

Determination

One New Zealand Group Limited and Dense Air New Zealand Limited [2024] NZCC 10

The Commission:	Dr John Small Tristan Gilbertson Nathan Strong
Summary of application:	An application from One New Zealand Group Limited seeking clearance to acquire 100% of the shares in Dense Air New Zealand Limited from Dense Air Limited and SoftBank Corp.
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the proposed acquisition.
Date of determination:	2 May 2024

Confidential material in this report has been removed. Its location in the document is denoted by [].

The Application

1. On 2 November 2023, the Commerce Commission registered an application (the Application) from One New Zealand Group Limited (One NZ) seeking clearance to acquire 100% of the shares in Dense Air New Zealand Limited (Dense Air) from Dense Air Limited and SoftBank Corp (the Proposed Acquisition).

Our decision

2. We give clearance to the Proposed Acquisition as we are satisfied that it will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. The Proposed Acquisition relates to radio spectrum, which is a scarce and critical input used by mobile network operators (MNOs) like One NZ (and other parties) in mobile telecommunications networks. Dense Air owns the management rights to 2 x 35 MHz radio spectrum in the 2600MHz band, which expire in December 2028.
4. With the Proposed Acquisition, One NZ would significantly increase its total spectrum holdings and increase its holdings relative to those of Two Degrees Mobile Limited (2degrees), whilst also decreasing the gap between its total spectrum holdings and those of Spark New Zealand Limited (Spark).
5. Our investigation found that, absent the Proposed Acquisition, there is a real chance that 2degrees would acquire Dense Air's spectrum.
6. MNOs' spectrum holdings may influence their relative capacity, which in turn can affect competition between them in telecommunications markets. In this case, we had initial concerns that change in relative spectrum holdings arising from the Proposed Acquisition would impact competition between MNOs for the provision of mobile and wireless broadband services (at both the retail and wholesale levels). We therefore published a Statement of Issues to test these concerns.
7. However, after considering submissions received in response to the Statement of Issues and other evidence gathered, we are satisfied that the Proposed Acquisition is not likely to substantially lessen competition in any wholesale and retail telecommunications markets. We are satisfied that One NZ would likely continue to face significant competition from other mobile and broadband providers (including, but not limited to, 2degrees and Spark).
8. Further, we are satisfied that the Proposed Acquisition is not likely to substantially affect 2degrees' competitive effectiveness (which could give rise to a substantial lessening of competition). While 2degrees would not have any spectrum in the 2600MHz band, it does have access to other spectrum in the 'mid-band' that it could deploy. In addition, 2degrees has options to expand the capacity of its network by deploying its existing spectrum at more sites and/or by improving spectral efficiency.
9. Finally, we note that there will be opportunities for MNOs, including 2degrees, to acquire or access additional spectrum in the future, including when the existing

management rights to 2600MHz spectrum expire in 2028. The award of new rights would be subject to the merger control provisions of the Commerce Act 1986 (the Act).

Our framework

10. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisition Guidelines (our guidelines).¹
11. To clear an application, we must be satisfied that a merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
12. A lessening of competition does not need to be felt across an entire market for a lessening to be substantial. A lessening of competition that adversely affects a significant section of a market may be enough to amount to a substantial lessening of competition.²
13. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).³
14. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise prices above the price that would exist in a competitive market (the 'competitive price'),⁴ or reduce non-price factors such as quality or service below competitive levels.

The parties and the Proposed Acquisition

One NZ

15. One NZ (formerly Vodafone NZ) is one of New Zealand's largest telecommunications companies and one of three MNOs in New Zealand. One NZ is 99.91% owned by Infratil 2019 Limited.
16. Relevant to the Proposed Acquisition, One NZ provides:
 - 16.1 retail mobile and broadband services to residential and business customers, including wireless broadband; and
 - 16.2 wholesale services to other telecommunications companies, including mobile virtual network operators (MVNOs).

