

**MOBILE RADIO NETWORK SERVICES MARKET INVESTIGATION
(DRAFT) EXPLANATORY NOTE – FOR CONSULTATION**

The Mobile Radio Network Services Market Investigation Order 2023

**The Mobile Radio Network Services
Market Investigation Order 2023 (the Order)**

This note is not part of the Order

Introduction

1. On 05 April 2023, the Competition and Markets Authority (**CMA**) published its report under section 136 of the Enterprise Act 2002 (**the Act**) entitled *Mobile Network Services Market Investigation: Final Report* (the **Report**).
2. The Report set out the CMA's decision that 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 Land Mobile Radio network services for public safety in Great Britain and there is an adverse effect on competition (**AEC**).
3. The AEC gives Airwave Solutions (and its owner, Motorola Solutions) 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.
4. The CMA estimates that, as a result of the AEC, Airwave Solutions and Motorola Solutions can be expected to make total supernormal profits of around £1.27 billion from the operation of the Airwave Network between 1 January 2020 and 31 December 2029. This is equivalent to charging almost £200 million per year more than the CMA would expect in a well-functioning market.
5. The Report sets out the CMA's decision to make an order under section 161 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. The Order imposes a charge control, limiting the charges Airwave Solutions and Motorola Solutions may make for services within the scope of the charge

control, and requires Airwave Solutions and Motorola Solutions to provide information supporting the operation of the charge control to the Home Office and the CMA.

The charge control

7. The charge control will be applied from the commencement of the Order on a forward-looking basis. Airwave Solutions and Motorola Solutions will be required to comply with the charge control when setting relevant charges. 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 are amended and supplemented by the terms of the Order.
8. The charge control will limit the price of the Airwave Network services at a level that the CMA considers would apply in a competitive market. It will, thereby, mitigate the detrimental effects on customers (the Home Office, the emergency services and ultimately taxpayers) from Airwave Solutions' and Motorola Solutions' market power. To the extent they will no longer be earning supernormal profits, the charge control will also reduce Airwave Solutions' and Motorola Solutions' incentives to delay the delivery of an interworking interface solution – required to facilitate the transition of users from the Airwave Network to a replacement network – and thereby to prolong the operation of the Airwave Network.
9. The charge control will determine an overall revenue allowance for the products and services provided by all Airwave Solutions' business lines, except for 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. The products and services provided by all Airwave Solutions' business lines, with the listed exceptions, are defined in the Order as the 'Specified Goods and Services.'
10. The overall revenue allowance for the Specified Goods and Services is specified for each year of the charge control. It is subject to defined indexation arrangements, and to adjustments as a result of a cost sharing mechanism which applies to capital expenditure on external (ie non-Motorola Solutions supplied) equipment. Under this mechanism, Airwave Solutions will retain 75% of any savings achieved, and bear 75% of any over-spend, relative to its specified target level for the year in question, with the other 25% returned to/borne by customers.
11. The overall revenue allowance for the Specified Goods and Services will be used to determine the maximum amount that Airwave Solutions and Motorola Solutions can charge for 'Core Services' and 'Police Menu Services.' These Core Services and Police Menu Services are part of, and account for around 90% of the revenue currently earned from, the Specified Goods and Services.

The remaining 10% of revenue for the Specified Goods and Services comes from the provision of a range of 'Other Menu Services', the requirements for which can be affected by a range of different usage decisions, including by organisations which share the use of the Airwave Network with the emergency services (such as the Highways Agency).

12. The provision of the Other Menu Services will continue to be subject to existing contractual arrangements. However, an estimate of the revenue Airwave Solutions and Motorola Solution earn from them (around £[8<]million per year) will be deducted from the overall revenue allowance to determine the maximum amount of revenue that can be received from the provision of Core Services and Police Menu Services.
13. The introduction of the charge control will reduce the charges for Core Services and Police Menu Services by more than 40%. It will, nonetheless, give Airwave Solutions and Motorola Solutions the opportunity to recover their reasonable costs of providing the Specified Goods and Services and to earn a reasonable level of profit in doing so, ie the level of profit that would be expected in a well-functioning market.
14. Airwave Solutions and Motorola Solutions will be required to provide information concerning compliance with the charge control and the evolution of their capital expenditure plans and projected spend over time to the Home Office and to the CMA. Airwave Solutions and Motorola Solutions will also have an obligation to respond fully, accurately and within specific time limits to reasonable requests from the Home Office and / or the CMA for further clarification and substantiation of the information they provide.

