protect & connect

Public Bill Committee
Product Security and Telecommunications Security Bill
House of Commons

cc. Julia Lopez MP, Minister of State for Media, Data, and Digital Infrastructure

21 March 2022

Dear Members,

Following my appearance before the Public Bill Committee on 15th March, I committed to supplement my evidence with further information in response to questions from Committee members. In addition, I wanted to further contextualise some of the remarks made during the Committee hearing, both by myself and the other witnesses.

***1. Information on the number of people who have approached Protect and Connect (Questions 2 and 11)***

In response to Questions 2 and 11, I committed to send the Committee information on the numbers of people who have contacted our campaign. Subsequently, I can confirm that 7,316 individuals have reached out to the Protect and Connect campaign through a variety of mediums, including registering as supporters and emailing their MPs.

We also note that other major stakeholder organisations including the NFU, BPF, CLA and CAAV have voiced similar concerns about the 2017 reforms, including putting forward evidence from their members as to how the Code has impacted them. The Law Society has also expressed concern that the proposals for reform deal with the symptoms rather than causes of the issues which are being addressed.

***2. Further detail on the development of tower companies since 2017 (Question 19)***

I also wanted to clarify some remarks that I made in relation to tower companies, and also the comment from Mr Bartlett in the later session that suggested I was incorrect because tower companies have been present in the market long before 2017.

I would agree with this statement, however, it does not address the point that I was trying to make. Tower companies generally contract with a landowner to obtain a site, install physical passive infrastructure (i.e. the mast) on that site, and then lease out space on the physical infrastructure to mobile network operators to install active infrastructure (i.e. antennae).

Prior to the introduction of the 2017 reforms, the government proposed that the Code valuation regime should include both site provider land and infrastructure provided by these Tower Companies. Including infrastructure, as well as land, in this valuation regime would have seen those operating the networks and directly providing 5G benefit from an annual saving of £91m. Ultimately, the government did not proceed with this proposal, fearing that the Tower Companies "were particularly sensitive to reductions in revenue". Tower companies have therefore been able to use the Code to depress rents paid to site providers significantly while enjoying immunity from the reductions themselves. Most worryingly, we have not seen (nor can the Government identify) these savings being fully passed on to the mobile network operators. Since it is the mobile network operators that make decisions about the rollout of 5G and extension of coverage into rural areas, we would ask you to consider if the savings that are being made (whatever they are) under the 2017 reforms are to the wider public benefit at all.

Indeed, in a presentation produced by Vantage Towers in relation to its sale, supplied below in Annex 2, it was noted that the tower company would "retain 30% of the net savings" related to land lease renegotiations. In addition, the documents show that operator customers are charged an average of £17,000 per year, far in excess of the average rent paid to site providers. This demonstrates that the Code has created a significant commercial opportunity for the Code Operator, infrastructure provider sector of telecoms industry, without any incentives or obligations to pass any savings through into investment for the public good.

### *3. Challenging the assertion that only 0.5% of rent agreements are referred to a tribunal (Question 43)*

In his answer to Question 43 by Julia Lopez MP, Mark Bartlett (of Cellnex UK and representing Speed Up Britain) stated: *"Since 2017… only 0.5% of any [rent negotiation] discussions ended up in the tribunal.*" While this may reflect Cellnex's own internal data, evidence provided elsewhere by Speed Up Britain directly undermines any suggestion that this claim is representative of the national picture.

Independent analysis by the CEBR shows that, between the 2017 reforms and 2021, there were at least 336 cases and referrals to tribunals across the United Kingdom. If we take the figure used by Mark Bartlett before the Committee, of operators having completed roughly 1,000 agreements having been made since 2017, then the actual rate of tribunal is likely in the double digits and far higher than 0.5%. Further context for this low rate of renewals is that, in 2017, there was a backlog of 4,000 expired agreements with further expirations taking place at a rate of 2,200 per year. By the operators' own admission therefore, they have not dealt with their pre-existing backlog, let alone the current number of expired agreements. We should also not ignore the fact that for every single tribunal case, there are likely to be a number of notices served which have not ended up in tribunal action. We know from speaking to site providers that the service of a notice alone causes a huge amount of anguish and stress.

