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Competition considerations arising in relation to proposed RANCo

A report for Chapman Tripp

15 October 2026

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Contents

1. Introduction	1
2. RAN investment a critical dimension of competition between MNOs	2
3. Assessment must focus on whether competition is substantially lessened	4
4. Assessment must consider effects relative to the likely counterfactuals	5
5. Proposed transaction risks permanently reducing competition between MNOs	6

1. Introduction

1. We have been engaged by Chapman Tripp to prepare this initial report for submission to the Commerce Commission (the Commission) in response to the merger clearance application by Two Degrees Mobile Limited and Two Degrees Networks Limited (together, '2degrees') and One New Zealand Group Limited (OneNZ). We welcome the prospect of providing further commentary as more details come to hand.
2. OneNZ and 2degrees (the parties) propose to establish RANCo, a joint venture that will own the amalgam of the parties' radio access network (RAN) assets (the proposed transaction).
3. In this report, we offer four observations in relation to the supply of mobile services and the parties' merger clearance application:
 - a. first, investment in RAN assets is a critical dimension of present and future competition between mobile network operators (MNOs);
 - b. second, the assessment of the proposed transaction requires focus on whether competition is substantially lessened rather than on consumer outcomes;
 - c. third, the assessment must consider the effects on competition relative to the likely counterfactual or counterfactuals (and not simply relative to the status quo); and
 - d. fourth, the proposed transaction risks permanently and substantially reducing competition between MNOs in a manner that the application does not properly engage with.
4. We elaborate on each of these observations in the material below.

2. RAN investment a critical dimension of competition between MNOs

5. Competition is a dynamic process of rivalry, whereby firms seek to maximise their profits by offering price-product-service packages to consumers that are more attractive than that of their rivals, whilst minimising their costs.¹
6. At present, competition for the supply of mobile services in New Zealand takes place between:²
 - a. three MNOs, being One NZ, 2degrees and Spark New Zealand Limited (Spark); and
 - b. several much smaller mobile virtual network operators (MVNOs).
7. The Commission notes that its data:³

...suggest some fluctuation in the market shares between MNOs...,

and that, in understanding the level of competition between MNOs, the Commission:

...interpret[s] volatility between provider market shares as an indicator of competition.
8. Consistent with these observations, it is likely that the state of competition between MNOs (and MVNOs) for the supply of mobile services is presently effective.
9. In competition economics, the supply of mobile services in New Zealand (along with many other jurisdictions) can generally be described as taking place on a differentiated product basis. This means that, in addition to price, mobile service providers differentiate themselves by reference to non-price attributes such as network coverage, speed and reliability – with these non-price attributes broadly reflecting service quality.
10. The quality dimension of a MNO's competitive offering is significantly governed by the RAN infrastructure that it operates.⁴ It follows that the nature, timing and extent of investment in the RAN is highly relevant to a MNO's ability to compete effectively with its rivals by reference to service quality.
11. RAN infrastructure investment decisions are at the heart of a long history of sustained innovation in the nature and quality of MNO services, such as the successive transitions from 3G (and its predecessor technologies) through to 4G and then 5G services. In our opinion, there is every reason to expect this innovation will continue to be key to improving customer experience, including as it relates to industry developments such as the rollout of 6G as well as the RAN improvements necessary to accommodate the increased usage of artificial intelligence on mobile devices.
12. We note that MVNOs acquire mobile services on a wholesale basis from MNOs and compete with MNOs in the provision of mobile services to end-users. However, by nature of acquiring mobile services from and so utilising the same RAN assets as MNOs, MVNOs have no ability to differentiate materially by reference to service quality. In any event, MVNOs supply a very small share of mobile

¹ See, for example: Brunt, M, Market definition issues in Australian and New Zealand trade practices legislation, Australian Business Law Review, 18, 1990, p 96

² Commerce Commission, *2025 telecommunications monitoring report*, 29 June 2026, pp 212-216.

³ Commerce Commission, *2025 telecommunications monitoring report*, 29 June 2026, p 215.

⁴ NERA recognises this in its economic report accompanying the parties' merger clearance application. See: NERA, *2degrees/One NZ RAN joint venture*, 23 September 2026, paras 3-4.

services in New Zealand.⁵ Accordingly, for the purposes of the Commission's assessment of the proposed transaction, MVNOs pose no competitive constraint on MNOs in terms of the fundamental, network quality dimension of competition.

⁵ MVNOs in total accounted for 3.2 per cent of the retail market in 2025, and the largest individual MVNO's market share was 1.0 per cent. See: Commerce Commission, *2025 telecommunications monitoring report*, 29 June 2026, p 214.

3. Assessment must focus on whether competition is substantially lessened

13. The Commission highlights in its Statement of preliminary issues that it must consider whether the proposed transaction would or would likely have the effect of substantially lessening competition in a market.⁶ Consistent with this requirement, the parties' clearance application sets out their reasons for believing that the proposed transaction will not have the effect of substantially lessening competition.⁷
14. Notably, the economic report prepared by NERA and accompanying the merger clearance application appears to focus on consumer outcomes in differently structured foreign markets, rather than any effects of the proposed transaction on competition itself.⁸
15. As a matter of principle, evidence regarding consumer outcomes (such as price and quality) can inform an assessment of competitive effects. For example, evidence that prices would increase (or quality would decrease) following a transaction would tend to be consistent with a conclusion that competition will be lessened following that transaction.
16. However, evidence that a transaction is likely to have a positive effect (or no effect) on consumer outcomes does not necessarily imply that competition would not or could not be substantially lessened. The effect of a transaction on competition necessitates consideration of the different scenarios by which competition may unfold, with and without the transaction, even though consumer outcomes may be positive – albeit to a greater or lesser extent – under each of those scenarios.
17. NERA's report also does not disclose the timeframe over which the price and quality effects it describes are expected to persist, giving rise to yet greater uncertainty as to the translation from consumer outcomes to competitive effects.
18. In our opinion, the Commission may wish to focus on assessing the competitive effects of the proposed transaction directly, rather than seeking to disentangle the implications of foreign studies and consumer outcome evidence.

