

MOBILE RADIO NETWORK SERVICES MARKET INVESTIGATION

The Mobile Radio Network Services Market Investigation Order 2023

Statement relating to the making of an Order under sections 161 and 165 of and Schedule 10 to the Enterprise Act 2002

Introduction

1. This statement follows the consultations the Competition and Markets Authority (**CMA**) has carried out on the making of an order to implement certain of the remedies it decided upon in its report *Mobile radio network services market investigation: Final report (the Report)*.^{1 2} It sets out and explains the order the CMA has decided to make.
2. The background to the Report and the consultation process the CMA followed are described below. Appendix A of this statement summarises the responses the CMA received to the consultations and sets out the CMA's assessment of those responses.

Background

3. On 5 October 2021, the CMA, in the exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (**the Act**), made an ordinary reference to the Chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for an investigation of the supply of Land Mobile Radio (**LMR**) network services for public safety (including all relevant ancillary services) in Great Britain.³

¹ [Final report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

² Unless stated, or the context requires otherwise, terms used in this statement have the same meaning as in the Order and the Report.

³ [MRN services investigation terms of reference](#)

4. On 05 April 2023, the CMA, in accordance with section 136(1) of the Act and within the period permitted by section 137, published the Report.
5. In the Report the CMA decided, in accordance with section 134(1) and section 134(4) of the Act, that:
 - (a) features of the market for the supply of communications network services for public safety and ancillary services in Great Britain, individually or in combination, prevent, restrict or distort competition in connection with the supply of LMR network services for public safety in Great Britain and there is an adverse effect on competition (**AEC**) for the purposes of section 134(2) of the Act;
 - (b) the AEC gives Airwave Solutions (**Airwave**) (and its owner, Motorola Solutions (**Motorola**)) the ability to price services above levels the CMA would expect to prevail in a competitive market and results in a detrimental effect on customers; and
 - (c) the CMA will take action under section 138 of the Act, by making an order (**the Order**) in accordance with section 161(1) of the Act for the purpose of remedying, mitigating or preventing the detrimental effect on customers, so far as it has resulted from, or may be expected to result from, the AEC.
6. Specifically, the CMA decided, as part of a package of remedies, to impose a charge control on Airwave and Motorola the detailed methodology and calculation mechanisms of which would be specified in the Order. The CMA set out in Section 8 of, and Appendix K to, the Report in particular, its reasons for doing so.
7. In accordance with the requirements of Schedule 10 to the Act,⁴ on 18 May 2023, the CMA gave notice of its intention to make the Order and invited representations on the Draft Order (**the First Consultation**). As part of

⁴ As applied by section 165 of the Act.

the First Consultation the CMA produced, shared with Motorola and the Home Office and published the following documents:

- (a) a notice meeting the requirements of paragraphs 2(1) and 2(2) of Schedule 10 to the Act (the **First Notice**);
 - (b) a draft of the proposed Order (the **Draft Order**);
 - (c) an explanatory note which accompanies and describes, but is not part of, the Order (the **Explanatory Note**); and
 - (d) a copy of the model used in setting the charge control reflected in the Draft Order.
8. The First Notice stated, in particular, the CMA's proposal to make the Order; the proposed Order's purpose and effect; the situation with which the proposed Order is seeking to deal; and the other facts the CMA considered justify its making.
9. The CMA received responses to the First Consultation from the Home Office on 8 June 2023 and 16 June 2023, and from Airwave and Motorola on 16 June 2023. The CMA considered the representations it received in those responses.
10. In light of the responses to the First Consultation, the CMA proposed to make certain modifications to the Draft Order. There were a small number of these, and they were generally of limited effect. However, to cover the possibility that any were material enough, for the purposes of paragraphs 2(4) – 2(5) and 5 of Schedule 10 to the Act, to require further consultation, the CMA decided to undertake such consultation (the **Second Consultation**).
11. The Second Consultation began on 11 July 2023. In light of the small number and limited effect of the proposed modifications to the Draft Order, the CMA proposed to consult for a seven-day period ending on 18 July 2023. In

response to a request from Motorola, the CMA allowed it a further two days to respond to the consultation (until 20 July 2023).

12. Again in accordance with the requirements of Schedule 10 to the Act, as part of the Second Consultation the CMA gave notice of its intention to make the Order with proposed modifications. The CMA published the following documents which we also provided to Airwave and Motorola and the Home Office:

(a) a notice meeting the requirements of paragraphs 2(4) and 2(5) of Schedule 10 to the Act (the **Second Notice**); and

(b) a draft of the proposed modified Order (the **Modified Draft Order**).

