

Connect Bidco- Inmarsat

A report to the Secretary of State for
Digital, Culture, Media & Sport on the
anticipated acquisition by Connect
Bidco Limited of Inmarsat plc

17 September 2019

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1. EXECUTIVE SUMMARY

- 1.1 This report is hereby given in response to the public interest intervention notice (the **Notice**) given to the Competition and Markets Authority (**CMA**) by the Secretary of State for Digital, Culture, Media and Sport (the **Secretary of State**) on 23 July, in exercise of her powers under section 42(2) of the Enterprise Act 2002 (the **Act**).
- 1.2 The Notice relates to the proposed acquisition by Apax Partners LLP, Canada Pension Plan Investment Board (**CPPIB**), Ontario Teachers' Pension Plan Board and Warburg Pincus LLC (each a **Consortium Member**, together the **Consortium Members**), through Connect Bidco Limited (**Connect Bidco**), of the entire issued share capital of Inmarsat Plc (**Inmarsat**) (the **Transaction**). The Consortium Members and Inmarsat together are referred to as the **Parties** in this report.
- 1.3 The Notice required the CMA to investigate and report by midnight on Tuesday 17 September 2019.

Relevant Merger Situation

- 1.4 As required by sections 44(3)(a) and 44(4) of the Act, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- 1.5 For the purposes of this report, a relevant merger situation exists because the Transaction will result in each of the Consortium Members and Inmarsat ceasing to be distinct and because the Transaction meets the thresholds set out in section 23(1)(b)(i) of the Act.

Competition Assessment

- 1.6 Inmarsat and one of the companies controlled by CPPIB, Arqiva Ltd (**Arqiva**), overlap in the supply of two-way fixed satellite communication services by Satellite Service Providers (**SSPs**) to end-customers. The CMA found that the Transaction does not give rise to competition concerns in relation to unilateral horizontal effects in the supply of these services in the EEA or globally, given the small combined share of supply of Inmarsat and Arqiva and the minimal increment resulting from the Transaction. The CMA found that, after the Transaction, Inmarsat will continue to be constrained by other SSPs that compete with Inmarsat more closely than Arqiva.

- 1.7 Inmarsat also operates as a Satellite Network Operator (**SNO**) supplying an input to SSPs, such as Arqiva. The CMA has also found that the Transaction does not give rise to competition concerns as a result of this vertical relationship, both with respect to input foreclosure and customer foreclosure in the EEA or globally. The CMA found that, after the Transaction, Inmarsat will not have the ability to foreclose other SNOs through customer foreclosure, because Arqiva has a small share of supply and it is not an important route to market. The CMA found that Inmarsat will also not have the ability to foreclose its competitors at SSP level through input foreclosure because it has a low to moderate share of supply and SNO and SSPs could switch away to alternative SNOs.
- 1.8 Therefore, the CMA does not believe that it is or may be case that the creation of the merger situation may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the UK for goods or services.
- 1.9 In view of the conclusions above, it has not been necessary for the CMA to assess whether any of the exceptions to the duty to refer or undertakings in lieu of a reference apply in this case.
- 1.10 Accordingly, the CMA advises that it believes a relevant merger situation would be created but that the test for reference is not met on competition grounds.

Public Interest

- 1.11 As required by section 44(3)(b) of the Act, the CMA has summarised representations received about the case which relate to the national security public interest consideration mentioned in the Notice.
- 1.12 The Ministry of Defence has brought together its views and those of several other UK defence and security services (together the **MoD**) in relation to the public interest consideration identified in the Notice. In its representations, the MoD identified national security concerns arising as a result of the Transaction.
- 1.13 Three third parties also sent representations directly to the CMA, which concerned public interest considerations.

Remedies

- 1.14 The Secretary of State may either make a reference for a Phase 2 assessment on public interest grounds¹ or accept undertakings in lieu of such reference² if he or she believes that it is or may be the case that the national security concerns identified may be expected to operate against the public interest.
- 1.15 The CMA understands that the MoD has been considering the specific risks identified in relation to national security matters and possible remedies to address those risks. The CMA understands that the MoD will advise the Secretary of State directly in this regard.
- 1.16 In accordance with the Act, in Phase 1, the CMA only summarises the representations made to it in relation to national security matters.

2. Legal Framework

- 2.1 In relation to anticipated mergers, the CMA is required to make a reference for a Phase 2 assessment where it believes that it is or may be the case that the creation of a relevant merger situation may be expected to result in an SLC within any market or markets in the UK for goods or services (section 33(1) of the Act).
- 2.2 The Act permits intervention by the Secretary of State in cases where he or she believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger concerned.³ In such a case, section 33(1) does not apply⁴ and instead the CMA is required to give a report to the Secretary of State within such period as he or she may require⁵. The report must contain:⁶
- (a) advice on the considerations relevant to the making of a reference under section 22 or 33 of the Act which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act; and

¹ Section 45 of the Act.

² Schedule 7 paragraph 3(2) of the Act.

³ Section 42(2) of the Act. As to public interest mergers more generally, see Chapter 16, *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014.

⁴ Section 33(3)(d) of the Act.

⁵ Section 44(2) of the Act.

⁶ Section 44(3) of the Act.

(b) a summary of any representations about the case which have been received by the CMA and which relate to any public interest consideration mentioned in the intervention notice concerned (other than a media public interest consideration) and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act.

2.3 In particular, the report must include⁷ decisions as to whether the CMA believes that it is or may be the case that:

(a) a relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

(b) the creation of that situation has resulted or may be expected to result in a SLC within any market or markets within the UK for goods and services.

2.4 Following receipt of the CMA's report, the Secretary of State may⁸ make a Phase 2 reference to the CMA on public interest grounds. In deciding whether to make such a reference, the Secretary of State is required to accept the CMA's decision on the matters listed in paragraph 2.3 above⁹. The relevant legal framework in relation to the CMA's assessment of jurisdiction is set out in section 4.

