliates and its employees, officers, directors, advisers and consultants shall cooperate fully with the Monitoring Trustee, in particular by providing the Monitoring Trustee with all cooperation, assistance and information as the Monitoring Trustee may reasonably require in order to discharge its functions, including but not limited to:
- 10.5.1. the provision of full and complete access to all personnel, books, records, documents, facilities and information of Cellnex and CK Hutchison businesses as the Monitoring Trustee may reasonably require; and
 - 10.5.2. the provision of such office and supporting facilities as the Monitoring Trustee may reasonably require.

11. Reporting

11.1. Cellnex undertakes that:

- 11.1.1. within two weeks from the Commencement Date (or such other period as may be agreed by the CMA), it will provide a written report to the CMA, copied to the Monitoring Trustee, setting out the timetable that it proposes to adopt to ensure Effective Divestiture and Effective Transition within the Divestiture Period. The report will outline the progress that Cellnex has made and the steps that it has otherwise taken to comply with its obligations under the Undertakings; and
- 11.1.2. every two weeks (or such other interval as agreed with the CMA) from the date of the report required at paragraph 11.1.1 and until Effective Divestiture has occurred, it will provide a report to the CMA setting out progress with all the steps required to achieve Effective Divestiture and Effective Transition, including progress with the identification of the Overlap Sites and Unidentified Streetworks Overlap Sites involving In-Flight Works.

11.2. CK Hutchison undertakes that:

- 11.2.1. within two weeks from the Commencement Date (or such other period as may be agreed by the CMA), it will provide a written report to the CMA, copied to the Monitoring Trustee, setting out the progress that CK Hutchison has made and the steps that it has otherwise taken to comply with its obligations under the Undertakings; and
- 11.2.2. every two weeks (or such other interval as agreed with the CMA) from the date of the report required at paragraph 11.2.1 and until CK Hutchison has informed the CMA and Cellnex of the locations of all Unidentified Streetworks Sites, it will provide a report to the CMA setting out progress with the identification of the Unidentified Streetworks Sites.

12. Procedure for consent and approval

- 12.1. Cellnex and CK Hutchison each undertake that where they require the consent or approval of the CMA (however that requirement is expressed in the

Undertakings) they will seek such consent or approval in writing. Any consent or approval given by the CMA under the Undertakings shall be given in writing.

- 12.2. Cellnex and CK Hutchison each undertake that any application by it for the CMA's consent or approval shall make full disclosure of every fact and matter within its knowledge that it reasonably considers is relevant to the CMA's decision (Relevant Information).
- 12.3. Cellnex and CK Hutchison each recognise that where the CMA grants consent or approval on the basis of information that is false or misleading in a material respect, the consent or approval is voidable at the discretion of the CMA, acting reasonably.
- 12.4. In the event that Cellnex and/or CK Hutchison discover that an application for consent or approval has been made without full disclosure of, or with incorrect, Relevant Information, Cellnex and CK Hutchison each undertake to:
 - 12.4.1. inform the CMA in writing identifying Relevant Information that it omitted to include and/or which is incorrect in the application for consent, promptly and no later than two Working Days of becoming aware that the Relevant Information is incomplete or incorrect; and
 - 12.4.2. provide to the CMA an application for consent that includes the missing and/or correct Relevant Information, promptly and no later than two Working Days starting with the date on which it informed the CMA of the omission or inaccuracy in accordance with paragraph 12.4.1 above.
- 12.5. Cellnex and CK Hutchison shall use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CMA at least five Working Days before the day on which the CMA's consent or approval is necessary to avoid a breach of the Undertakings.

13. Divestiture Trustee

- 13.1. The CMA will keep under review the need for a Divestiture Trustee and may issue written directions for the appointment of a Divestiture Trustee, where, upon reasonable grounds, the CMA considers that:

- 13.1.1. the reports received in accordance with paragraph 10 or the advice of the Monitoring Trustee indicate that it is unlikely that Cellnex will achieve Effective Divestiture within the Divestiture Period; or
 - 13.1.2. Cellnex is in material breach of any provisions of the Undertakings or has failed to comply with the Undertakings and that such breach or failure is not remedied within a reasonable period of time.
- 13.2. Cellnex undertakes that, upon the written directions of the CMA issued in accordance with paragraph 13.1, it will appoint a Divestiture Trustee to bring about Effective Divestiture and Effective Transaction (the Divestiture Trustee Obligation).
- 13.3. Cellnex undertakes that the appointment of a Divestiture Trustee pursuant to paragraph 13.2 will be in accordance with the obligations and conditions set out in Annex 4.