Review of the Order and duration

15. A person aggrieved by the CMA's decision to make the Order may apply to the Competition Appeal Tribunal for a review of that decision in accordance with section 179 of the Act.
16. The CMA will carry out a review of the ongoing effectiveness and appropriateness of the Order in 2026. More generally, the CMA has a duty under section 162 of the Act to keep the carrying out of the Order under review. This includes a duty to consider, from time to time, whether the Order is being complied with, and whether by reason of any change of circumstances the Order is no longer appropriate and needs to be varied or revoked. Airwave Solutions and Motorola Solutions may also apply to the CMA for the variation of the Order where they and the Home Office agree arrangements for the setting of charges for Specified Goods and Services that differ from the charge control methodology set out in the Order but do not result in a material weakening of the constraints on revenue that the Order would otherwise impose.
17. Subject to the review of it, and to any variation, the Order will limit the revenue and charges for relevant services provided until 31 December 2029 and

cease to have effect after that date once a final set of charges has been calculated and paid and Airwave Solutions and Motorola Solutions have complied with their final obligations under Articles 6 – 9, unless prior to 31 December 2029 the CMA is satisfied that the whole Airwave Network has been permanently shut down and the contractual obligations between Airwave Solutions and the Home Office have come to an end and that Airwave Solutions and Motorola Solutions have complied with all their obligations under the Order. In that latter case, the Order will cease to have effect on the date on which Airwave Solutions and Motorola Solutions have complied with all their obligations under it.

Possible consequences of non-compliance

18. Section 167 of the Act places a duty on any person to whom the Order relates to comply with it. That duty is owed to any person who may be affected by the contravention of the Order. Any person who suffers loss or damage caused by a breach of this duty may bring civil proceedings for contravention of the Order.
19. The CMA has power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.
20. Section 167 of the Act provides that compliance with the Order is also enforceable by civil proceedings brought by the CMA for an injunction or for any other appropriate relief or remedy.

Public consultation on the Draft Order

21. The CMA is inviting representations on the Draft Order, which must reach the CMA by 11.59pm on 16 June 2023.

Structure of the Order

22. The Order is divided into 3 Parts and has 2 Schedules.
23. Part 1 contains general provisions which include specifying when the Order comes into force, the scope of the Order, and the definitions that are used throughout the Order (and which are also used in this Explanatory Note).
24. Part 2 contains an obligation on Airwave Solutions and Motorola Solutions to comply with the charge control obligations in accordance with the methodology in Schedule 1.
25. Part 3 contains provisions for monitoring compliance, including provisions allowing the CMA to give directions as to compliance with the Order and to require the supply of information to the CMA and the Home Office by Airwave Solutions and Motorola Solutions for the purposes of monitoring compliance

with the Order and reviewing its operation. Part 3 also contains provisions relating to the variation of the Order.

26. Schedule 1 sets out the methodology for calculating and applying the charge control.
27. Schedule 2 sets out a Template for the Charge Control Compliance Statement Airwave Solutions and Motorola Solutions are required to make to the CMA and the Home Office.

Part 1 – General and Interpretation

28. Article 1 provides that the Order applies to Airwave Solutions and Motorola Solutions. It provides that the Order will come into force on the day after the Order is made. The CMA has the power to vary or revoke the Order.
29. Article 2 includes definitions of various terms used in the Order. It also provides that words or expressions used in the Order have the same meaning as in the Report, unless they have been defined otherwise in the Order and/or the context requires it. The same applies to words or expressions in this Explanatory Note.
30. Article 3 provides that, without prejudice to its duties of review under section 162 of the Act, the CMA will conduct a review of the Order in the year ending 31 December 2026, unless the CMA is satisfied before that date that the Airwave Network has been permanently shut-down and that the contractual obligations between Airwave Solutions and the Home Office have come to an end and that Airwave Solutions and Motorola Solutions have complied with all their obligations under the Order.
31. Article 3 also provides that, subject to the aforementioned review and to the CMA's duties under section 162 of the Act, the Order will continue in force until the final set of charges have been calculated and paid following the end of the charge control period, ie 31 December 2029, and Airwave Solutions and Motorola Solutions have complied with their obligations under Articles 6 – 9, unless the CMA is satisfied that before 31 December 2029 the Airwave Network has been permanently shut down and that the contractual obligations between Airwave Solutions and the Home Office have come to an end, and that Airwave Solutions and Motorola Solutions have complied with all their obligations under the Order (in which case the Order will cease to have effect at the earlier date on which all such obligations are met).