¹ Commerce Commission, Mergers and Acquisitions Guidelines (May 2022).

² Mergers and Acquisitions Guidelines above n1 at [2.25] and *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 64 FLR 238; ATPR 40-315, 43,888.

³ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

⁴ Or below competitive levels in a merger between buyers.

Dense Air

17. Dense Air is owned by Dense Air Limited (67.03%) and SoftBank Corp (32.97%).
18. Dense Air's only assets in New Zealand are the management rights to 2 x 35 MHz of 2600MHz spectrum, specifically management right number 473 (2620-2655MHz) and management right number 474 (2500-2535MHz).⁵
19. Dense Air does not currently use this spectrum. It has terminated its business in Asia-Pacific, including New Zealand, citing a desire to focus on fewer markets.⁶ The management rights for Dense Air's 2600MHz spectrum expire on 31 December 2028.

The Proposed Acquisition

20. With the Proposed Acquisition, One NZ would increase its holdings of 2600MHz spectrum. It would own a 2 x 15 MHz block of 2600MHz plus a second 2 x 35 MHz block.⁷
21. One NZ has publicly stated that it plans to deploy Dense Air's spectrum to improve speeds and capacity on its 4G and 5G mobile networks. The additional capacity should also allow One NZ to increase the availability of wireless broadband for customers and to provide faster download and upload speeds. One NZ stated that this should be beneficial to customers across New Zealand, describing the effect as "like adding an extra lane on the motorway".⁸

Background

22. Radio spectrum is a scarce and critical input used in mobile telecommunications networks and in the provision of mobile and wireless broadband services. MNOs (ie, One NZ, Spark and 2degrees) compete to acquire and hold long-term (for example, 20 year) management rights to spectrum. Rights can be acquired from the Crown or (via secondary transactions) from other parties, including Tū Ātea (which represents Māori groups with an interest in spectrum assets).
23. The type and amount of spectrum held by individual MNOs affects the way in which they deploy their networks, the coverage of their networks, and the capacity and/or types of services they can offer to retail and wholesale customers.⁹

⁵ As recorded in the Register of Radio Frequencies under the Radiocommunications Act 2001.

⁶ The Application at [3.4].

⁷ One NZ strictly currently holds 1 x 15 MHz and 1 x 20 MHz of 2600MHz spectrum, but for the purposes of our analysis we view its holding a usable block of 2 x 15 MHz paired spectrum. Beyond One NZ, the only other MNO to currently own and use 2600MHz spectrum is Spark. Wireless internet service providers also have access to use a management spectrum park of 2600MHz spectrum under licence.

⁸ One NZ media release re Proposed Acquisition (3 November 2023) – <https://media.one.nz/denseair>. This is consistent with information in the Application at [6.1]-[6.2] and [24.1], which states that the Proposed Acquisition would []].

⁹ Commerce Commission, Mobile Market Study – Findings (26 September 2019) at [3.98] and [4.4], and the Application at [11.7].

24. Different spectrum bands have different characteristics that may make them suitable for different purposes. Low-frequency spectrum (eg, sub-1GHz) transmits signals over long distances, so is best suited to providing coverage in rural areas and assists in providing greater indoor penetration in urban areas. Mid-band spectrum (between 1GHz and 6GHz, including 2600MHz) offers greater capacity, but over shorter distances, so is useful to provide capacity and carry signals in densely populated urban areas using a large number of sites. 2600MHz spectrum is currently used by One NZ and Spark to provide 4G mobile and wireless broadband services, but may be used for 5G and 6G services in the future, together with other spectrum bands.¹⁰
25. An MNO can increase its network coverage and capacity by acquiring more sites to support capacity, by adding additional equipment to existing sites (ie, upgrading sites), and/or by obtaining additional spectrum (as is proposed by One NZ with the Proposed Acquisition).¹¹ Technically, building new sites or upgrading existing sites may provide comparable improvements to an MNO's service and network quality as it could achieve with additional spectrum.¹² These same alternatives are equally available to all MNOs, although they come with different cost profiles to achieve similar levels of coverage and capacity. For example, upgrading and/or building additional sites may be commercially less desirable than acquiring additional spectrum as it may come at a significantly higher cost.
26. While One NZ competes closely with rival MNOs (Spark and 2degrees) to offer mobile and wireless broadband services, it also competes with other parties in the provision of broadband services – this includes parties that nationally offer broadband services over copper, fibre and satellite, and regional wireless internet service providers that offer wireless broadband services. As discussed later, different types of broadband can be substitutable, and substitutability may change as technologies advance and as some become more widely available or cheaper.