14. Compliance

- 14.1. Cellnex and CK Hutchison each undertake to comply with such reasonable written directions as the CMA may from time to time give and to take such steps as are within its reasonable competence for the purpose of carrying out or securing compliance with the Undertakings.
- 14.2. Cellnex and CK Hutchison each undertake to provide to the CMA such information or statement of compliance as it may from time to time require for the purpose of monitoring compliance by Cellnex and CK Hutchison and their Subsidiaries with the Undertakings. In particular, by 5pm (UK time) on [May 2022] and subsequently every four weeks or such other interval as agreed with the CMA (or, where such interval date does not fall on a Working Day, the first Working Day thereafter), until Effective Divestiture has occurred, Cellnex and, until the expiry of the period in paragraph 8.1, CK Hutchison, shall provide a statement to the CMA in the form set out in Annex 5 to the Undertakings confirming compliance with the Undertakings.
- 14.3. Cellnex and CK Hutchison each undertake to procure that each of its Subsidiaries and (as may be the case) successors in title complies fully with the Undertakings.

15. Effect of invalidity

15.1. Cellnex and CK Hutchison each undertake that should any provision of the Undertakings be contrary to law or invalid for any reason, Cellnex and CK Hutchison shall continue to observe the remaining provisions.

16. Extensions and time limits

16.1. Cellnex and CK Hutchison each recognise and acknowledge that the CMA may, where it considers appropriate, in response to a written request from Cellnex and CK Hutchison showing good cause, or otherwise at its own discretion grant an extension of any period specified in the Undertakings within which Cellnex and CK Hutchison must take action.

17. Provision of information to the CMA

17.1. Cellnex and CK Hutchison each undertake that it shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under the Undertakings or under sections 82, 83, 92 and 94(6) of the Act.

17.2. Cellnex and CK Hutchison each undertake that should it at any time be in breach of any provision of the Undertakings, it will notify the CMA promptly and no later than two Working Days starting with the date it becomes aware of the breach to inform the CMA that there has been a breach, the circumstances of that breach and the steps taken or to be taken to remedy the breach.

18. Service

18.1. Cellnex hereby authorises Clifford Chance LLP and CK Hutchison hereby authorises Freshfields Bruckhaus Deringer LLP to accept service on their behalf of all documents connected with the Undertakings (including any document of any kind which falls to be served on or sent to Cellnex and CK Hutchison or any of their respective Subsidiaries in connection with any proceedings in courts in the UK) orders, requests, notifications or other communications connected with the Undertakings.

18.2. Unless Cellnex and CK Hutchison inform the CMA in writing that Clifford Chance LLP and Freshfields Bruckhaus Deringer LLP respectively has ceased to have authority to accept and acknowledge service on their or any of their Subsidiaries' behalf, any document, order, request, notification or other

communication shall be validly served on Cellnex and CK Hutchison if it is served on Clifford Chance LLP and Freshfields Bruckhaus Deringer LLP respectively; and service shall be deemed to have been acknowledged by Cellnex and CK Hutchison if it is acknowledged by Clifford Chance LLP and Freshfields Bruckhaus Deringer LLP or such other nominee.

- 18.3. Any communication from Cellnex or CK Hutchison to the CMA under the Undertakings shall be addressed to the Director of Remedies [...].

19. Governing law

- 19.1. Cellnex and CK Hutchison each recognise and acknowledge that the Undertakings shall be governed and construed in all respects in accordance with English law.
- 19.2. In the event that a dispute arises concerning the Undertakings, Cellnex and CK Hutchison each undertake to submit to the jurisdiction of the courts of England and Wales.
- 19.3. Cellnex and CK Hutchison each undertake to exercise reasonable endeavours to secure that any contractual or non-contractual obligations arising out of or in connection with the Undertakings shall be governed and construed in all respects in accordance with English law.

20. Termination

- 20.1. Cellnex and CK Hutchison each recognise and acknowledge that the Undertakings shall remain in force until such time as Effective Transition and, with respect to the Undertakings in paragraph 3.5 for a period of ten years from Effective Divestiture and paragraph 3.6 for a period of ten years from the end of the Divestiture Period.

FOR AND ON BEHALF OF CELLNEX UK LIMITED

(signed)

FOR AND ON BEHALF OF CELLNEX TELECOM S.A.

(signed)

**FOR AND ON BEHALF OF CK HUTCHISON NETWORKS EUROPE
INVESTMENTS S.À R.L.**

(signed)

Annex 1: The Overlap Sites

Annex 1 is a table of the [1,000–1,200] Overlap Sites. It includes the site ID, international code, site type, latitude, longitude and ownership type of each of the Overlap Sites.

Annex 2: Unidentified Streetworks Overlap Sites

Annex 2 details the methodology used to identify the Overlap Sites and Unidentified Streetworks Overlap Sites.