Part 2 – Charge Control

32. The charge control applies to the products and services provided by all Airwave Solutions' business lines, with the exception of: (a) the Ambulance Bundle 2 contract (which covers control room services and terminals, including terminal support); (b) Pronto (a data solution offered to police services); (c) CCCRS (a command central control room solution offered to police services); (d) Radio terminals (except where part of a managed service); and (e) services associated with the development and provision of

any interface solution required for interworking and provided under the Interface Agreement. The services within the scope of the charge control are referred to in the Order as the Specified Goods and Services.

33. Article 4 provides that the existing contractual pricing arrangements under the PFI Agreement, the Police Service Contracts, the Ambulance and Scottish Ambulance Contracts and the Firelink Project Agreement – that apply to the Specified Goods and Services – are amended and supplemented by the charge control imposed by the Order. Article 4 requires that Airwave Solutions and Motorola Solutions comply with the charge control set in accordance with the methodology in Schedule 1 to the Order (as to which see paragraphs 44 - 53 below).
34. The charge control applies a limit on the charges Airwave Solutions and Motorola Solutions may set in each relevant year for the provision of Core Services and Police Menu Services. These Core Services and Police Menu Services are part of, and currently account for around [8<] % of the revenue earned from, the Specified Goods and Services. Article 4 sets out that Airwave Solutions and Motorola Solutions must ensure that, irrespective of any existing contract price agreed with the Home Office, the charges for Core Services and Police Menu Services are set in accordance with the methodology in Schedule 1.
35. The charge control does not amend the charging arrangements which currently apply to Other Menu Services (which account for the remainder of the Specified Goods and Services). However, in line with Schedule 1, an estimate of revenue from these services will be taken into account when the limit on revenue from Core Services and Police Menu Services is being determined.
36. Article 5 contains further provisions relating to the methodology for calculating the charge control in Schedule 1. Article 5 provides that the methodology in Schedule 1 specifies the method for calculating the overall revenue that Airwave Solutions and Motorola Solution may receive in relevant years limiting their charges for Core Services and Police Menu Services. Article 5 specifies that the methodology includes defined indexation arrangements, a cost sharing mechanism applying to capital expenditure on external (ie non-Motorola Solutions supplied) equipment, a means of adjusting for other permitted charges (for example, the reasonable costs of securing independent assurance of reported information) and the pro-rating of charges for any part of a year where the Order is in force. An overview of the key parts of the calculations included in Schedule 1 is in paragraphs 44 - 53 below.

Part 3 – Compliance and Information

37. Article 6 requires that, for each year (or part year) the Order is in force, Airwave Solutions and Motorola Solutions must provide information to the Home Office (on its own behalf and Airwave Network users') and the CMA concerning charge control inputs and calculations such as is necessary to demonstrate, to the CMA's satisfaction, compliance with the charge control. The information must be provided clearly, accurately and fully within specified time limits.

