

Draft undertakings

Enterprise Act 2002 Undertakings

ANTICIPATED ACQUISITION BY HYTERA COMMUNICATIONS CORPORATION LTD OF SEPURA PLC

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY BY

HYTERA COMMUNICATIONS CORPORATION LTD, INCORPORATED IN PEOPLE'S REPUBLIC OF CHINA WHOSE REGISTERED OFFICE IS AT HYTERA TOWER, HI-TECH INDUSTRIAL PARK NORTH, 9108# BEIHUAN ROAD, NANSHAN DISTRICT, SHENZHEN, PEOPLE'S REPUBLIC OF CHINA ("HYTERA")

PROJECT SHORTWAY LIMITED, INCORPORATED IN ENGLAND AND WALES WHOSE REGISTERED OFFICE IS AT 939 YEOVIL ROAD, SLOUGH, BERKSHIRE SL1 4NH (No.10515575) ("HYTERA UK"); AND

SEPURA PLC, INCORPORATED IN ENGLAND AND WALES WHOSE REGISTERED OFFICE IS AT 9000 CAMBRIDGE RESEARCH PARK, BEACH DRIVE, WATERBEACH, CAMBRIDGE CB25 9TL (No. 04353801) ("SEPURA")

WHEREAS:

- (A) On 16 December 2016 Hytera and Sepura plc announced the proposed acquisition by Hytera of the entire issued and to be issued ordinary share capital of Sepura plc (the "**Transaction**");
- (B) On 10 April 2017 the Secretary of State issued a public intervention notice to the Competition and Markets Authority ("**CMA**") under section 42 of the Enterprise Act 2002 (the "**Act**");
- (C) On 4 May 2017, the CMA reported to the Secretary of State in accordance with section 44(2) of the Act, which was within the period specified by the Secretary of State, summarising representations received by it relating to the national security public interest consideration specified in the public intervention notice;
- (D) The Secretary of State has the power to refer the Transaction under section 45 of the Act to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 or may, instead of making such a reference, accept undertakings in lieu under paragraph 3(2) of Schedule 7 to the Act; and
- (E) The Secretary of State considers the undertakings given below by Hytera, Hytera UK and Sepura are appropriate to remedy, mitigate or prevent any of the effects adverse to the public interest within the meaning of section 58(1) of the Act which may be expected to result from the creation of the relevant merger situation, and the Secretary of State shall in consequence not make a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

Each of Hytera, Hytera UK and Sepura therefore gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of this relevant merger situation.

1. INTERPRETATION

In these Undertakings:-

- 1.1 where reference is made to any company then in the event of any merger, joint venture or acquisition or internal re-organisation or sale either private or to the public, such reference shall be interpreted as applying to the equivalent or successor organisation in the new structure;
- 1.2 except where the context does not allow, the singular shall include the plural and the plural shall include the singular;
- 1.3 reference to a clause shall be a reference to a clause within these undertakings;
- 1.4 "**Airwave Service**" means the TETRA Airwave network and service used by the emergency services in the UK;
- 1.5 "**Effective Date**" means the date on which these undertakings are accepted by the Secretary of State, except where the Transaction is not completed, in which case these undertakings shall not take effect until the date of such completion;
- 1.6 "**Enhanced Grade Algorithm**" means the UK sovereign end-to-end encryption algorithm used in Airwave end-to-end terminals;
- 1.7 "**Enhanced Grade Device**" means a Sepura TETRA terminal used on the Airwave Service in which the software embodies the Enhanced Grade Algorithm (whether provisioned or enabled or not) and any associated devices used to test, provision or otherwise interact with those terminals;
- 1.8 "**GCHQ**" means the UK Government Communications Headquarters;
- 1.9 "**Home Office**" means the UK Secretary of State for the Home Department;
- 1.10 "**List X Area**" means the secure area within the Sepura facilities at 9000 Cambridge Research Park, Beach Drive, Waterbeach, CB25 9TL that has been approved to hold Sensitive Material;
- 1.11 "**Ministry of Defence**" means the UK Secretary of State for Defence;
- 1.12 "**Repair Services Capability**" means the capability to provide repair services for TETRA devices used on the Airwave Service, targeting 7 working days turnaround times for devices in warranty;
- 1.13 "**Secretary of State**" means the UK Secretary of State for Business, Energy and Industrial Strategy;
- 1.14 "**Security Check**" means the level of UK national security clearance necessary for a person to work in a position which involves long-term, frequent and uncontrolled access to UK government material with a protective marking of "Secret" applied by an authorised UK government representative;
- 1.15 "**Security Requirements for List X Contractors**" means the Security Requirements for List X Contractors V10.0 or any updated version published by the UK Cabinet Office;

- 1.16 **"Security Undertakings"** means the undertakings made in clause 2;
- 1.17 **"Sensitive Material"** means Enhanced Grade Algorithm or any parts or descriptions of it, any Sepura source code, intermediate code or binary software embodying the Enhanced Grade Algorithm, and any UK government software, information, thing or documentation with a protective marking or classification of "Confidential" or "Secret" applied by an authorised UK government representative;
- 1.18 **"TETRA"** means terrestrial trunked radio; and
- 1.19 **"UK"** means the United Kingdom.