⁶ Commerce Act 1986, s 47(1); and Commerce Commission, *Statement of preliminary issues | proposed radio access network joint venture – 2degrees/One NZ*, 1 October 2026 (hereafter, 'SOP'), paras 11-13.

⁷ 2degrees and One NZ, *Application for clearance of an acquisition of shares and assets of a business under section 66 of the Commerce Act 1986* (hereafter, 'Merger clearance application'), para 12.

⁸ NERA, *2degrees/One NZ RAN joint venture*, 23 September 2026.

4. Assessment must consider effects relative to the likely counterfactuals

19. The parties submit that the appropriate counterfactual involves a continuation of the status quo.⁹
20. We note that the parties' stated rational for the proposed transaction is:¹⁰
- ...to improve network coverage, quality, and customer experience, delivering accelerated enhancements (including 5G rollout, as well as future mobile technologies) whilst retaining spectrum and core network differentiation, through the network efficiencies achieved by combining the Parties' RAN Assets...
21. We understand that, at present, a number of multi-operator radio access network (MORAN) arrangements are in effect across New Zealand, with such arrangements between MNOs providing for shared use of telecommunications infrastructure. These MORAN arrangements leverage the same or similar efficiencies that the parties' clearance application describes.
22. Accordingly, in our view, the state of competition in the counterfactual would very likely involve some degree of expanded or enhanced MORAN arrangements to allow for the realisation of at least some (and perhaps a significant proportion) of the efficiencies that the clearance application describes. Expanded or enhanced MORAN arrangements could reasonably be expected in provincial areas where demand is limited and so the efficiencies of avoided RAN duplication are greatest. Such arrangements would be consistent with those that have occurred elsewhere, such as the RAN sharing arrangement between Optus Mobile Pty Ltd and TPG Telecom Limited in Australia.¹¹ The Commission therefore ought to assess the proposed transaction against this counterfactual scenario, rather than the status quo.
23. In circumstances where the likely counterfactual scenario differs from the status quo, it is unlikely to be fully informative to present evidence regarding how a transaction may change outcomes such as price, quality or consumer welfare by reference to current market conditions. The required comparison concerns the state of competition with and without that transaction, rather than the state of competition before and after.
24. The empirical evidence put forward by NERA in support of the proposed transaction involves the latter form of comparison, ie, how RAN sharing changes prices and quality outcomes in markets. That evidence seems of limited value in the assessment of the proposed transaction against a counterfactual that involves more than a preservation of the status quo.

⁹ Merger clearance application, para 8.

¹⁰ Merger clearance application, para 4.

¹¹ See: ACCC, *ACCC will not oppose Optus and TPG regional mobile network and spectrum sharing*, 5 September 2024, available at: <https://www.accc.gov.au/media-release/accc-will-not-oppose-optus-and-tpg-regional-mobile-network-and-spectrum-sharing>, accessed 15 October 2026.

5. Proposed transaction risks permanently reducing competition between MNOs

25. NERA observes that, following the proposed transaction, the parties would retain the ability to invest unilaterally in RAN assets, ie, either party could invest in RAN assets that the other does not wish to deploy.¹²
26. In our view, the parties' *ability* to undertake unilateral RAN investments is of limited relevance to the Commission's assessment unless there is evidence that the parties would also have credible economic *incentives* to exercise that ability.
27. Absent sufficient incentives to invest unilaterally in the RAN, the proposed transaction would, in effect, reduce the number of MNOs with the ability to compete effectively by reference to current and future network service quality from three to two. In other words, 2degrees and One NZ would cease to differentiate from one another by reference to service quality, leaving Spark as the only entity with the ability to compete by reference to service quality.
28. Further, given the likelihood of much reduced competition in relation to investment in RAN assets, it is unclear whether the parties will have a sufficient or any incentive to pass efficiency benefits through to consumers. For example, an equity analyst report regarding the proposed transaction anticipates that the establishment of RANCo will materially increase the parties' free cash flows, implying that benefits will accrue to shareholders rather than consumers. In our view, an informed third party assessment of this kind raises the probability that the proposed transaction could worsen consumer outcomes.
29. The manifestation of those worsened consumer outcomes can be expected to arise from a circumstance where two of the three competing MNOs share the same RAN and incur the same costs in relation to a very substantial portion of the mobile service provided. Consistent with those changed operating arrangements, the proportion of the price-service offering over which the parties compete for customers will be substantially smaller than now.
30. Lastly, recognising that the parties' proposed joint venture contains no stated duration, its term must be presumed to be indefinite. Accordingly, the effects of the proposed transaction on competition between MNOs – and so consumer outcomes – as described above are likely to be permanent. As a matter of principle, the future entry of an efficient competitor could act to mitigate or reverse the effects of the proposed transaction. However, the barriers to entry in relation to any future third party development of RAN assets and so a mass market consumer MNO offering are likely to be so substantial that any such a development cannot realistically be contemplated.

¹² NERA, *2degrees/One NZ RAN joint venture*, 23 September 2026, para 5A.



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