13. As well as the information contained in the First Notice (which was repeated), the Second Notice also stated the proposed modifications and the reasons for them. In addition, the Second Notice explained that, while the CMA had considered all the responses to the First Consultation and would in due course set out its response to them (as part of making the final Order), it was publishing and consulting on the modifications it proposed should be made to the Draft Order in the interim, so that it could make the final Order, and address the ongoing detrimental effect on customers resulting from the AEC, as soon as possible (see paragraphs 28 and 31 of the Second Notice).

14. The CMA received two responses to the Second Consultation. The Home Office responded on 18 July 2023. Airwave and Motorola responded on 20 July 2023. Additionally, Motorola and the CMA corresponded on 12 and 13 July on matters relevant to the consultation, and the CMA met with Motorola on 19 July, at which meeting Motorola raised with the CMA a number of the points it included in its 20 July written response.

15. The CMA has considered the representations contained in the responses to the Second Consultation, along with those made in response to the first. Having done so, the CMA has decided to make the Order in the form

published [here](#). The CMA's reasons for that decision are explained below and in Appendix A.

The CMA's reasons

16. For the reasons set out in the Report, the CMA decided that there is an AEC in the relevant market and that it would impose remedies including a charge control.
17. The CMA described and explained fully in the Report its findings that Airwave and Motorola have set (and maintained) a price for Airwave Network services very substantially in excess of the competitive level. That ability is reflected in the generation of supernormal profits of around £1.27 billion from the operation of the Airwave Network between January 2020 and December 2029. That figure is the equivalent to charging almost £200 million per year more than the CMA would expect in a well-functioning market.
18. The CMA specified the form of the charge control it had decided to impose, and the way in which that charge control would be calibrated, in Section 8 of, and Appendix K to, the Report. The CMA's decision therein was that the charge control will mitigate the substantial detrimental effects described in the preceding paragraph by limiting Airwave's and Motorola's ability to price relevant Airwave Network services above levels the CMA would expect in a competitive market. It will set an appropriate price level for such services, established as described in the Report (and Appendix K thereof in particular).
19. Together with the recommendation the CMA decided to make to the Home Office (again as described in the Report), the CMA concluded that the charge control will form part of an effective and proportionate package of remedies, as explained in paragraphs 8.126 to 8.174 of the Report. That is, a package of remedies that will achieve as comprehensive a solution as is reasonable and practicable to the AEC the CMA found and any detrimental effects on customers so far as resulting from that AEC.

20. In the First Consultation, the First Notice explained both the effects of the proposed Draft Order and the following provisional views thereon:

- (a) The proposed Draft Order was consistent with and would give effect to the CMA's decisions included in the Report to impose a charge control.
- (b) The charge control provided for by the Draft Order would, as set out in the Report, apply to the products and services provided by all Airwave's business lines, other than the following: Ambulance Bundle 2; Pronto; the Command Centre Control Room Solution business; Radio terminals (except where part of a managed service); and services associated with the development and provision of any interface solution required for interworking and provided under the Interface Agreement.
- (c) The charge control would limit what Airwave and Motorola can charge customers for services within the scope of the charge control; and would require Airwave and Motorola to provide information to the Home Office and to the CMA to support the operation of the charge control.
- (d) The charge control mechanism in the Draft Order would specify an overall revenue allowance for each year of the control that would limit the level at which charges for goods and services within the scope of the control are set (in the manner set out in Appendix K of the Report), subject to certain matters including specified indexation arrangements and adjustments as a result of the cost sharing mechanism described in the following sub-paragraph.
- (e) The charge control would include a cost sharing mechanism that applies to capital expenditure (capex) on external (ie non-Motorola supplied) equipment such that Airwave retains 75% of savings achieved relative to a pre-determined target level for the given year (with the other 25% subsequently returned to customers), and Airwave bears 75% of any over-

spend relative to the target level (with the other 25% passed on to customers).

- (f) The charge control would require Airwave and Motorola to provide information to the Home Office (on its own behalf and that of Airwave Network users) and the CMA concerning the evolution of capex plans and spend over time. These requirements would include an obligation to respond in full, and in a clear and timely manner, to reasonable requests from the Home Office and the CMA for further clarification and substantiation with respect to the information provided. The charge control would also specify reporting and assurance requirements.
- (g) The charge control specified in the proposed Draft Order would be applied from the day after the Order is made, and the existing contractual pricing arrangements set out in the PFI Agreement, the Police Service Contracts, the Ambulance and Scottish Ambulance Contracts and the Firelink Project Agreement would be amended and supplemented in accordance with the Order.
- (h) Subject to a review in 2026, and to any variation of it, the Order would limit the revenue and charges for relevant services provided until 31 December 2029. It would remain in force until a final set of charges has been calculated and paid and Airwave and Motorola have complied with their final obligations (unless the earlier shutdown of the Airwave Network makes such a review and/or the continued operation of the Order no longer necessary).