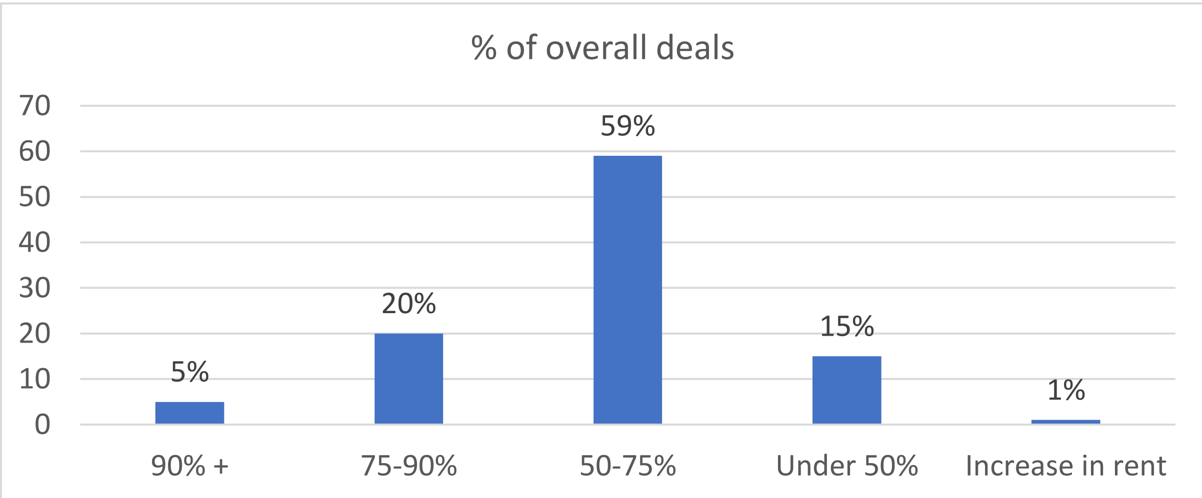
SUB's own figures, combined with the CEBR's independent analysis, therefore suggest that the true rate of tribunal referrals is far higher than Mr Bartlett's testimony states. Moreover, for each site owner with the resources and inclination to bring a dispute to the tribunal (the minimum cost of bringing a dispute to tribunal is estimated at £100,000), there will be many more who will not be able or willing to defend their rights in this way because they cannot afford the cost.

In addition to the cost of bringing a dispute to the tribunal, legal action significantly slows the speed of the 5G rollout. As we stated in our evidence, the changes in the PSTI Bill will inject more hostility and create more legislation that will need to be tested in the courts, resulting in further legal challenges, slowing vitally important 5G rollout down. Consensual deals based on a fair price will always be faster.

### *4. Contextualising the claim that the 2017 reforms have only led to a 63% reduction (Question 47)*

In his answer to Question 47 by Shailesh Vara MP, Mark Bartlett stated that: "*I would also point out that, on average, it is a 63% reduction in rent*". We have reproduced here Speed Up Britain's own chart, passed to us from an un-named source, showing the changes in rent as a result of a Code agreement renewal. While not disagreeing with SUB's statement of fact that their own data shows an average reduction of 63%, their data also shows that one in four agreement renewals result in a reduction of more than 75%. We would also highlight that the government's own Human Rights memorandum to the Bill highlights that the proposed changes are likely to lead to further reductions so, even if this 63% was accurate, it is extremely likely that the figure would rise on enactment.

**Reproduction of a chart produced by Speed Up Britain**




Protect and Connect conducted its own survey of over 100 site owners that further calls into question Speed Up Britain's data. As the following table of results show, a significant proportion of cases represent very significant reductions of more than 80% and 90%.

| | | |
|---|---|---|
| **Increases in rents** | 2 | 1.9% |
| **Reductions in rents of >90%** | 37 | 34.3% |
| **Reduction in rents of >80%** | 57 | 52.8% |

This more severe rent reduction is supported by analysis of results from tribunal claims, which show that rent on rural sites falls on average to £600 per year, roughly a 90% reduction from pre-2017 rent levels.

***5. Addressing the suggestion that many site owners have seen rent increases (Question 52)***

In her answer to Question 52 by Kevin Brennan MP, Juliette Wallace (of MBNL and representing Speed Up Britain) stated: *"As I say, we have a lot of sites where there has been no reduction and we have a small number where the rent has actually increased".* However, this is not an accurate portrayal of the national picture, and is undermined by SUB's own figures which show this occurs only in 1% of cases.

***6. Addressing the stance that issues with the 2017 Code were teething problems and that extreme rent reductions are no longer a common feature of the market (Question 1)***

In Question 1, Julia Lopez MP said that *" A larger a number of cases arose, but certainly from my experience as a Minister, the number of difficult cases seems to have evened out."* In reply, I stated: *"we are not seeing the same tailing off of difficult cases; a number of cases are continuing to come to us where leases are up for renewal".*

Our review of the weekly case list at the  Upper Lands Tribunal there are at least two cases concerning the Code heard each week. Last week there was a case management hearing and an interim rights hearing both concerning EE/H3G but with two different site providers, one of them being the Trustees of the London Playing Fields Society.  The previous week there was a two day hearing, again involving EE/H3G.  Two days later there was a case management hearing between Cornerstone and Travelodge.