The relevant markets

27. Market definition is a tool that helps identify and assess the competitive constraints a merged firm is likely to face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.¹³

Submissions received

28. One NZ submitted that the relevant markets for assessing the Proposed Acquisition are the national markets for:¹⁴
- 28.1 mobile telephony services (in a single product market for 2G, 3G, 4G and 5G services, which it submitted are interchangeable); and

¹⁰ The Application at [1.5], [11.2]-[11.3], [11.5], [11.20], [11.21], [16.5] and [22.2]-[22.4].

¹¹ The Application at [11.7].

¹² The Application at [22.5].

¹³ Mergers and Acquisitions Guidelines above n1 at [3.7]-[3.8].

¹⁴ The Application at [14.1], [15.1] and [16.2]-[16.3].

- 28.2 residential broadband services (whether by way of wireless broadband, fibre, copper or satellite broadband, which it submitted are functionally similar and substitutable).
29. Given that spectrum is used as an input into all mobile and wireless broadband services, One NZ further submitted that there is no need to separately assess other market segments based on customers or any other parameters. It submitted that mobile and wireless broadband services provided to business or wholesale customers would not use different spectrum than that used by residential customers.¹⁵
30. 2degrees submitted that the Proposed Acquisition is particularly likely to affect the supply of wireless broadband, for which a distinct product market should be defined. Specifically, 2degrees submitted that:¹⁶
- 30.1 the service and speed that can be delivered on wireless broadband (and implied substitutability) depends on the capacity of the network, which depends on spectrum;
- 30.2 although wireless broadband is a substitute for lower broadband data users, it is not considered a substitute for high data users; and
- 30.3 whether a separate market or not, the ability to substitute for wireless broadband, or to remain competitive in a stand-alone wireless broadband market, is impacted by spectrum.

Our view

31. We have not needed to reach definitive views on the precise boundaries of the relevant markets for broadband or mobile services.
32. The main market definition questions that arose related to broadband services. As noted above, 2degrees submitted that the Proposed Acquisition is particularly likely to affect the supply of wireless broadband which, in its view, may not have close substitutes for some customers.
33. Our investigation indicated that different types of broadband – such as copper, wireless, satellite, fibre, etc – can be substitutable, but that the extent of substitutability depends on the characteristics of particular products as well as the needs, location and budget of particular customers. For example, consumers who need moderate speeds and latency may be able to choose between a range of technologies and may, for example, be able to obtain similar performance and prices from VDSL, 4G wireless broadband and entry-level fibre and satellite, where those technologies are available. On the other hand, consumers or businesses demanding high performance may not find that copper, wireless or entry-level fibre meet their needs. We also note that patterns of substitutability may change as technologies advance and as some become more widely available or cheaper.

¹⁵ The Application at [14.2].

¹⁶ Submission from 2degrees to the Commerce Commission (8 December 2023) at [10].

34. While we carefully considered these questions, and the likely impacts of the Proposed Acquisition across New Zealand including in areas where fibre is not available, we concluded that market definition is not determinative in this case. Even if wireless broadband were to have no close substitutes for some customers, our analysis, summarised below, indicates that the competitive effectiveness of 2degrees and other rivals to One NZ in supplying wireless broadband should not be significantly affected. All telecommunications services provided via mobile networks, in whichever markets that may be defined, use the same underlying spectrum, and (as discussed later) One NZ's rivals have a range of options for expanding their mobile networks, if required, beyond acquiring Dense Air's spectrum. For similar reasons, we also did not need to conclude on market definition for mobile services (for example, on how different competitive conditions may be for consumers and business customers).