2. SECURITY UNDERTAKINGS

Each of Hytera, Hytera UK and Sepura undertakes the following in respect of itself, and in respect of obligations on Sepura, each of Hytera and Hytera UK undertake to procure that:

Maintenance of strategic capabilities

- 2.1 For so long as the Airwave Service is operational, Sepura will provide repair services for TETRA devices used on the Airwave Service, targeting 7 working days turnaround times for devices in warranty and maintain the Repair Services Capability in the UK, except in so far as the Home Office has separately agreed otherwise in writing.
- 2.2 The Repair Services Capability shall continue to be directly controlled by a company or companies incorporated in the UK under the laws of England, except insofar as the Home Office has separately agreed otherwise in writing.

Protection and Exploitation of Technology and Information

- 2.3 Sepura will comply with, and maintain certification pursuant to, the Security Requirements for List X Contractors in respect of areas where Sensitive Material is used or stored.
- 2.4 Sepura will maintain necessary security controls in respect of all areas and all matters relating to Sensitive Material and Enhanced Grade Devices to the satisfaction of the Home Office, GCHQ and the Ministry of Defence, including but not limited to those actions as further specified in the Confidential Annex to these Undertakings.
- 2.5 Except in so far as the Home Office has separately agreed otherwise in writing, one member of Sepura's board of directors will be a British citizen with Security Check clearance
- 2.6 Only personnel with Security Check clearance will have access to the List X Area, unless the Ministry of Defence has granted prior written approval for the relevant individual.

Compliance

- 2.7 Sepura will employ a security controller responsible for facilitating and overseeing compliance with the Security Requirements for List X Contractors and the Security Undertakings. Such security controller shall be a British citizen with Security Check clearance.
- 2.8 Hytera, Hytera UK and Sepura will provide the Home Office with such information as it may from time to time reasonably require to ascertain that they are fulfilling the Security Undertakings. If any of Hytera, Hytera UK or Sepura are unable to comply with any of the Security Undertakings, or become aware of any noncompliance, they will: notify the Home Office immediately; provide to the Home Office full reasons for the inability to comply or the non-compliance within 1 month of becoming aware thereof; and use best endeavours to remedy any non-compliance as soon as possible.
- 2.9 For the purpose of checking compliance with the Security Undertakings, representatives of the Home Office, the Ministry of Defence and GCHQ shall be entitled to enter and inspect any premises used by Sepura or Hytera which are in any way connected with Sensitive Material or Enhanced Grade Devices, and inspect any document or thing in any such premises which is concerned with such Sensitive Material, whether the visit is announced or unannounced. Such representatives shall be entitled to access to all such information as they may reasonably require and may remove from any premises any Sensitive Material that is being used or stored in breach of these Undertakings.
- 2.10 Hytera and Hytera UK will take or refrain from taking such action as is reasonably necessary, in order to enable Sepura to comply with the Security Undertakings.

Provision of Information

- 2.11 Hytera, Hytera UK and Sepura will co-operate with the CMA and provide it with such information as it may reasonably require for the purpose of any of its functions under section 92 of the Act in relation to these Security Undertakings.

Directions from the CMA

- 2.12 Hytera, Hytera UK and Sepura will comply with such written directions as the CMA may from time to time give to take such steps within their competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Security Undertakings. Hytera, Hytera UK and Sepura will do or refrain from doing anything so specified or described in such written directions which they might be required by these Security Undertakings to refrain from doing or to do.

3. IMPLEMENTATION OF THESE UNDERTAKINGS

- 3.1 Each of Hytera, Hytera UK and Sepura will implement the Security Undertakings as soon as possible and in any event within 10 days of completion of the Transaction.

4. TERM OF THESE UNDERTAKINGS

- 4.1 These Undertakings shall take effect upon the Effective Date and shall continue in force until they are released by the Secretary of State or the Airwave Service has ceased to operate, whichever is sooner.

5. GOVERNING LAW

- 5.1 These Undertakings shall be governed by and construed in accordance with the laws of England and each party hereby irrevocably submits to the exclusive jurisdiction of the English courts.