3. Parties and transaction

3.1 Connect Bidco is a special purpose vehicle set up by the Consortium Members for the purpose of the Transaction. The Consortium Members include: Apax Partners LLP, CPPIB, Ontario Teachers' Pension Plan Board and Warburg Pincus LLC.¹⁰ CPPIB has a joint control over Arqiva¹¹ which is active to a limited extent in the supply of two-way fixed satellite communication services as a reseller and SSP.¹² CPPIB has a 48% interest in

⁷ The full list of requirements is set out in section 44(4) of the Act.

⁸ Pursuant to section 45 of the Act.

⁹ Section 46(2) of the Act.

¹⁰ Merger Notice, paragraphs 3.1-3.9.

¹¹ Arqiva is owned by the following shareholder groups: CPPIB (48%), Macquarie Europea Infrastructure Fund 2 (Macquarie) (25%), IFM Investors (IFM) (14.8%), Motor Trades Association of Australia (MTAA) (5.2%), Health Super Investments Pty Ltd. and Small minority holders managed by Macquarie. Each shareholder group with a 12.5% shareholding is entitled to ■■■ vote, except for the ■■■ who are each entitled to one vote for each ■■■ shareholding. The composition of the Board of Arqiva is as follows: (i) ■■■ Board of Directors appointed by CPPIB, (ii) ■■■ Board of Directors appointed by ■■■ and (iii) ■■■ Board of Directors collectively appointed by ■■■ Shareholder groups which hold ■■■ or more shareholding have veto rights over strategic decisions of Arqiva, such as the approval of the business plan. On this basis, Arqiva is jointly controlled by ■■■

¹² Paragraph 15.3, Merger Notice.

Arqiva and appoints [REDACTED] members of the Board. The Parties told the CMA that none of the Consortium Members have any interest in other companies with activities that overlap or are related with the activities of Inmarsat.¹³

- 3.2 Inmarsat is a UK publicly listed company that provides fixed and mobile two-way satellite communication services (i.e. data and voice communication services) through its in-orbit fleet of 13 satellites and its ground network of land earth stations. Inmarsat's core business is as an SNO. It owns and manages a satellite fleet and sells two-way satellite communication services (airtime) to SSPs. Inmarsat also operates as an SSP, providing services to end-customers, as well as resellers. The Parties submitted that Inmarsat predominantly uses its own capacity and airtime for its SSP business, whereas many SSPs are not active upstream as SNOs and therefore procure capacity and airtime from third party SNOs.¹⁴ Inmarsat does not provide satellite communications services directly to the MoD. Inmarsat is an indirect supplier of specialist satellite communication services to the MoD [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 3.3 The Transaction concerns the acquisition by the Consortium Members, through Connect Bidco, of the entire issued share capital of Inmarsat.¹⁵
- 3.4 Connect Bidco announced its intention to make an offer to acquire the entire issued and to be issued share capital of Inmarsat (the **Offer**) on 25 March 2019. The Offer is recommended by the board of Inmarsat.¹⁶
- 3.5 The Offer will be implemented by means of a publicly announced English law court-sanctioned scheme of arrangement under Part 26 of the Companies Act 2006. The scheme was approved by Inmarsat shareholders on 10 May 2019.¹⁷
- 3.6 The Offer values Inmarsat at approximately \$3.4 billion¹⁸.

¹³ However, as noted in footnote 66 of the Merger Notice, it cannot be excluded that Consortium Members' portfolio companies may be one of many end-users of Inmarsat services globally through a distributor.

¹⁴ Merger Notice, paragraph 3.10-3.11(a)-(b)

¹⁵ The Transaction is a public offer pursuant to the UK City Code on Takeovers and Mergers.

¹⁶ Merger Notice, Paragraph 7.5.

¹⁷ Merger Notice Paragraph 7.6.

¹⁸ This is equivalent to £2.6 billion.

- 3.7 The Transaction is conditional on the receipt of certain regulatory and merger control clearances, including merger control clearances in Austria, China, Germany, Russia, the UK and the US and foreign investment approvals including in Australia, Italy, Russia and the US, and on the necessary shareholder and court approvals.¹⁹

4. Jurisdiction

Legal Framework

- 4.1 This section outlines the legal framework applicable to the CMA's assessment of its jurisdiction over the Transaction.

Enterprises ceasing to be distinct

- 4.2 The CMA has jurisdiction over transactions where it believes that it is or may be the case that a relevant merger situation has been created. In the case of an anticipated transaction, a relevant merger situation has been created when:
- (a) arrangements are in progress or in contemplation which will lead to two or more enterprises²⁰ ceasing to be distinct.²¹ Two enterprises will cease to be distinct if they are brought under common ownership or control;²² and
 - (b) either the thresholds under sections 23(1) (the turnover test) or 23(2) (the share of supply test) of the Act are satisfied.

Changes to the turnover test under section 23(1) of the Act

- 4.3 On 11 June 2018, the Act was amended to introduce different turnover thresholds for certain mergers. These amendments provide that the turnover test is met where:
- (a) the value of the turnover in the UK of the enterprise being taken over exceeds £1 million; and

¹⁹ Paragraph 2.10 Merger Notice. The CMA understands that to date the Transaction has been cleared by a number of competition authorities.

²⁰ 'Enterprise' is defined in section 129 of the Enterprise Act 2002 as the activities, or part of the activities, of a business. Merger Assessment Guidelines Paragraph 3.2.2

²¹ Section 33(1)(a) of the Act and Section 23 of the Act.

²² Section 26 of the Act.

(b) in the course of enterprises ceasing to be distinct, a person or group of persons has brought a 'relevant enterprise' under the ownership or control of the person or group.

4.4 Section 23A of the Act includes a definition of 'relevant enterprise', providing that a 'relevant enterprise' means an enterprise carrying out activities which consist in developing or producing restricted goods within the meaning of the relevant export legislation. The provisions applicable to the Transaction are outlined below.

Relevant Enterprise

Restricted goods

4.5 Under section 23A(1)(b)(i) of the Act, a relevant enterprise means any enterprise carrying out activities which consist in 'developing or producing restricted goods'.

