

MOBILE RADIO NETWORK SERVICES MARKET INVESTIGATION

The Mobile Radio Network Services Market Investigation Order 2023

Notice of intention to make an Order under section 165 of and Schedule 10 to the Enterprise Act 2002 and public consultation on modifications to the Draft Order

Background

1. On 5 October 2021, the Competition and Markets Authority (**CMA**) in the exercise of its power 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.¹
2. On 05 April 2023, the CMA, in accordance with section 136(1) of the Act and within the period permitted by section 137, published its report *Mobile radio network services market investigation: Final report (the Report)*.^{2 3}
3. 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

¹ [MRN services investigation terms of reference](#)

² [Final report \(publishing.service.gov.uk\)](#)

³ Unless stated, or the context requires otherwise, terms used in this Notice have the same meaning as in the Draft Order and the Report.

is an adverse effect on competition (**AEC**) for the purposes of section 134(2) of the Act;

(b) 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; 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.

4. The Order is consistent with and will give effect to the CMA's decisions included in the Report (explained in section 8 and Appendix K thereof in particular) to impose a charge control. The charge control will limit what Airwave Solutions and Motorola Solutions can charge customers for services within the scope of the charge control; and will require Airwave Solutions and Motorola Solutions to provide information to the Home Office and to the CMA to support the operation of the charge control.
5. The charge control will 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 will be amended and supplemented in accordance with the Order. Subject to a review in 2026, and to any variation of it, the Order will limit the revenue and charges for relevant services provided until 31 December 2029 and will remain in force until a final set of charges has been calculated and paid and Airwave Solutions and Motorola Solutions 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).
6. The charge control will apply to the products and services provided by all Airwave Solutions' 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.⁴

7. The charge control will specify an overall revenue allowance for each year of the control that will 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 paragraph.
8. The charge control will include a cost sharing mechanism that applies to capital expenditure (capex) on external (ie non-Motorola Solutions supplied) equipment such that Airwave Solutions 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 Solutions bears 75% of any over-spend relative to the target level (with the other 25% passed on to customers).
9. The charge control will require Airwave Solutions and Motorola Solutions 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 will 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 will also specify reporting and assurance requirements.
10. As described and explained fully in the Report, the CMA's findings are that Airwave Solutions and Motorola Solutions can set (and maintain) a price for services within the scope of the charge control 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

⁴ All such services being as described in the Report.

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.

11. The charge control will mitigate the substantial detrimental effects described in the preceding paragraph by limiting Airwave Solutions' and Motorola Solutions' 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). It forms part of an effective and proportionate package of remedies as explained in paragraphs 8.126 to 8.174 of the Report.
12. On 18 May 2023, the CMA gave notice of its intention to make the Order and invited representations on the Draft Order (**the Previous Consultation**). The CMA has considered the representations it received in response. In light of them, the CMA proposes to modify the Order. This Notice and the modified Draft Order have been published on the CMA website. The proposed modifications and the reasons for them are as follows.

The proposed modifications

13. The proposed modifications to the Order, which are highlighted in the modified Draft Order, are made in respect of:
 - (a) the part of the chronology of the making of the Order described in Background Recital paragraph 5;
 - (b) the definition of 'Specified Goods and Services' in Article 2.1;
 - (c) the compliance information provided by Airwave Solutions and Motorola Solutions as to material deviations between actual and forecast capex levels in Article 6.2;
 - (d) the information the CMA may require from Airwave Solutions and Motorola Solutions, under Article 8.4, in a review of the Order in 2026;
 - (e) the figure used in the charge control formula to determine the allowed percentage return on capital, which has been updated, and an

accompanying clarificatory amendment, in Schedule 1, paragraph 1 and footnote 1;

- (f) a requirement for Airwave Solutions and Motorola Solutions to use an official inflation forecast when setting charge levels, as set out in Schedule 1, paragraph 4;
- (g) a modification to the formula for determining the final adjustment reconciliation on a permanent shutdown of the whole Airwave Network part way through a calendar year between the start of 2024 and the end of 2029 in Schedule 1, paragraph 12; and
- (h) a small number of minor drafting modifications.

Reasons for the proposed modifications

Background Recitals

14. The CMA proposes to make an addition to Background Recital paragraph 5 to reflect the further consultation on the Draft Order (on the proposed modifications).

'Specified Goods and Services'

15. In respect of the definition of 'Specified Goods and Services' in Article 2.1 of the Draft Order, the Home Office submitted in response to the Previous Consultation that the definition should be clarified to ensure that it covers the services provided to all contracted users of the Airwave Network, as the CMA decided in the Report.
16. The CMA notes that as set out in paragraph 8.20 of the Report it decided that a charge control will be introduced to remedy, mitigate or prevent the detrimental effect on customers and will apply to the products and services provided by all Airwave Solutions' business lines, with the exception of: Ambulance Bundle 2; Pronto; the Central Control Room Solution (CCCRS); radio terminals (except where part of a managed service); and services associated with the development and provision of any interface solution required for interworking.

17. The definition of ‘Specified Goods and Services’ included in the version of the Draft Order published in the Previous Consultation inadvertently and incorrectly provided for a narrower scope than that decided upon in the Report. The CMA therefore proposes to modify the definition to bring it in line with the Report.

Capex deviations

18. Article 6(2) of the Draft Order requires Airwave Solutions and Motorola Solutions to inform the CMA (and the Home Office) about any material deviations between its actual capex, the capex plans submitted, and the capex that has been allowed for within the charge control methodology. In response to the Previous Consultation, the Home Office sought clarification about the forecasts to which this requirement relates.