With and without scenarios

35. Assessing whether a substantial lessening of competition is likely requires us to:
- 35.1 compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the merger, often referred to as the factual) with the likely state of competition if it does not (the scenario without the merger, often referred to as the counterfactual); and
 - 35.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.

The factual

36. With the Proposed Acquisition, One NZ would increase its holdings of 2600MHz spectrum. It would gain a 2 x 15 MHz block of 2600MHz plus a second 2 x 35 MHz block. One NZ submitted that acquiring Dense Air's 2600MHz spectrum would enable it to compete more effectively [].¹⁷
37. 2degrees would []¹⁸
- We note that []¹⁸

¹⁷ The Application at [6.1]-[6.2] and [24.1], Commerce Commission interview with One NZ (1 December 2023), and submission from One NZ to the Commerce Commission (5 March 2024) at [1.8] and [1.10].

¹⁸ Commerce Commission interview with 2degrees (4 December 2023), submission from 2degrees to the Commerce Commission (8 December 2023) at [9.2]-[9.3] and e-mail from Simpson Grierson (on behalf of 2degrees) to the Commerce Commission (27 February 2024).

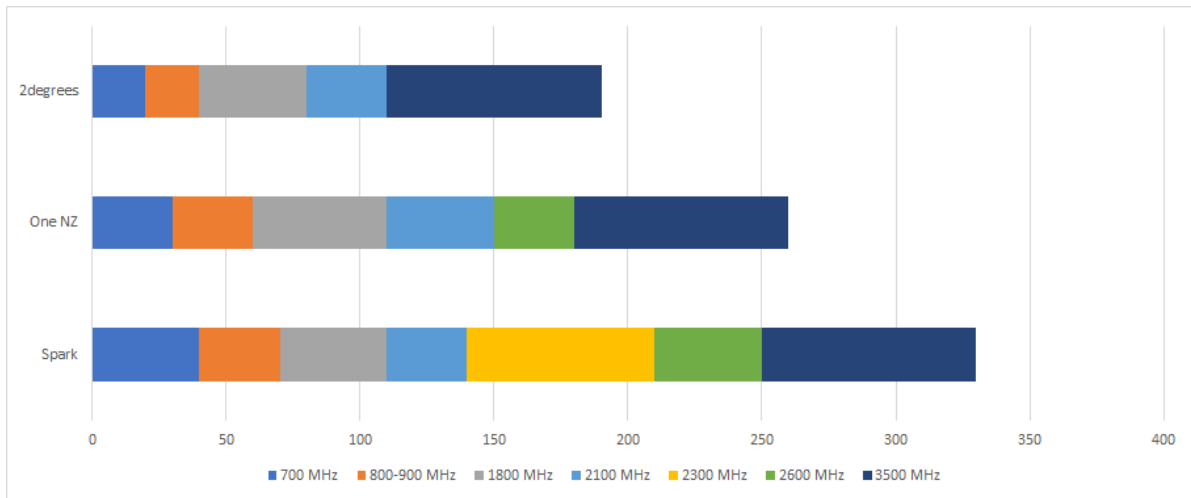
The counterfactual

- 38. We considered what is likely to happen to Dense Air’s holdings of 2600MHz spectrum absent it being acquired by One NZ, and what One NZ would do absent the Proposed Acquisition.
- 39. Absent the Proposed Acquisition, we consider that there is a real chance that 2degrees would acquire Dense Air’s spectrum. 2degrees [].¹⁹ 2degrees submitted that the acquisition of Dense Air’s spectrum in the counterfactual would provide it enhanced capacity to compete better in both mobile and wireless broadband, by delivering improved quality services and greater capacity [].²⁰
- 40. In the counterfactual, One NZ submitted that it would [].²¹

Spectrum holdings currently, in the factual and counterfactual

- 41. Figures 1, 2 and 3 set out the spectrum holdings of each MNO currently and in the factual and counterfactual. All figures [].²²

Figure 1: Current relative spectrum holdings of MNOs



Source: Commerce Commission analysis of radio spectrum holdings data

¹⁹ Letter from 2degrees to the Commerce Commission (24 July 2023) and submission from 2degrees to the Commerce Commission (8 December 2023) at [2.8(a)].