4.6 Restricted goods means 'goods, software or information the export or transfer of which is controlled by virtue of their being specified in the relevant export control legislation'.²³

- *Relevant export control legislation*

4.7 Section 23A(2) of the Act provides that the 'relevant export control legislation' includes Annex I to Council Regulation (EC) No. 428/2009 (the **EU Dual-Use List**).

4.8 Category 9 of the EU Dual-Use List includes space launch vehicles, spacecraft, spacecraft buses, spacecraft payloads, spacecraft on-board systems or equipment, and terrestrial equipment.

- *Developing or producing*

4.9 Section 23A of the Act defines a relevant enterprise by reference to the activities undertaken with respect to the restricted goods in question. Under section 23A(1)(a) of the Act, a relevant enterprise means any enterprise the activities of which consist in or include *inter alia* 'developing or producing restricted goods'.

²³ section 23A(1)(a) of the Act.

- *Holding specified information*

4.10 In addition, section 23A(1)(b) of the Act states that a relevant enterprise also includes any enterprise activities of which consist in or include *'holding information [...] that is capable of use in connection with the development or production of restricted goods [and] is responsible for achieving or exceeding the performance levels, characteristics or functions of the restricted goods.'*

Assessment

4.11 An assessment of the CMA's jurisdiction in accordance with the legal framework outlined above is provided below.

Enterprises ceasing to be distinct

- 4.12 As entities which carry on activities for gain or reward, Inmarsat, the Consortium Members and Connect Bidco each constitute an enterprise.
- 4.13 The CMA considered whether the Transaction will lead to each of the Consortium Members and Inmarsat ceasing to be distinct.²⁴
- 4.14 As noted in paragraphs 4.2 above, two enterprises will cease to be distinct if they are brought under common ownership or control.²⁵ 'Control' is not limited to the acquisition of outright voting control but may include situations falling short of outright voting control, including the ability to exercise material influence.²⁶ In carrying out its assessment, the CMA will focus on 'the acquirer's ability materially to influence policy relevant to the behaviour of the target entity in the marketplace. The policy of the target in this context means the management of its business, and thus includes the strategic direction of a company and its ability to define and achieve its commercial objectives.'²⁷
- 4.15 Material influence may be based on the acquirer's ability to influence the target's policy through exercising votes at shareholder's meetings together with any other factors that indicate that the acquiring part exercises an influence disproportionate to its shareholding.²⁸ In assessing the influence conferred by shareholding, regard should be had to the distribution and

²⁴ The CMA has assessed the level of control exercised by the Consortium Members rather than Connect Bidco on Inmarsat as Connect Bidco is a holding company set up to acquire the company.

²⁵ Section 26 of the Act.

²⁶ Section 26(3) of the Act and paragraph 4.13 of [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#).

²⁷ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), paragraph 4.14.

²⁸ In accordance with [Mergers: Guidance on the CMA's jurisdiction and procedure](#) paragraph 4.19, a share of voting rights of over 25% is likely to be seen as conferring the ability materially to influence policy.

holders of the remaining shareholding, the patterns of attendance and voting at recent shareholder meetings, the existence of any special veto rights and any other special provisions in the company's constitution conferring an ability materially to influence its policy.²⁹

- 4.16 Material influence may also arise if the acquirer is able to influence the board of the target³⁰ or through other arrangements (such as consultancy or financial arrangements that give material influence over the target's commercial policies).³¹

The Parties' views

- 4.17 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Furthermore, the Consortium Members submitted that the Unanimous Reserved Matters (discussed below) consist of a limited number of minority protection rights and that none of these concern strategic decisions.³²

- 4.18 The Consortium Members also submitted that the Transaction could be viewed under the Act as either:³³

- (a) an acquisition of material influence over Inmarsat by each of the Consortium Members acting through Bidco under section 26 of the Act on the basis that each Consortium Member would have 25% of the voting rights in Connect Bidco (and therefore Inmarsat) and [REDACTED] or [REDACTED]
- (b) an acquisition of a controlling interest (in this case, the entire issued share capital) in Inmarsat by the Consortium Members acting together in order to secure control, and hence as associated persons under section 26 and 127(4)(d) of the Act on the basis that the Consortium Members have jointly made the Offer in accordance with the Joint Bid Conduct Agreement (**JBCA**).

²⁹ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) paragraph 4.21

³⁰ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) paragraph 4.23

³¹ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) paragraphs 4.26-4.27

³² Page 10, Merger Notice

³³ Paragraph 5.3 of the Merger Notice.

CMA's assessment

4.19 The terms regulating the conduct of Inmarsat, while not finalised yet, are set out in the Investment Agreement Term Sheet (**IATS**)³⁴ included in the JBCA.³⁵

Rights conferred on the Consortium Members

- *Shareholdings*

4.20 Under the terms of the JCBA and the IATS, Consortium Members will each hold an equity interest in Connect Bidco of up to [REDACTED] and voting rights of 25% (regardless of their equity interest).

- *Board representations*

4.21 In accordance with the IATS, the board of Connect Bidco will consist of at least [REDACTED] directors (two from each Consortium Member) and is responsible for taking all strategic decisions. The quorum of the board is [REDACTED] directors at a properly convened adjourned meeting, each appointed by different Consortium Members. Each director is entitled to [REDACTED] vote and the IATS provides the Board of Directors comprises [REDACTED] directors ([REDACTED] investor directors, [REDACTED] non-executive directors and [REDACTED] executive director) with no casting votes. It is unclear how the executive directors are appointed. The non-executive directors are appointed by [REDACTED]. The CMA notes the [REDACTED] will affect their ability to appoint an investor director to any committees of the board.³⁶

4.22 Pursuant to topics 7 to 9 of the IATS, certain reserved matters require 50%, 75% or 100% approval.³⁷

³⁴ Appendix 2 of the JCBA contains the IATS (available on pages 136-152).

³⁵ Annex 001-005 of the Merger Notice. The JBCA 'sets out the terms and conditions of an agreement between the Parties in connection with the conduct of such evaluation and, if relevant, the implementation of the Joint Bid, the terms and conditions of which are or will be contained in the Offer Letters and the Joint Bid Documentation, pursuant to and in accordance with the Code'

³⁶Topic 1 of the IATS.