Annex 3: Purchaser Approval Criteria

In order for a prospective purchaser to be approved by the CMA, the CMA must be satisfied that the prospective purchaser:

- (a) Is independent of the Parties. The purchaser should have no significant connection to either CK Hutchison or Cellnex that may compromise the purchaser's incentives to compete with Cellnex (for example, an equity interest, common significant shareholders, shared directors, reciprocal trading relationships or continuing financial assistance).
- (b) Has the necessary capability to compete. The purchaser must have access to appropriate financial resources, expertise (including managerial, operational and technical capability (including understanding of the regulatory regime)) and assets to enable the assets comprising the Divestiture Package to be used to effectively compete in the market as part of a viable and active business. This should be sufficient to enable the purchaser of the Divestiture Package to continue to develop as an effective competitor. For example, a highly-leveraged acquisition of the Divestiture Package which left little scope for competitive levels of capital expenditure is unlikely to satisfy this criterion. The proposed purchaser will be expected to obtain in advance of Effective Divestiture all necessary approvals, licences and consents from any regulatory or other authority required to permit completion to occur. The CMA would expect companies with an existing track record of owning or operating passive infrastructure assets, either in the UK or elsewhere to be able to readily demonstrate the technical capacity to compete effectively. If a purchaser is viewed by a customer as not having the necessary capabilities to compete, then this would increase the likelihood that it would be unable to obtain the necessary consents from customers.
- (c) Is committed to competing in the relevant market. The CMA will wish to be satisfied that the purchaser has an appropriate business plan and objectives for competing in the relevant market and that the purchaser has the incentive and intention to maintain and operate the Divestiture Package as part of a viable and active business in competition with Cellnex and other competitors in the market.
- (d) That divestiture to the purchaser will not create further competition or regulatory concerns. Divestiture to the purchaser should not create a realistic prospect of further competition or regulatory concerns.

Annex 4: Appointment of a Divestiture Trustee

1. Pursuant to paragraph 13 of the Undertakings, Cellnex undertakes to comply with the following obligations, as are deemed appropriate and necessary by the CMA.

Nomination of a Divestiture Trustee

2. Within the period of five Working Days following the day on which pursuant to paragraph 13.2 of the Undertakings the CMA issues a direction, or such other period as may be agreed by the CMA, Cellnex shall submit to the CMA for approval a list of two or more persons whom Cellnex proposes to appoint as Divestiture Trustee.
3. Each person on the list referred to in paragraph 2 above shall be independent of and unconnected to Cellnex and CK Hutchison, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
4. The CMA may approve or reject any or all of the proposed persons (such approval not to be unreasonably withheld or delayed) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Divestiture Trustee Obligation. If only one proposed person is approved, Cellnex undertakes to use its reasonable endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one proposed person is approved, Cellnex shall decide which person to appoint as Divestiture Trustee from among the approved persons. Cellnex undertakes to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
5. If all the proposed Divestiture Trustees are rejected by the CMA (acting reasonably), Cellnex shall submit the names of at least two further persons within four Working Days of the date on which it is informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 2 to 4 above.
6. The provisions of paragraph 7 shall apply if:

- 6.1 Cellnex fails to nominate further persons in accordance with paragraph 5; or
 - 6.2 those further persons nominated by Cellnex in accordance with paragraph 5 are rejected by the CMA (acting reasonably); or
 - 6.3 Cellnex is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
7. The CMA shall nominate one or more persons to act as Divestiture Trustee, and Cellnex shall appoint or cause to be appointed one of those Divestiture Trustees within two Working Days starting with the date of nomination under the terms of a Divestiture Trustee mandate approved by the CMA.
 8. Cellnex recognises that the function of the Divestiture Trustee is distinct from the function of the Monitoring Trustee, although the two functions may be performed by the same person subject to that person meeting the requirements of paragraph 3.
 9. Cellnex undertakes to remunerate and reimburse the Divestiture Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of its appointment and in accordance with the directions or instructions given in paragraph 13, in such a way so as not to impede the Divestiture Trustee's independence or ability to effectively and properly fulfil the Divestiture Trustee Obligation.

Divestiture Trustee – functions

10. Cellnex undertakes to enable the Divestiture Trustee to carry out the Divestiture Trustee Obligation.
11. The Divestiture Trustee shall undertake such preparatory matters as it considers necessary to discharge the Divestiture Trustee Obligation and for these purposes may give written directions to Cellnex and Cellnex undertakes to comply with any such written directions.
12. Cellnex recognises and acknowledges that:
 - 12.1 The CMA may, on its own initiative or at the request of the Divestiture Trustee or Cellnex, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Divestiture Trustee Obligation (including directions as to the divestiture of such

property, assets, rights, consents, licences, privileges or interests as the CMA considers necessary to bring about Effective Divestiture).