Testimonials gathered by the Protect and Connect campaign support this: we have heard numerous cases well after 2018 where site owners have seen demands of extreme reductions in rent. One example is of a site owner whose rent was reduced in 2020 from £2,900 per year to only £200, a reduction of 97%. For another site owner, who was still engaged in negotiations at the point he reached out to our campaign in 2021, he had received demands of a 90% reduction.

This is not just impacting private site owners. Hillingdon Hospital Trust was taken to court by Vodafone to reduce the rent they would pay for site rental under a new lease. As a result of the claim, the Trust has seen its telecoms mast rental income fall by 90% after a revaluation. In addition, the Trust's 2020/21 financial accounts show that it paid Vodafone over £300,000 in fees, potentially including back-dated rent reimbursements.

I hope that these further submissions have been useful for the Committee during its deliberations.

Yours sincerely,

Anna Turley
Chair, Protect and Connect Campaign

# **Annex 1**: Survey results breakdown

Respondents were asked the following questions:

- *How much was your rental agreement worth per year before the rent reduction demand?*
- *What was/is the new rent proposal from the operator?*

Pre-reduction, the average respondent had a rental mast income of **£6,530,** similar to the UK average.

We received **116** answers that answered both questions: some respondents had not yet received rent proposals from operators. Of those, **108** told us that the new rent proposal was different to their previous rental agreement. Of those reporting changes, **106** reported that they had been asked for reductions.

| *Questions* | # | % |
|---|---|---|
| **Increases** | 2 | 1.9 |
| **Reduction of >90%** | 37 | 34.3 |
| **Reduction of >80%** | 57 | 52.8 |

On average site providers who reported changes in rent were subject to reductions of **76%**.

We also asked respondents to answer the following yes/no questions:

| *Questions* | *Yes (#)* | *No (#)* | *Yes (%)* |
|---|---|---|---|
| **Did the mast operator threaten legal action if an agreement couldn't be reached?** | 74 | 75 | 49.7 |
| **Have you ever found people working on the apparatus on your property without warning?** | 76 | 89 | 46.1 |
| **Does your mast operator seek your permission before carrying out site upgrades?** | 108 | 58 | 65.1 |
| **Did you receive legal notice?** | 46 | 101 | 31.3 |
| **Have you ever suffered damage to your property as a result of actions by those using the mast?** | 38 | 125 | 23.3 |

Respondents were asked *"To what extent do you feel in control of what happens on your land with regard to your mobile mast?"*, with possible answers of:

| *Answers* | # | % |
|---|---|---|
| **I don't feel in control at all** | 58 | 35 |
| **I don't feel very much in control** | 50 | 31 |
| **I feel fairly in control** | 26 | 16 |
| **I feel mostly in control** | 27 | 16 |
| **I feel totally in control** | 5 | 3 |
| **Total** | 166 | - |

*Totals may not add to 100% due to rounding*

# **Annex 2**: Vantage Towers IPO presentation pages

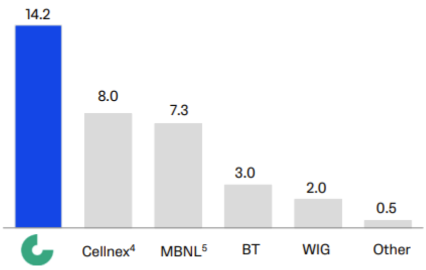
VANTAGE TOWERS

## #1 operator in the UK with two strong anchor tenants

### #1 tower operator in the UK

| | | | | | | |
|---|---|---|---|---|---|---|
| Tenancy ratio | 2.0x | 1.5x[1] | n.a. | n.a. | n.a. | n.a. |
| Market share[2] | 41% | 23% | 21% | 9% | 6% | 1% |
| Mobile market share of anchor tenants[3] | 53% | n.a. | 47% | 30% | n.a. | n.a. |

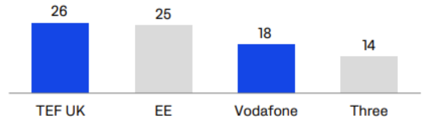
Macro sites ('000)[2]




### Anchor tenant relationship with Vodafone and TEF UK

| | | | | |
|---|---|---|---|---|
| Share of total subs (%)[3] | 31% | 30% | 22% | 17% |
| Subs / PoPs ('000)[3] | 1.4 | 1.4 | 1.0 | 1.0 |

Mobile network operator subscribers (m)[3]