38. Article 6 provides that the information to be provided will need to:
- (a) explain any material changes to Airwave Solutions' capital expenditure plans and any material deviations between actual capital expenditure levels and: (i) those that were included in the capital expenditure plans; and (ii) those that have been allowed for within the methodology set out in Schedule 1 to the Order;
 - (b) demonstrate how the level of allowed revenue under the charge control has been calculated for the relevant year, and has been adjusted to reflect the permitted indexation arrangements, the calculation of the indexation factor to be applied when calculating estimated revenue from Other Menu Services, the cost sharing mechanism in relation to external equipment capital expenditure, the calculation of other permitted costs, the pro-rating of charges for any part year where the Order is in force, and compliance with the requirements relating to the calculation of a final settlement allowance in relation to the end of the Order in accordance with Article 3;
 - (c) demonstrate how the actual revenues earned by Airwave Solutions and Motorola Solutions for the provision of services covered by the charge control compare to the level of allowed revenue for the relevant year; and
 - (d) demonstrate how any differences between actual revenue earned by Airwave Solutions and Motorola Solutions for the provision of services covered by the charge control and the allowed revenues for the relevant year have been reflected in changes Airwave Solutions and Motorola Solutions have made to the charge levels.
39. Article 6 also stipulates that Airwave Solutions and Motorola Solutions must provide to the CMA and the Home Office Airwave Solutions' Statutory Accounts for the relevant year, including a detailed breakdown of the levels of its operating expenditure and capital expenditure as shown in those accounts; and a reconciliation between the information provided as regards (a) its external equipment capital expenditure and actual revenue levels and (b) that included in the statutory accounts. Airwave Solutions and Motorola Solutions must also provide independent assurance to the Home Office and the CMA of this reconciliation, in order to verify that their financial submissions in relation to charge control compliance are consistent with the information included in Airwave Solutions' Statutory Accounts.
40. Article 7 provides that Airwave Solutions and Motorola Solutions must also respond clearly, accurately and in full, and within 10 working days, to reasonable queries and requests from the Home Office or the CMA for further clarification and substantiation of the compliance information provided under Article 6. The CMA may, in exceptional circumstances, allow a longer deadline for responses to such requests.
41. Article 8 provides that the CMA may also within reasonable time periods require Airwave Solutions and Motorola Solutions to provide information, documents and records required by the CMA for the purposes of enabling the CMA to monitor the carrying out of the Order and/or to review the effectiveness of its operation. It also provides that, where it believes they have information which may be relevant to the monitoring or the review of the

operation of the Order, the CMA may require Airwave Solutions and Motorola Solutions to attend the CMA and provide such information to it. Subject to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of the Order.

42. Article 9 states the power of the CMA to make directions requiring a person or office-holder specified in the directions to carry out or ensure compliance with the Order, or to do, or refrain from doing, anything required by the Order.
43. Article 10 provides that where Airwave Solutions, Motorola Solutions and the Home Office agree arrangements for the setting of charges for Specified Goods and Services that differ from the charge control methodology set out in Schedule 1, and those arrangements do not result in a material weakening of the constraints that Schedule 1 would otherwise impose on their revenue from the provision of Specified Goods and Services, Airwave Solutions and Motorola Solutions may apply to the CMA for the variation of the Order.

Schedule 1 – Charge Control Methodology

44. Schedule 1 sets out the methodology for calculating and applying the charge control.
45. Paragraphs 1 to 11 of Schedule 1 set out how the maximum level of revenue that Airwave Solutions and Motorola Solutions can receive in relation to each year of the charge control from charges will be determined.
46. Paragraphs 1 – 3 set out how the maximum level of revenue that Airwave Solutions and Motorola Solutions can receive from charges for Core Services and Police Menu Services in relation to each relevant year will be determined. Paragraph 1 does so for all complete years the Order is in place from 2024 to and including 2029. Paragraph 2 does so for 2023 (starting with the Commencement Date). Paragraph 3 does so in the event that the operation of the whole Airwave Network comes to an end part way through any year between 2024 and 2029.
47. Paragraph 1 sets out the calculation for each complete year from 2024 to 2029, where the charge control remains in place throughout that period. The calculation ensures that a requirement to provide service credits (resulting from performance falling below defined levels) would not have the effect of increasing the amount of revenue Airwave Solutions and Motorola Solutions are allowed to collect from relevant charges. It also sets out how differences between the maximum level of revenue allowed to be collected and the amount actually collected (after taking account of service credits), will be adjusted for in a net present value (NPV)-neutral way in the following year.
48. Paragraph 2 sets out the equivalent calculations for 2023. It does so recognising that the Order will come into force and the application of the charge control will commence part-way through the year.
49. Paragraph 3 sets out the equivalent calculations that would apply (instead of paragraph 1) in the event that the CMA is satisfied that the whole Airwave Network has been permanently shut down and that the contractual obligations between Airwave Solutions and the Home Office have come to an end part-way through any year in the period starting on 1 January 2024 and ending on

31 December 2029. It provides for the pro-rating of the relevant charges in any such year and reflects that the provision of relevant services and the recovery of charges for them may stop before the Order ceases to have effect.