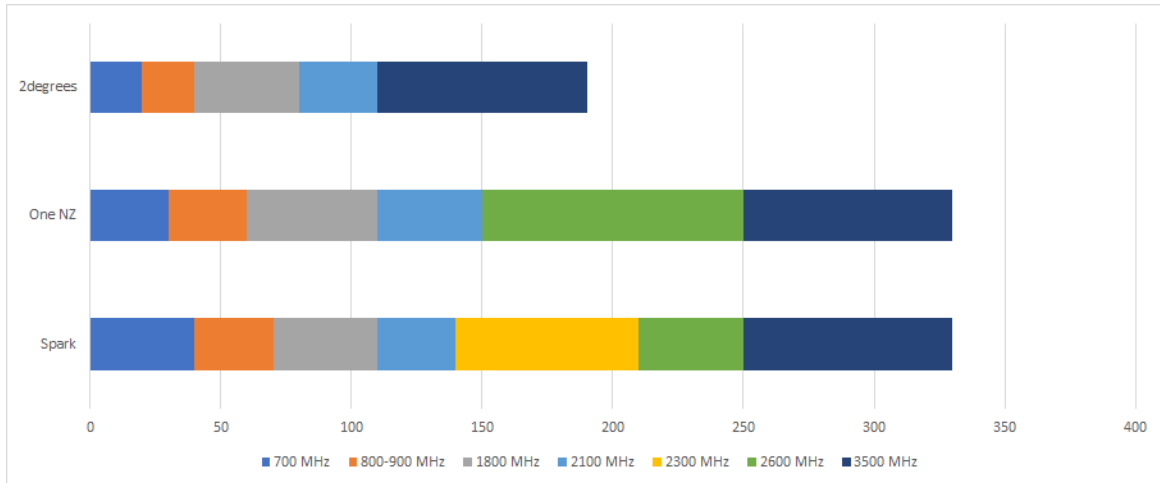
²⁰ Submission from 2degrees to the Commerce Commission (8 December 2023) at [2.10].

²¹ The Application at [9.4].

²²

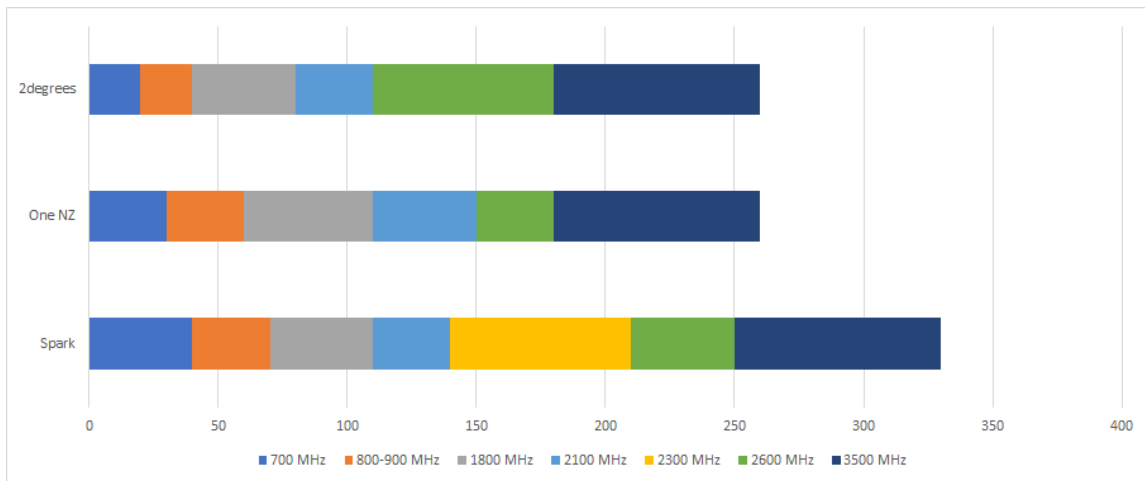
[]