- 4 player market with 2 network sharing partnerships:
  - Vodafone and TEF UK on Cornerstone, EE and Three through MBNL[5]
- Network sharing between Vodafone and TEF UK means Cornerstone is a critical infrastructure provider to both mobile network operators, together representing >50% mobile market share
- Significant ground lease cost saving opportunity over the long term on existing and new sites under the Electronic Communications Code ("ECC")
  - Cornerstone will retain 30% of the net savings, providing additional capital to further the rollout of next-generation digital networks in the UK

**Source** Company information as of 30-Sep-20, company reporting, broker reports, Fitch Solutions

**Notes**

1 Cellnex as of 3Q20
2 Based on number of macro sites; data as of 3Q20 for Cellnex and broker reports for other operators
3 Mobile subscriber data based on Fitch Solutions as of 2019; PoPs based on broker reports
4 Cellnex has also agreed with CK Hutchison to acquire the economic risks or rewards deriving from approximately 6,000 macro sites in the UK
5 Mobile Broadband Network Ltd ("MBNL"); 50:50 joint venture between EE and Three; manages towers for EE and Three but does not own the passive infrastructure



VANTAGE TOWERS

## FY20 adjusted pro forma KPIs and financials

### Historical performance

| ~14,200 macro sites[1] | 77% GBT[1] 23% RTT[1] | 2.01x tenancy ratio[1] | ~1,200 committed new macro sites |
|---|---|---|---|

| Key financials[2] (£m), Mar-YE | Adjusted[2] FY20PF | Adjusted[2] 1H21PF |
|---|---|---|
| **Revenue (ex. pass through)** | **280** | **139** |
| Pass through revenue[3] | 67 | 38 |
| **Total revenue** | **347** | **177** |
| Opex (incl. pass through) | (118) | (63) |
| **Adj. EBITDA[4]** | **229** | **114** |
| *Adj. EBITDA margin (%)[5]* | *82%* | *82%* |
| Recharged capex revenue | - | - |
| Ground lease expense[6] | (118) | (58) |
| **Adj. EBITDAaL[4]** | **111** | **56** |
| *Adj. EBITDAaL margin (%)[7]* | 40% | 40% |
| Maintenance capex | (9) | (5) |
| **ROpFCF** | **102** | **61** |
| *Cash conversion (%)* | 92% | 91% |
| Interest[8] | (5) | (3) |
| Tax[9] | (6) | (5) |
| Change in NWC | n.a. | n.a. |
| **RFCF** | **91** | **43** |

- **Long-term contracted revenue with anchor tenants**
  - Vodafone UK and TEF UK represent 96% of revenue (ex. pass through revenue)
  - Cornerstone also recognises revenues that are passed through to tenants relating to business rates and in configuration upgrades
  - Blended average anchor fee of £17.0k per macro site
  - Other tenant revenue for FY20PF of £10m
- **Ground leases account for 69% of cost base (ex. pass through costs)**
  - Majority linked to inflation or periodic rent review
  - Upside in the long term from renegotiations on existing and new sites under ECC (Cornerstone will retain 30% of the net savings)
- **Adj. EBITDAaL margin of 40%[4,7]**
  - Reflecting relatively high ground lease costs in the UK (especially on urban macro sites)
  - Opportunity to benefit from operating leverage due to passive sharing and third party lease-up
- **Highly cash generative business with 92% cash conversion in Adj. FY20PF**
  - Stable and low maintenance capex at 3% of revenue (ex pass through)

**Notes**

1 As of 30-Sep-20
2 Adjustments, basis of preparation and definitions described on p.14, 19 and 20, respectively
3 Pass through revenue consists of recovery of business rates passed through to the tenants (FY20PF: £67m, 1H21PF: £38m) and recharged capex revenue (FY20PF: £0m, 1H21PF: £0m)
4 Includes the impact of the reassessment of the capitalisation policy for internal staff costs from FY21, explained on p.14
5 Adj. EBITDA divided by revenue (ex. pass through)
6 Sum of depreciation of lease-related right-of-use asset and interest expense on lease liability and net interest on finance sublease arrangements. Cornerstone is performing a lease term re-assessment, which may result in a minor historical restatement of the pro forma depreciation of lease-related right of use assets and interest on leases
7 Adj. EBITDAaL divided by revenue (ex. pass through)
8 Based on 3.0-4.0x Net Financial Debt / Adj. EBITDAaL. Please see p.20 for the definition of net financial debt
9 Effective cash tax rate of 10-15% in FY20PF and 1HFY21PF, increasing to 19% over the near term; taxable income £60-70m higher than earnings before taxes, delta normalises over long run as capital allowance aligns to D&A; D&A in FY20PF of £118m