19. The CMA proposes to modify the Draft Order by adding a reference in Article 6.2 to 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 to the capex allowances set out in the Report. The proposed modification makes clear Airwave Solutions’ and Motorola Solutions’ obligation.

Supply of information to the CMA

20. Article 8.4 of the Draft Order describes information the CMA may require from Airwave Solutions and Motorola Solutions in the review of the Order in 2026. The CMA proposes to modify that Article to remove an ambiguity, by making clear that Airwave Solutions’ and Motorola Solutions’ appointment of an independent expert to provide advice or reports as part of the review is subject to the CMA’s approval. This was the intended effect of the original, unmodified Draft Order.

Return on capital

21. In Appendices J (paragraph 94) and K (paragraph 146) of the Report, the CMA decided that the allowed return on capital to be used in the charge control will be determined by using a six-month average of Index Linked Gilt

yields to estimate the relevant risk-free rate for the charge control, using the latest data available at the time that the Order is put in place.

22. In the version of the Draft Order published in the Previous Consultation, the CMA included in Schedule 1, paragraph 1 and footnote 1 a figure of 6.1% and noted that it would be updated. The CMA now proposes a modification to give effect to that updating.

23. The CMA has used a six-month average of Index Linked Gilt yields of maturity of 7-15 years from 1 December 2022 to 31 May 2023. The CMA takes account that the average yield had increased by 0.45 percentage points, which increases the risk-free rate by 0.45 percentage points, resulting in a new range for the risk-free rate of 0.45% to 1.45%. The increase in the risk-free rate results in an increase in the WACC of between 3.26% and 6.34%. Consistent with its approach in the Report, the CMA proposes to update the rate set out in the Draft Order using the upper end of that range.

24. The CMA also proposes to include in Schedule 1, paragraph 1 a clarificatory cross-reference to the definition of CPI_t used in paragraph 7 of that Schedule. This responds to a request for clarification from the Home Office in response to the Previous Consultation.

Using an official inflation forecast

25. In its response to the Previous Consultation, the Home Office put to the CMA that it should indicate to Airwave Solutions and Motorola Solutions how they are required to undertake inflation forecasts for the purpose of setting charges under Schedule 1, paragraph 4 of the Draft Order. In its response, Airwave Solution and Motorola Solutions questioned how CPI and RPI figures could be taken into account in charging calculations that would need to be made before final figures were published. In light of these comments, and to facilitate the effective implementation of the remedy consistent with the requirement decided upon in the Report to use their best estimates, the CMA proposes to modify the Draft Order so that Airwave Solutions and Motorola Solutions must use an official inflation forecast from the Office of Budget Responsibility or the Bank of England when setting charge levels.

The reconciliation amount if shutdown occurs before the end of 2029

26. In line with the decisions in the Report, in the Draft Order published in the Previous Consultation the CMA intended that all reconciliation amounts in the charge control are net present value (**NPV**) neutral⁵. In its response to that consultation, the Home Office noted that in the event of the shutdown of the Airwave Network before the end of 2029, no indexation adjustment would be applied to the reconciliation amount provided for by Schedule 1, paragraph 13 of the Draft Order and the amount would therefore not be NPV-neutral.
27. The CMA proposes modifications to Schedule 1, paragraph 13 of the Draft Order to give effect to its intention referred to in previous paragraph.

Next steps and other matters

28. The publication of this Notice and the modified Draft Order reflect the CMA's consideration of the responses it received in response to the Previous Consultation and its assessment of those respects in which it is necessary or appropriate to make changes to the requirements of the Order. The CMA is publishing and consulting on those modifications now, in order that the ongoing detrimental effect on consumers resulting from the AEC the CMA set out in the Report is addressed as soon as possible.
29. In doing so, the CMA notes that the responses to the Previous Consultation also raise some points that may affect the Explanatory Note to the Order but do not affect the substantive requirements of the Order itself. Those are matters which may serve helpfully to illustrate how the Order could operate in practice, but which do not affect the proposed modifications in the Draft Order described above.
30. For example, we note in this context, that in its response to the previous Consultation, the Home Office requested clarification of the requirement in Schedule 1, paragraph 5 of the Draft Order which requires Airwave Solutions

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

and Motorola Solutions to use a ‘reasonable estimate of the weighted average of the percentage increases that Airwave Solutions has applied to the level of charges for Other Menu Services between 2022 and year t.’ The CMA considers that this obligation is clear, and that there are a range of approaches that might be taken to derive such a ‘reasonable estimate’ and hence does not propose to change the substantive requirements of the Order. However, to provide additional transparency and support the effective operation of the Order, the CMA proposes to provide an example of one way in which this obligation could be met.

31. The CMA intends that this and any other such matters be addressed in the final version of the Explanatory Note to the Order (which is not part of the Order). Subject to the consultation provided for by this Notice, the CMA intends to do that alongside the publication of the final Order and a statement summarising responses to this and the Previous Consultation, and its assessment of those responses.

Time for representations

32. In accordance with paragraph 2(5)(c) of Schedule 10 to the Act, the CMA invites written representations on the proposed modifications to the Draft Order from any interested person or persons, which must reach the CMA by 11.59pm on 18 July 2023.

33. Representations should be made by email to: MRN@cma.gov.uk

(signed)

MARTIN COLEMAN

Group Chair

11 July 2023