³⁷ For the sake of completeness, the CMA notes the IATS contains provisions for 'simple majority' ([REDACTED]) 'super majority' ([REDACTED]) decisions for amendments to 'the Group's annual budget or business plan'.

- 4.23 Unanimous reserved matters,³⁸ requiring 100% approval, relate to:
- (a) 'related party transactions';
 - (b) 'any dividend in respect of, or repurchase or redemption of, Securities other than a pro rata basis';
 - (c) 'any loan or financing agreement above [6.5]x net leverage ratio', and
 - (d) 'minority protection rights';

4.24 Minority protection rights includes:

- (a) creating any encumbrances over shares/assets, other than in limited circumstances;
- (b) any material change in the nature or scope of the business of the Group;
- (c) any amendment to the articles of association/constitutional documents of the Company materially and disproportionately adverse to an Investor when compared to the other Investors;
- (d) any material changes to the T&Cs applicable to the Securities or any restructuring / reorganisation of the Securities or the Group which is materially and disproportionately adverse to an Investor when compared to the other Investors;
- (e) insolvency / bankruptcy / liquidation of a Group Company; and
- (f) issuing options in any Group Company.

Conclusion

- 4.25 The CMA considers that the veto right over the unanimous reserved matters, in particular the ability to block any material change in the nature or scope of the business of the Group, may confer the ability to exercise material influence within the meaning of the Act on each Consortium Member.
- 4.26 The CMA therefore believes that Inmarsat will be brought under common ownership of each of the Consortium Members in accordance with Article 26(4) of the Act.

³⁸ Page 141 of the JBCA

Relevant enterprise and jurisdictional thresholds

4.27 Set out below is the CMA's assessment of whether Inmarsat is a relevant enterprise carrying out activities which consist in developing or producing restricted goods within the meaning of the relevant export legislation.

Relevant Enterprise

- *Restricted Goods*

4.28 The Parties submitted:

(a) certain restricted goods are used by Inmarsat, as a two-way satellite communication provider, or by distributors, resellers or end-customers of its services. Such goods form part of spacecraft and launch vehicles, router/antenna systems, and software.

(b) Inmarsat uses I4S and that I4S is used to facilitate command and control of certain spacecraft (i.e. active and passive satellites and space probes). I4S is a software product which consists of a bundle of component products. [REDACTED]

(c) I4S is suitable for use on satellites from various manufacturers. Inmarsat uses I4S internally to control its satellites, as well as licensing the software to third parties who use it to control their own satellites. [REDACTED]

4.29 Whether I4S is a relevant good within the relevant export control legislation is considered below.

- *Relevant export control legislation*

4.30 As discussed in paragraph 4.8, Category 9 of the EU Dual-Use List includes space launch vehicles, spacecraft, spacecraft buses, spacecraft payloads, spacecraft on-board systems or equipment, and terrestrial equipment.

4.31 The CMA believes that I4S falls within Item 9A004 because I4S is used to facilitate command and control of certain space craft and is suitable for use on satellites. It is therefore a restricted good within the meaning of the relevant export control legislation.

- *Meaning of ‘developing’ restricted goods*

- 4.32 As stated in the BEIS Guidance,³⁹ it is ‘intended that ‘development’ means all stages prior to production (e.g. design, assembly and testing of prototype)’. In addition, the BEIS Guidance also states that this would include the creation of intellectual property (even if not yet put to commercial use).⁴⁰
- 4.33 The Parties submitted that Inmarsat uses I4S in-house and has only licensed it to a limited number of third parties. The Parties submitted that software development is the process of creating software programs, including writing the source code that forms a software program.
- 4.34 In developing I4S, the Parties submitted that Inmarsat also holds information that is capable of use in connection with the development or production of restricted goods and is responsible for achieving or exceeding the performance levels, characteristics or functions of the restricted goods that are specified in the relevant export control legislation.
- 4.35 On this basis, the CMA considers that Inmarsat is involved in developing restricted goods. The CMA considers that it may also be the case that Inmarsat is also involved in producing the software. However, the CMA considers that this can be left open.

- *MoD’s view on jurisdiction*

- 4.36 The MoD has submitted that Inmarsat is a relevant enterprise under section 23A(1)(a) and (b) of the Act because its role in developing certain software product amounts to both ‘developing or producing a restricted good’ within the meaning of section 23A(1)(a) of the Act and ‘holding information [...] that is capable of use in connection with the development or production of restricted goods [and] is responsible for achieving or exceeding the performance levels, characteristics or functions of the restricted goods that are specified in the relevant export control legislation’ within the meaning of section 23A(1)(b) of the Act.

³⁹ Department for Business, Energy & Industrial Strategy, “Enterprise Act 2002: Changes to the Turnover and Share of Supply Tests for Mergers: Guidance 2018 (**BEIS Guidance**)

⁴⁰ In response to Q.1 of the CMA’s RFI,

Conclusion

- 4.37 The CMA considers that Inmarsat is involved in developing restricted goods. The CMA considers that it can be left open whether Inmarsat is also involved in producing the software, as the test in section 23(A)(1)(a) of the Act is not cumulative and only requires the target company to have activities which include either developing or producing restricted goods. For the same reason, it can be left open as to whether Inmarsat holds information that is capable of use in connection with the development or production of restricted goods under section 23(A)(1)(b) of the Act.

Turnover thresholds

- 4.38 With regards to the turnover test, as noted by the Parties, Inmarsat's turnover exceeded £1 million in the UK in 2018. Inmarsat's UK turnover comprises the amount derived from the sale of products and the provision of services which it makes in the ordinary course of its business activities to customers (mainly UK-based distribution partners and to a lesser extent direct end-customers) in the UK. Consequently, the CMA considers that the second criterion is satisfied.