- 12.2 The Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its duty, such terms and conditions as it reasonably considers appropriate.
- 12.3 The Divestiture Trustee shall protect the legitimate financial interests of Cellnex subject to the Divestiture Trustee's overriding obligation to give effect to the Divestiture Trustee Obligation which may include the Effective Divestiture of the Divestiture Package at no minimum price.
13. Cellnex recognises and acknowledges that the Divestiture Trustee shall take such steps and measures it considers necessary to discharge the Divestiture Trustee Obligation and to that end the Divestiture Trustee may give written directions to Cellnex and Cellnex undertakes to comply with such directions or to procure compliance with such directions as are within its powers and to take such steps within its competence as the Divestiture Trustee may specify.
14. Cellnex recognises and acknowledges that in the performance of the Divestiture Trustee Obligation the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of Cellnex and Cellnex undertakes that it shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

Divestiture Trustee – obligations of Cellnex

15. Cellnex undertakes to provide the Divestiture Trustee with all such cooperation, assistance and information (including by the production of financial or other information whether or not such information is in existence at the time of the request but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Divestiture Trustee Obligation.
16. Cellnex recognises and acknowledges that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information reasonably necessary for the fulfilment of its duty (save where material is properly the subject of legal privilege). Cellnex

undertakes to provide the Divestiture Trustee upon request with copies of any such document. On the reasonable request of the Divestiture Trustee, Cellnex undertakes to make available to the Divestiture Trustee one or more offices on its premises and to ensure that personnel are available where necessary for meetings in order to provide the Divestiture Trustee with all information reasonably necessary for the performance of the Divestiture Trustee Obligation, subject in each case to the Divestiture Trustee's compliance with Cellnex's internal policies.

17. Cellnex undertakes to grant reasonable, comprehensive powers of attorney, on terms approved by the CMA, and duly executed, to the Divestiture Trustee to enable it to discharge the Divestiture Trustee Obligation including by the appointment of advisers to assist with the divestiture process. Before appointing any advisers, the Divestiture Trustee will consider using the advisers already appointed by Cellnex and will only appoint advisers (whether in replacement of, or in addition to Cellnex's advisers) if it reasonably considers the appointment of such advisers necessary or appropriate in the discharge of the Divestiture Trustee Obligation. Cellnex undertakes that, upon the reasonable request of the Divestiture Trustee, it shall execute the documents required to give effect to the Divestiture Trustee Obligation. Should Cellnex refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Cellnex, approve and direct the appointment of such advisers.
18. Cellnex undertakes to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Divestiture Trustee Obligation. Cellnex recognises and acknowledges that the Divestiture Trustee, its employees, agents or advisers shall have no liability to Cellnex for any liabilities arising out of the proper performance of the Divestiture Trustee Obligation, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
19. Cellnex undertakes to make no objection to the fulfilment by the Divestiture Trustee of the Divestiture Trustee Obligation or any part thereof save on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial interests of Cellnex subject always to the Divestiture Trustee Obligation; and where Cellnex wishes to make an objection on these grounds it shall submit to the CMA a notice

setting out its objections promptly and no later than two Working Days from the day on which it became aware of the fact or facts giving rise to its objection.

Divestiture Trustee – replacement, discharge, and reappointment

20. Cellnex acknowledges that if the Divestiture Trustee ceases to perform the Divestiture Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting with Cellnex, require Cellnex to replace the Divestiture Trustee.
21. If the Divestiture Trustee is removed under paragraph 20 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure in paragraphs 2 to 4.
22. Cellnex recognises and acknowledge that, other than in accordance with paragraph 20, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the functions with which the Divestiture Trustee has been entrusted have been met.

Annex 5: Pro forma compliance statement

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

Compliance statement for [insert Cellnex or CK Hutchison as appropriate]

I [insert name] confirm on behalf of [insert Cellnex or CK Hutchison as appropriate] that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date]:
 - (a) [insert Cellnex or CK Hutchison as appropriate] has complied with the Undertakings accepted by the CMA that are applicable to it on [insert date of the Undertakings] in relation to the Merger.
 - (b) The subsidiaries of [insert Cellnex or CK Hutchison as appropriate] have also complied with the Undertakings (where applicable to them) in the period from [insert date] to [insert date].
 - (c) Except with the prior written consent of the CMA, no action has been taken by [insert Cellnex or CK Hutchison as appropriate] to prejudice Effective Divestiture and Effective Transition or otherwise impair the ability of the Approved Purchaser to compete effectively with Cellnex in the relevant market.
 - (d) [insert Cellnex or CK Hutchison as appropriate] and its subsidiaries remain in full compliance with the Undertakings that are applicable to it.

Interpretation

2. Terms defined in the Undertakings have the same meaning in this compliance statement.