Figure 2: Relative spectrum holdings of MNOs in the factual



Source: Commerce Commission analysis of radio spectrum holdings data

Figure 3: Relative spectrum holdings of MNOs in the counterfactual



Source: Commerce Commission analysis of radio spectrum holdings data

- 42. The above figures indicate that One NZ would gain a boost in its network capacity after acquiring Dense Air’s spectrum, as would 2degrees in the counterfactual.

Competition analysis

- 43. For the reasons set out below, we are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

Submissions received

- 44. One NZ submitted that the Proposed Acquisition would not give rise to a substantial lessening of competition in any relevant market. This is because, in its view:²³

²³ The Application at [1.6], [18.1], [19.1], [19.5]-[19.6], [22.5], [26.1]-[26.2] and [28.1], submission from One NZ to the Commerce Commission (18 December 2023), submission from One NZ to the Commerce Commission (5 March 2024) and NERA Report (5 March 2024).

- 44.1 all MNOs, including 2degrees and Spark, have access to adequate spectrum to provide high quality services;
 - 44.2 there are a number of opportunities for MNOs to acquire additional spectrum for use in 4G and 5G services arising in the short, medium and long term;
 - 44.3 MNOs do not need equivalent spectrum holdings to compete, asymmetric outcomes in spectrum allocations are not indicative of competition concerns, and spectrum capacity is merely one element of competition;
 - 44.4 building or utilising more sites is an alternative to acquiring more spectrum, and provides comparable improvements in service and network quality. For example, 2degrees is currently undertaking an extensive upgrade of its sites and having the financial resources to invest in its network;
 - 44.5 mobile and broadband markets are highly competitive and the Proposed Acquisition would not impact the ability or incentives of parties to compete, including in wireless broadband; and
 - 44.6 the Proposed Acquisition would not increase One NZ's market power or materially increase the likelihood of coordination occurring.
45. Conversely, 2degrees submitted that the Proposed Acquisition would have the effect of substantially lessening competition in mobile and broadband markets and be harmful to consumers, by entrenching the positions of One NZ and Spark at the expense of challengers like 2degrees.²⁴ It submitted that:²⁵
- 45.1 spectrum is essential, and 2degrees' lack of spectrum is limiting its ability to compete with Spark and One NZ;
 - 45.2 the existing disparity in spectrum holdings between 2degrees and One NZ would be exacerbated by the Proposed Acquisition;
 - 45.3 if 2degrees acquired Dense Air's spectrum it would have a significantly increased ability to compete with One NZ and Spark;
 - 45.4 it is not viable for 2degrees to build more sites to replicate the expansion to its network that it would achieve by acquiring Dense Air's spectrum;
 - 45.5 spectrum acquisition options comparable to Dense Air are not available to 2degrees;

²⁴ Submission from 2degrees to the Commerce Commission (8 December 2023) at [11.1] and submission from 2degrees to the Commerce Commission (27 February 2024) at [1.3].

²⁵ Submission from 2degrees to the Commerce Commission (8 December 2023) at [1.2], Commerce Commission interview with 2degrees (4 December 2023), submission from 2degrees to the Commerce Commission (27 February 2024) at [4.1] and submission from 2degrees to the Commerce Commission (22 March 2024) at [2.4], [7], [24] and [44].

- 45.6 2degrees has no viable options to mitigate the negative effects resulting from the Proposed Acquisition; and
- 45.7 the effects of this Proposed Acquisition would be long term.