Conclusion on jurisdiction

- 4.39 On the basis of the above, the CMA considers that:
- (a) the Transaction will result in each of the Consortium Members and Inmarsat ceasing to be distinct;
 - (b) Inmarsat's activities consist in or include developing or producing restricted goods within the meaning of section 23A of the Act and is therefore a 'relevant enterprise';
 - (c) the turnover threshold as set out in section 23(1)(b)(i) of the Act is satisfied.
- 4.40 Therefore, in accordance with sections 44(3)(a) and 44(4) of the Act, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

5. Counterfactual

- 5.1 The counterfactual is an analytical tool used in answering the question on whether a merger gives rise to an SLC. The SLC test involves a comparison of the competitive situation with the merger against the competitive situation that would prevail absent the merger (the counterfactual). For anticipated mergers, in Phase 1, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁴¹
- 5.2 In this case the Parties submitted that the CMA should assess the competitive effects of the Transaction by reference to the current competitive situation.⁴² The CMA has received no evidence supporting an alternative counterfactual.
- 5.3 The CMA therefore considers that the prevailing conditions of competition is the current counterfactual against which to assess the impact of the Transaction.

6. Industry Background

- 6.1 The satellite communication sector essentially comprises two types of satellite communications: (i) 'one-way' satellite communication services, which account for the larger part of the satellite communication services industry and are mainly used for broadcast (e.g. television and radio) purposes; and (ii) 'two-way' satellite communication services, which allow end-to-end exchanges of voice and data between several terminals.
- 6.2 Given that Inmarsat is not active in the provision of one-way satellite communication services, the one-way satellite communications sector is not discussed in this report.
- 6.3 End-customers can use different types of terminals for two-way satellite communication services: whether it is fixed in a single location (e.g. oil platform in the ocean) or is mobile (attached to a vehicle or vessel).

⁴¹ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

⁴² Merger Notice, Paragraph 11.1

- 6.4 Two-way satellite communications can be used for aeronautical, land, or maritime applications.
- 6.5 Based on the available evidence, the CMA has identified three levels in the supply chain of two-way satellite communication services:
- (a) SNOs: which own and manage the satellite fleets and wholesale airtime/capacity on their satellites;
 - (b) SSPs: which assemble a package of communication solutions consisting of airtime/capacity purchased from SNOs, so-called 'value-added services' and terminals. SSP's customers are either large end-customers or resellers; and
 - (c) resellers: which purchase satellite capacity communication and value-added services from SSPs (or even directly from SNOs) and distribute them to end-customers. Resellers tend to be smaller companies or companies which are not focused on the provision of two-way satellite communications services.
- 6.6 Globally, the main players in two-way satellite communications services, other than Inmarsat, include: SES, Intelsat, Echostar, Viasat, Iridium, Gogo and Speedcast.⁴³
- 6.7 The overlap between the Parties within this industry is described below.

7. Overlap and Related Activities

- 7.1 Inmarsat is active in both fixed and mobile two-way satellite communications services only. Inmarsat is not active on the upstream market for the manufacture of satellite terminals.
- 7.2 Arqiva - one of CPPIB's jointly controlled portfolio companies - is predominantly active in: (i) one-way fixed satellite distribution services to television and radio broadcasters primarily in the UK; and (ii) the provision of telecoms masts and towers to mobile network operators. Arqiva does not operate any satellites or have any activities upstream of two-way satellite communications services.⁴⁴

⁴³ Merger Notice Paragraph 13.3

⁴⁴ The Connected Always [Report](#) produced by Arqiva states that Arqiva is the leading independent telecom towers operator and sole terrestrial broadcast network provider in the UK, holding significant investments in essential communications infrastructure.

- 7.3 There are no horizontal overlaps between Inmarsat and any of the Members of the Consortium at the upstream SNO level.
- 7.4 There is a minimal overlap at the SSP level in the supply of two-way fixed satellite communication services (see definition below in section 8) between Inmarsat and Arqiva. This is because Arqiva performs some activities as an SSP providing bundled satellite capacity and airtime, together with: (i) value added services to end-customers and resellers; and (ii) as a provider of value-added services (without bundled satellite capacity and airtime included). Inmarsat also operates as an SSP in fixed two-way satellite communication services, providing services to end-customers, as well as resellers. Inmarsat predominantly uses its own capacity and airtime for this aspect of its business.⁴⁵
- 7.5 Arqiva is also active to a limited extent in the supply of two-way satellite communication services as a reseller of two-way satellite communication services provided by Inmarsat (via an existing Inmarsat distributor) to UK Power Network. Inmarsat is not active as a reseller, only as a SNO and SSP.
- 7.6 Therefore, there is no horizontal overlap between the activities of Inmarsat and Arqiva as resellers in the supply of two-way satellite communication services. There are vertical links between these two companies due to the relationship of Inmarsat as an SNO providing two-way satellite services to Arqiva as an SSP and reseller.
- 7.7 On the narrowest basis, the Parties have a horizontal overlap in two-way fixed satellite communication services (airtime/capacity) at the SSP level in relation to land application. For maritime applications, only Arqiva offers these services.

⁴⁵ Paragraph 15.3 Merger Notice

8. Frame of Reference

Product scope

- 8.1 Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁴⁶
- 8.2 The European Commission has previously considered that one-way and two-way satellite communications are two separate markets. The European Commission has also considered a potential segmentation between the three different levels in the supply of two-way satellite communications described above: SNO, SSP and resellers.⁴⁷
- 8.3 In *Astrium Holding / Vizada Group*,⁴⁸ the European Commission considered whether the supply chain for the supply of two-way satellite communications can be further segmented by: (i) the type of terminal the end-customer uses (i.e. fixed or mobile); (ii) the area of use (e.g. whether the two-way satellite communication service is used on land or for maritime or aeronautical applications); and (iii) whether the services are used by the military or for commercial use.⁴⁹ However, with respect to all segmentations, given the lack of concerns on any basis, the European Commission considered that the exact scope of the relevant product market could be left open.
- 8.4 The Parties do not contest the segmentation of the supply of two-way satellite communications by level of the supply chain. The Parties submitted, however, that:

⁴⁶ Merger Assessment Guidelines, paragraph 5.2.2.