50. Paragraph 4 requires that charges for Core Services and Police Menu services be set, based on Airwave Solutions and Motorola Solutions best estimate of relevant input values, such that they would expect to receive revenues from the provision of those services equal to the maximum level allowed for the relevant year as determined (as relevant) by paragraphs 1, 2 and 3 of Schedule 1. Paragraph 4 also requires that Airwave Solutions and Motorola Solutions ensure that the finalised value of any reconciliation amount relating to a given year (because revenue received in that year was higher or lower than maximum amount allowed under paragraphs 1, 2 or 3) has been returned to, or requested from, customers by the end of the following year.
51. Paragraphs 5 – 11 set out how the component elements of the calculations in paragraphs 1 – 3 will be determined. In particular, how the Allowed Revenue from all Specified Goods and Services in relation to each relevant year ($AR(ALL)_t$) will be determined for the purposes of calculating the maximum charges Airwave Solutions and Motorola Solutions may set for Core Services and Police Menu Services in accordance with paragraphs 1 – 3:
 - (a) Paragraph 5 sets out how the level of Allowed Revenue from charges for Core Services and Police Menu Services in relation to each relevant year ($AR(CPM)_t$) will be determined, in light of the calculation of the Allowed Revenue from all Specified Goods and Services in relation to each relevant year ($AR(ALL)_t$) set out in paragraph 6 (see below).
 - (b) In particular, paragraph 5 sets out how the estimated revenue from Other Menu Services will be calculated and deducted from ($AR(ALL)_t$). For the purposes of doing so, paragraph 5 uses £[8<]million as the opening figure for such revenue from Other Menu Services as of 2022. This is the figure used in paragraph 67(b) of Appendix K to the Report. We note that, for the purposes of the Order, an alternative approach would be to replace this figure with Motorola's forecast for the relevant revenue for 2023 of £[8<]million. Both approaches would apply the principles and methodology set out in the Report and so would be consistent with the decisions included in the Report. The impact on Airwave Solutions' permitted revenues resulting from using one approach or the other would be minor.
 - (c) Paragraph 6 sets out that ($AR(ALL)_t$) will be calculated as the sum of allowances for: operating expenditure (opex), depreciation, return on capital, the level of cost sharing adjustment to be applied, and other permitted costs.
 - (d) Paragraph 7 sets out how indexation will be applied to the opex allowances included in the Report in order to determine the allowance to be taken into account in each given year.
 - (e) Paragraphs 8 – 9 set out how the return on capital allowance will be determined, and how the RAB will be updated over time. A nominal percentage return on capital ($ARet_t$) should be calculated for each relevant year, and applied to the average nominal value of the RAB in that

year. This differs in form from the indexation approach set out in the Report, which involved applying a fixed real percentage return on capital to the average real value of the RAB in the relevant year (ie it applied indexation to the RAB rather than to the percentage return on capital figure), but is simpler and to substantially equivalent effect. It is consistent with the decisions included in the Report.

- (f) Paragraph 10 sets out how the cost-sharing adjustment associated with Airwave Solutions' capital expenditure on external (ie non-Motorola Solutions-supplied) equipment (which may be positive or negative) is calculated.
 - (g) Paragraph 11 sets out how the allowance for other costs that Airwave Solutions and Motorola Solutions are permitted to recover – in particular, the costs of required third party assurance and independent engineering or other expert assessments – will be taken into account.
52. Paragraph 12 of Schedule 1 sets out the final settlement arrangements to be applied in relation to the termination of the Order under Article 3.
53. Paragraph 13 specifies the uplift to Service Credit Levels that Airwave Solutions and Motorola Solutions must apply. It applies a fixed uplift factor of 1.6.

Schedule 2 – Charge control compliance statement

54. Schedule 2 sets out a Template for the Charge Control Compliance Statement that Airwave Solutions and Motorola Solutions are required to make to the CMA and the Home Office relating to their compliance with their obligations under the Order and the requirements of Article 6 in particular.