Our view

46. We considered whether an increase in the asymmetry in MNOs' spectrum holdings would be likely to give rise to a substantial lessening of competition. In particular, we sought to understand exactly what the factual and counterfactual would mean for competition in downstream telecommunications markets in both the short term, and the medium to long term. We did so by factoring in how One NZ and 2degrees could deploy Dense Air's spectrum and the alternative options available to MNOs to add capacity.²⁶
47. For the reasons discussed below, we are satisfied that One NZ acquiring Dense Air's spectrum is not likely to substantially lessen competition in any retail or wholesale telecommunications markets compared with a counterfactual where 2degrees acquires Dense Air's spectrum. In our view, One NZ would likely continue to face significant competition from other mobile and broadband providers (including, but not limited to, 2degrees and Spark).
48. We discuss below some reasoning relevant to all markets first, and then separately points specific to markets for each of mobile and wireless broadband.

Reasoning relevant to all markets

49. In terms of how One NZ and 2degrees would each deploy Dense Air's spectrum (in the factual and counterfactual), the evidence before us indicates that both MNOs would likely use Dense Air's spectrum to add capacity to their networks and provide improved services to customers.²⁷ Data provided by One NZ and 2degrees indicates that [].²⁸
50. The Proposed Acquisition is not likely to substantially affect 2degrees' competitive effectiveness. While it would mean that 2degrees would not have any spectrum in the 2600MHz band – which, as set out above, is mid-band spectrum that is useful to MNOs in providing capacity – we consider that 2degrees is likely to have sufficient spectrum so as to remain a credible and significant competitor to One NZ and Spark.

²⁶ In the context of this determination, short term is within the next two years. Long term is the period out to 2048 (which includes a 20 year new period of management rights for 2600MHz spectrum beyond 2028).

²⁷ One NZ media release re Proposed Acquisition (3 November 2023) – <https://media.one.nz/denseair> and submission from 2degrees to the Commerce Commission (8 December 2023) at [2.10].

²⁸ E-mail from Bell Gully (on behalf of One NZ) to the Commerce Commission (26 March 2024), Commerce Commission interview with One NZ (26 March 2024), submission from 2degrees to the Commerce Commission (22 March 2024) at [48] and [29], and e-mail from Simpson Grierson (on behalf of 2degrees) to the Commerce Commission (22 March 2024).

51. There are alternative ways in which 2degrees could add network capacity and remain competitive without the benefit of Dense Air’s 2600MHz spectrum. We consider that all MNOs (both in the factual and counterfactual) have other opportunities to acquire more spectrum and alternative options to add and manage capacity. While, these alternatives come with different cost profiles to achieve similar levels of coverage and capacity, we consider that they would not be cost prohibitive or unviable options by which 2degrees could add capacity in the factual.
- 51.1 One way in which MNOs can add more capacity is by upgrading sites, in particular by deploying more of their existing spectrum holdings at sites. At present, 2degrees has not fully deployed all its spectrum across its network, and has access to other spectrum in the mid-band (which is substitutable for 2600MHz spectrum) that it could deploy to add capacity. In addition, 2degrees could also take steps to improve spectral efficiency within its network.
- 51.2 Another alternative available to all MNOs to add capacity to their networks is by increasing the number of sites they have, either by building more sites or by co-locating on new sites. With the Proposed Acquisition, 2degrees indicated that it would [].²⁹
- 51.3 There will be opportunities for MNOs, including 2degrees, to acquire or access additional spectrum in the future, including when the existing management rights to 2600MHz spectrum expire in 2028. While we were considering One NZ’s application, []. 2degrees is likely to be able to bid for other spectrum that becomes available in the future. Any future acquisitions of spectrum management rights by MNOs will be subject to the merger control provisions of the Act.³⁰
- 51.4 Like other MNOs, 2degrees can also invest to roll out its 5G network – for which it already has large holdings of 3.5 GHz spectrum – to meet growing demand for data and potentially to alleviate any capacity constraints on its 4G network (by moving customers from 4G to 5G). In addition, 2degrees is looking to shut down its 3G network, which may increase its 4G capacity by []%.³¹