⁴⁷ COMP/M.6393, *Astrium Holding / Vizada Group* (2011), paragraphs 8-9; and COMP/M.4709, *Apax Partners / Telenor Satellite Services*, paragraph 8.

⁴⁸ COMP/M.6393, *Astrium Holding / Vizada Group* (2011), paragraphs 8-9; and COMP/M.4709, *Apax Partners / Telenor Satellite Services*, paragraph 8.

⁴⁹ Military two-way satellite communication (Milsatcom) services are provided to States over frequencies that are exclusively dedicated to secure government and military use. Commercial two-way satellite communication (Comsatcom) services are provided to military and commercial clients over non - dedicated frequencies. The Parties note that Inmarsat does not provide Milsatcom services. Inmarsat does, however, provide services on a commercial basis to governments in certain jurisdictions on its satellite network, but these services are Comsatcom services, rather than Milsatcom services. The CMA has therefore not considered a further segmentation on this basis.

- (a) the segmentation by two-way fixed and mobile satellite communications is not appropriate for the purpose of assessing this Transaction and can be left open, because Arqiva only supplies two-way fixed satellite communications;
- (b) the segmentation by area of use is not appropriate because the voice and data services provided are the same, regardless of whether the services are accessed on land, at sea or in the air and because there is supply-side substitution at SNO level with SNOs offering services to customers that wish to access services on land, at sea or in the air;
- (c) the segmentation between military and commercial use is not appropriate for the purposes of this case, because Inmarsat does not directly provide Milsatcom⁵⁰ services to the UK Government.
- 8.5 Customers and competitors generally agreed with the segmentation in the supply of two-way satellite communications, both in terms of the levels of the supply chain (i.e. SNO, SSP and resellers) noting that there are different competitors across the supply chain. One third party considered, however, that there is no clear distinction between the SSP and the reseller segments due to varying degrees of vertical integration and business models. Customers and competitors generally did not make comments regarding the segmentation by type of terminal (fixed and mobile).
- 8.6 Some third parties commented that there is no clear distinction between different end-uses of two-way satellite communication services (i.e. for land, maritime and aeronautical applications) due to varying degrees of demand- and supply-side substitutability across the land, maritime and aeronautical applications.
- 8.7 Having regard to: (i) the fact that the Parties primarily overlap in the supply of two-way fixed satellite communication services at the SSP level; and (ii) the different features of the various strata of the supply chain identified, the CMA believes that it is appropriate to distinguish between the supply of two-way satellite communications separately for mobile and fixed applications, and each level of the supply chain (i.e. SNOs, SSPs, and resellers) for the purposes of assessing this Transaction.
- 8.8 As Inmarsat and Arqiva primarily overlap in the supply of two-way fixed satellite communication services at the SSP level, the CMA has assessed the competition effects of the Transaction by reference to the supply of two-way

⁵⁰ Military two-way satellite communication (Milsatcom) services are provided to States over frequencies that are exclusively dedicated to secure government and military use

fixed satellite communication services (airtime/capacity) by SSPs to end-customers. Within this assessment, the CMA has considered any differences between land-based, aeronautical and maritime applications when assessing the closeness of competition between Inmarsat and Arqiva.

- 8.9 Given the vertical relationship between Inmarsat, as SNO, and Arqiva, as SSP (i.e. Arqiva resells capacity and airtime supplied by SNOs, such as Inmarsat)⁵¹, the CMA has also considered the impact of the Transaction in the supply of two-way fixed satellite communication services (capacity and airtime) by SNOs to SSPs and resellers.
- 8.10 However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

- 8.11 The European Commission has in previous cases considered the supply of two-way satellite communications supplied by SNOs to be worldwide in scope and has left open the geographic scope for the supply of these services to end-customers.⁵²
- 8.12 The Parties submitted that the supply of two-way satellite communication services, at SNO level, is worldwide in scope. This is because, in the Parties' view, customers generally source two-way satellite communication services on a global basis, with contracts for the provision of these services or solutions being negotiated on a global basis. Further, the Parties submitted that SNOs and SSPs also generally offer two-way satellite communication services on a global basis. The Parties submitted that there are no transportation costs, duties, legal or technical barriers that prevent suppliers from selling such service internationally, or their customers from buying such services on a global basis. The Parties considered that the geographic scope of the supply of these services at the SSP and resale level can be left open but noted that given the European regulatory framework, it could not plausibly be narrower than the EEA.⁵³
- 8.13 The majority of third party submissions received by the CMA supported a global geographic frame of reference at both SNO and SSP level. A small number of third parties told the CMA that, in some circumstances, the

⁵¹ The airtime acquired from Inmarsat (via an Inmarsat distributor) is resold by Arqiva to UKPN and is used by UKPN in a fixed manner at its remote telemetry units (see page 3 of Merger Notice).

⁵² *Astrium Holding/Vizada Group*.

⁵³ Paragraph 143 Merger Notice, *Astrium Holding/Vizada Group*.

geographic scope of the provision of these services at the SSP and resale level may be narrower than global, depending on technical aspects (e.g. satellite coverage) and the nature and complexity of services provided (e.g. when local support is required). However, these third parties still considered that the geographic scope was at least EEA-wide.

- 8.14 The CMA has therefore, on a cautious basis, considered the impact of the Transaction on an EEA-wide basis, both for the supply of two-way fixed satellite communication services at SNO, SSP and resale level. However, it is not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below no competition concerns arise on any plausible basis.

Conclusion on frame of reference

- 8.15 For the reasons set out above, on a cautious basis, the CMA has considered, with respect to the horizontal relationship, the impact of the Transaction in the supply of two-way fixed satellite communication services (airtime/capacity) at SSP level to end-customers and resellers on an EEA-wide basis, taking into account any differences between land, sea and aeronautical applications.
- 8.16 Given the vertical relationship between Inmarsat and Arqiva, the CMA has also considered the effects of the Transaction in the following frame of reference: the supply of two-way fixed satellite communication services (airtime/capacity) by SNOs to SSPs and resellers on an EEA-wide basis.