21. In the Second Consultation, in addition to the above points, the Second Notice explained the proposed modifications to the proposed Draft Order and the following provisional views thereon:

- (a) The proposed addition to Background Recital paragraph 5 of the proposed Draft Order would (just) reflect the fact the Second Consultation had taken place.
- (b) The proposed amendment to the definition of 'Specified Goods and Services,' in Article 2.1 of the Draft Order, would clarify that definition to ensure that it covers the services provided to all contracted users of the Airwave Network, as the CMA decided in the Report. That definition had inadvertently and incorrectly been drawn too narrowly in the version of the Draft Order published in the First Consultation.
- (c) The proposed modification to Article 6.2 of the Draft Order, to refer to (i) the Motorola capex forecasts which underpinned the capex allowances that were referred to in the Report as the 'May 2021' and 'April 2022 forecasts', and (ii) the capex allowances set out in the Report, would make clear Airwave's and Motorola's obligations under that Article.
- (d) The proposed amendment to Article 8.4 of the Draft Order would remove an ambiguity, by making clear that Airwave's and Motorola's appointment of an independent expert to provide advice or reports as part of the review is subject to the CMA's approval. This would correspond to the intended effect of the original, unmodified Draft Order.
- (e) The proposed amendments to Schedule 1, paragraph 1 and footnote 1 of the Draft Order would:
 - I. give effect to the commitment the CMA made, in the Report and the First Consultation, to update the six-month average of Index Linked Gilt yields used to estimate the relevant risk-free rate for the charge control, and in turn to determine the allowed return on capital, using the latest data available at the time that the Order is put in place;
and

II. include a clarificatory cross-reference to the definition of CPI_t used in paragraph 7 of that Schedule.

(f) The proposed amendment to paragraph 4 of Schedule 1 to the Draft Order would facilitate the effective implementation of the charge control remedy, consistent with the requirement the CMA decided upon in the Report, by specifying that, when setting charge levels, Airwave and Motorola must use an official inflation forecast from a UK public authority which publishes regular inflation forecasts, such as the Office of Budget Responsibility or the Bank of England. This modification was proposed in response to representations Airwave and Motorola, and the Home Office, made in response to the First Consultation.

(g) The proposed amendment to paragraph 12 of Schedule 1 to the Draft Order would bring the reconciliation amount payable under the Order in the event of the shutdown of the Airwave Network before the end of 2029 into line with the CMA's decision in the Report that all reconciliation amounts in the charge control are net present value (**NPV**) neutral.⁵

22. The CMA's provisional views, on which it was consulting, were therefore that the proposed Draft Order, with the modifications proposed in the Second Consultation, was:

(a) consistent with its decisions in the Report;

(b) would give effect to those decisions; and

(c) would, in the precise formulation proposed, comprise part of a package of remedies that would be effective and proportionate to achieve as comprehensive a solution as is reasonable and practicable to the AEC the CMA found and any detrimental effects on customers so far as resulting from that AEC.

⁵ Appendix K, paragraph 67(e) of the Report

23. The CMA has considered Airwave's and Motorola's, and the Home Office's, responses to the consultations as set out in Appendix A to this statement. For the reasons set out there, those responses do not, save insofar as they caused the CMA to make the modifications to the Draft Order described above, and the following additional modification, cause the CMA to come to conclusions that differ from its provisional views.
24. The additional modification the CMA has decided to make to the Draft Order following the Second Consultation is to one of the formulae in paragraph 1 of Schedule 1 (which specifies part of the charge control methodology). Specifically, the formula for the reconciliation in 2024 of Airwave's and Motorola's actual revenue in 2023 (from the Commencement Date of the Order) with that allowed under the charge control.
25. This additional modification is made to reflect that – unlike in subsequent years of the control – any amount requiring reconciliation will have arisen only in relation to the latter part of 2023, such that the average time lag ahead of the reconciliation being accounted for in subsequent charges will be less than a year. The object and effect of the provision, however, remains the same: to ensure all reconciliation amounts in the charge control are accounted for in an NPV-neutral way. We note that if Airwave recovered 1% more (or less) revenue than allowed under the charge control for the remainder of 2023, then the downward (or upward) adjustment provided for to account for this would be lower – as result of the modification – by around £20,000 in 2024 (an amount equal to around 0.01% of Airwave's allowed revenue). The modification is therefore not material.
26. Accordingly, the CMA has decided to make the Order in the terms shown [here](#). Those terms are substantially the same as in the Draft Order proposed in the First Consultation, subject only to the modifications proposed in the second and that described immediately above. The CMA's conclusion is that making the Order in that form is:

- (a) consistent with its decisions in the Report;
- (b) would give effect to those decisions; and
- (c) would comprise part of a package of remedies that would be effective and proportionate to achieve as comprehensive a solution as is reasonable and practicable to the AEC the CMA found and any detrimental effects on customers so far as resulting from that AEC.