Mobile services

52. We are satisfied that the Proposed Acquisition is not likely to substantially lessen competition in any retail or wholesale mobile markets, both in the short term, and the medium to long term. This is for the above general reasons noted (in terms of alternative options available to MNOs) and also because:

²⁹ Commerce Commission interview with 2degrees (4 December 2023), submission from 2degrees to the Commerce Commission (8 December 2023) at [9.2]-[9.3] and e-mail from Simpson Grierson (on behalf of 2degrees) to the Commerce Commission (27 February 2024).

³⁰ Section 138 of the Radiocommunications Act 1989 provides that spectrum management rights are “assets of a business” for the purpose of s47 of the Act.

³¹ Submission from 2degrees to the Commerce Commission (22 March 2024) at [37].

- 52.1 One NZ would likely continue to face significant competition from rival MNOs (2degrees and Spark);
- 52.2 there is no evidence that the Proposed Acquisition would materially reduce any MNO's ability to compete for mobile customers, as evidence indicates that [],³² meaning that a lack of 2600MHz spectrum is unlikely to materially impact on the mobile services offered by an MNO;
- 52.3 2degrees itself submitted to us that [],³³
- 52.4 the Proposed Acquisition is not likely to restrict 2degrees' ability to compete to provide wholesale mobile services to MVNOs;³⁴ and
- 52.5 there is no direct evidence that One NZ would raise prices in retail or wholesale mobile markets above competitive levels in the factual or that prices would be lower in the counterfactual, nor that quality of mobile service levels would be negatively impacted by the Proposed Acquisition.

Wireless broadband services

53. Factoring in how One NZ and 2degrees would each deploy Dense Air's spectrum (in the factual and counterfactual) and the alternative options available to MNOs to add capacity (discussed above), we are satisfied that the Proposed Acquisition is not likely to substantially lessen competition in any retail or wholesale broadband markets (whether defined broadly or narrowly), both in the short term, and the medium to long term. This is because:
- 53.1 One NZ would continue to face significant competition from other broadband providers (including, but not limited to, 2degrees and Spark);
- 53.2 retail broadband customers in both fibre and non-fibre areas would continue to have competitive supply options, as 2degrees and other retail broadband providers would continue to be able to compete with One NZ for broadband customers by providing different types of broadband services (including fibre and satellite broadband);

³² Evidence indicates that []. Submission from One NZ to the Commerce Commission (5 March 2024) at [9.3]. This is supported by monitoring data that the Telecommunications Team has collected.

³³ E-mail from Simpson Grierson (on behalf of 2degrees) to the Commerce Commission (27 February 2024).

³⁴ In any event, evidence before us indicates that there is low demand for wholesale wireless broadband services, which are not necessarily purchased in a bundle with other wholesale services like mobile.

- 53.3 there is evidence of customers switching between low speed fibre plans and wireless broadband, and [];³⁵ and
- 53.4 there is no direct evidence that One NZ would raise prices in retail or wholesale broadband markets above competitive levels in the factual or that prices would be lower in the counterfactual, nor that quality of wireless broadband service levels would be negatively impacted by the Proposed Acquisition.

Determination on notice of clearance

54. We are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
55. Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to One New Zealand Group Limited to acquire 100% of the shares in Dense Air New Zealand Limited from Dense Air Limited and SoftBank Corp.

Dated this 2nd day of May 2024

Dr John Small
Chair

³⁵ Submission from Chorus to the Commerce Commission (19 February 2024) at [6.1], e-mail from Bell Gully (on behalf of One NZ) to the Commerce Commission (4 March 2024) and submission from One NZ to the Commerce Commission (5 March 2024) at [6.2] and [7.5].