9. Competitive Assessment

9.1 The CMA assessed the following theories of harm:⁵⁴

- (a) horizontal unilateral effects in the supply of two-way fixed satellite communication services (airtime/capacity) by SSPs to end-customers and resellers in the EEA; and
- (b) vertical effects, in particular whether the Transaction could result in:
 - (i) input foreclosure whereby the merged entity, as SNO, could stop supplying or only supply on less favourable conditions two-way fixed satellite communication services (capacity and airtime) to rival SSPs and resellers at an EEA level; and/or
 - (ii) customer foreclosure whereby the merged entity, as SSP and reseller, could stop purchasing or only purchase on less favourable conditions two-way fixed satellite communication (capacity and airtime) from rival SNOs at an EEA level.

Horizontal Unilateral Effects

9.2 Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to profitably raise prices or to degrade quality on its own without needing to coordinate with its rivals.⁵⁵ The concern under this theory of harm is that the removal of one party as a competitor could allow the parties to increase prices, lower quality, reduce the range of their services and/or reduce innovation. After the merger, it is less costly for the merging company to raise prices (or lower quality) because it will recoup the profit on recaptured sales from those customers who would have switched to the offer of the other merging company. Horizontal unilateral effects are more likely when the merging parties are close competitors.

9.3 The CMA considered the horizontal effects of the Transaction in the supply of two-way fixed satellite communication services (capacity/airtime) by SSPs to end-customers and resellers, in which Inmarsat and Arqiva overlap.

⁵⁴ The CMA notes that CPPIB has the lowest level of control (material influence) over Arqiva and that the Consortium Members also only exert material influence over Inmarsat. However, on a cautious basis, the CMA assumed in its competition assessment that CPPIB exerts full control over both Inmarsat and Arqiva because, even on this basis, the Transaction does not give rise to competition concerns. Therefore, it was not necessary for the CMA to consider in its competitive assessment CPPIB's level of control over Inmarsat and Arqiva.

⁵⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Parties' submissions

- 9.4 The Parties submitted that the overlap between Inmarsat and Arqiva is minimal and that the Transaction will not give rise to any plausible horizontal theory of harm given the negligible shares of supply achieved by the Parties. Moreover, the Parties submitted that they would not be close competitors as: (i) they focus on different types of two-way satellite communications (Arqiva is only active in fixed services, while Inmarsat is primarily active in mobile services); and (ii) their customer scope is different (Arqiva is active to a very limited extent in the land and maritime segments, while Inmarsat is active across the land, maritime and aeronautical segments).⁵⁶
- 9.5 In assessing the possibility of horizontal effects arising from the Transaction, the CMA considered: (i) shares of supply; (ii) closeness of competition between the Parties; and (iii) the competitive constraints on the merged entity that would remain after the Transaction.

Shares of supply

- 9.6 The CMA considered the shares of supply of Inmarsat and Arqiva as SSPs in the provision of two-way satellite communication services. Inmarsat's business to end-customers accounts for around a █████ of its global revenues and around █████ of its UK revenues (approximately █████ in 2018). Arqiva generated around █████ in 2018 from its activities as an SSP.⁵⁷
- 9.7 Although the CMA was not provided with sufficient information to estimate the exact shares of the Parties and their competitors for two-way fixed satellite communication services at the SSP level,⁵⁸ the CMA found, based on the Parties' estimates, that Inmarsat and Arqiva each have shares of supply of less than [0-5%] in the supply of two-way fixed satellite communications services by SSPs at EEA level.⁵⁹ For two-way fixed satellite land-based communication services at the SSP level in the EEA, Inmarsat and Arqiva estimate their individual shares of supply in this segment are below [0-5%]. For two-way fixed satellite maritime communication services at the SSP level in the EEA Inmarsat is not active and Arqiva estimate its shares would be below [0-10%].⁶⁰

⁵⁶ Paragraph 7 of the Merger Notice

⁵⁷ The CMA notes that Arqiva's revenues from its activities as an SSP represent a small share of its total business (total revenues for the year ending June 2018 were █████).

⁵⁸ The Parties were unable to provide the CMA with their competitors' shares for two-way fixed satellite communication services by SSPs at EEA level.

⁵⁹ Paragraph 14.5 and 14.6 Merger Notice.

⁶⁰ Two-way fixed satellite aeronautical based communication services at the SSP level in the EEA could not be provided.

9.8 The Parties' and their competitors' share of supply at the SSP level for both fixed and mobile (together) for two-way satellite communication services, globally and at the EEA level are presented below in Table 1 and Table 2.

Table 1 and 2: Estimated shares of supply in two-way satellite communication services both fixed and mobile for all applications (land, maritime and aeronautical) at SSP level - Global and EEA (2018)

Table 1 – Estimated shares in two-way satellite communication services – SSP - Global (2018)		
Competitor		Share of supply by value (%)
Echostar/Hughes		5-10%
Viasat		5-10%
Gogo		0-5%
Speedcast		0-5%
GEE		0-5%
Inmarsat		0-5%
Marlink		0-5%
Arqiva		0-5%
others		70-80%
TOTAL		90-100%
Table 2 – Estimated shares in two-way satellite communication services – SSP - EEA (2018)		
Competitor		Share of supply by value (%)
Marlink		5-10%
Airbus Defense and Space		5-10%
Telespazio		5-10%
SpeedCast		5-10%
Echostar/Hughes		0-5%
Inmarsat		0-5%
Arqiva		0-5%
Others		60-70%
TOTAL		90-100%

Source: Parties' estimates

9.9 As noted above, the Parties estimate that Inmarsat's share of supply by value is around [0-5%] globally and lower in the EEA with around [0-5%].

9.10 On a narrower bases of two-way satellite communication services (for both mobile and fixed), for land-based, maritime and aeronautical based

applications Inmarsat's global shares are [0-5%], [0-10%] and [0-5%] respectively.⁶¹

- 9.11 Arqiva's share of supply is around [0-5%] globally and [0-5%] in the EEA. Even on narrower bases of two-way satellite communication services (for both mobile and fixed), for land-based or maritime and aeronautical applications, its global share remains below [0-10%]. Therefore, the combined share of supply of Inmarsat and Arqiva is lower than [0-10%] on any plausible basis and the increment resulting from the Transaction is minimal.
- 9.12 As indicated in the shares of supply, after the Merger, there will be a number of other SSPs larger than the Parties which will continue to impose a significant competitive constraint on the merged entity both globally and at EEA level.

Closeness of competition between the Parties

- 9.13 The CMA considered the degree to which Inmarsat and Arqiva are competing closely with each other. None of the Parties' customers the CMA consulted in its merger investigation reported that Inmarsat and Arqiva competed against each other in the past; indeed, customers confirmed that Inmarsat has not competed against any of the businesses controlled by the Consortium Members.⁶²
- 9.14 Inmarsat's internal documents⁶³ did not refer to Arqiva as a competitor which indicates that it does not consider Arqiva to be a competitor.
- 9.15 Furthermore, as discussed above (see section entitled 'frame of reference'), the Parties focus on different types of two-way satellite communications (Arqiva is only active in fixed services, while Inmarsat is primarily active in mobile services) and their customer scope is different (Arqiva is active to a very limited extent in the land and maritime segments, while Inmarsat is active across the land, maritime and aeronautical segments). As noted above, across these end-customers, Arqiva's shares of supply (for both fixed and mobile two-way satellite communication services) are below [0-5%] on any basis.
- 9.16 In addition, Arqiva, has limited activities in the supply of two-way fixed satellite services to both end-customers and resellers with only one contract as a

⁶¹ The Parties were unable to provide these shares on an EEA wide basis.

⁶² The CMA notes that Marlink, an SSP, is owned by a separate entity not controlled by APAX Partners LLP (the investment funds advised by AP Funds), as confirmed by the Parties on 08 August 2019.

⁶³ Document 3,41 and 46, accompanying the Merger Notice

reseller to UKPN⁶⁴ and limited shares for end-customers of [0-5%] (on a global basis) and [0-5%] (on an EEA-wide basis). In contrast, Inmarsat has a number of large customers which are mainly distribution partners: including AST Connections, AND Group, NSSL Global and Spectra Group. These distribution partners are responsible for contracts with a range of UK-based end-users including MoD, as Airbus Defence and Space. This indicates that, as submitted by the Parties, Inmarsat, as a large SSP, does not compete closely against a smaller player like Arqiva for the same opportunities in the UK.⁶⁵ Instead, as submitted by the Parties, the CMA found that Inmarsat tends to focus its limited resources on opportunities which are large or complex (e.g. British Airways).

- 9.17 Therefore, based on the available evidence, the CMA considers that Inmarsat's and Arqiva's offering are focused on different customers, with Arqiva being a small player in the market across all application. Therefore, the CMA considers that the Parties are not close competitors.

Competitive constraints

- 9.18 The CMA considered the available evidence it has gathered on the relative competitive strength of the Parties as SSPs and of their SSP competitors.
- 9.19 The Parties told the CMA that Inmarsat alone works with a network of over [REDACTED] SSPs and [REDACTED] resellers worldwide, of which [REDACTED] SSPs and over [REDACTED] resellers have a presence in the UK.
- 9.20 The internal documents⁶⁶ provided by Inmarsat indicated that its main competitors are: [REDACTED]
- 9.21 All competitors and customers that the CMA consulted identified a number of other SSPs that compete closely with Inmarsat, some of which are larger (by revenue) than Inmarsat in the various frames of reference considered above. These include, Viasat, Speedcast, Marlink, and Echostar/Hughes.
- 9.22 In addition, Inmarsat does not compete with Arqiva for its customer, UK Power Networks, and as noted earlier, Inmarsat is not active as a reseller. This was also confirmed with third parties who added that they had a range of alternative providers to choose from. The CMA therefore considers that a

⁶⁴ Inmarsat has confirmed that it does not compete with Arqiva to provide services to UKPN

⁶⁵ Paragraph 15.8 Merger Notice.

⁶⁶ Document 3,41 and 46, accompanying the Merger Notice

number of significant competitors remain to constrain the Parties post-Transaction.

Conclusion

9.23 For these reasons, the CMA has found that the Transaction creates only a minor overlap between the activities of Inmarsat and Arqiva at SSP level in any subset of applications (i.e. land, aeronautical and maritime). The combined share of supply of Inmarsat and Arqiva in the supply of two-way fixed satellite communications at SSP level is low, with a minimal increment resulting from the Transaction. The CMA has found that Inmarsat and Arqiva do not compete closely in the supply of these services for any application and a number of significant SSPs will remain to constrain the Parties after the Merger, including Intelsat, Viasat and Telenor Satellite. The CMA therefore considers that the Transaction does not give rise to realistic prospect of an SLC in the supply of two-way fixed satellite communication services (capacity/airtime) by SSPs to end- customers and resellers in the EEA.

Vertical effects

- 9.24 Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer, or a downstream competitor of the upstream supplier's customers.
- 9.25 Vertical mergers can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.⁶⁷
- 9.26 The CMA's approach to assessing each vertical theory of harm is to analyse: (i) the ability of the merged entity to foreclose competitors; (ii) the incentive of it to do so; and (iii) the overall effect of the strategy on competition.⁶⁸ In practice, the analysis of these questions may overlap and many of the factors may affect more than one question. All of these criteria must be met in order to establish an SLC.

⁶⁷ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

⁶⁸ MAG, paragraph 5.6.6.

- 9.27 The CMA considered whether the vertical relationships between Inmarsat, Arqiva and their rivals could give rise to vertical effects as a result of input foreclosure and customer foreclosure, as discussed below.
- 9.28 The Parties submitted that the Transaction does not give rise to any competitively relevant vertical relationships.

Input foreclosure

- 9.29 The CMA assessed whether the Transaction gives rise to vertical effects from input foreclosure whereby the merged firm could stop supplying or only supply under less favourable conditions (e.g. with higher prices) two-way fixed satellite communication services (capacity and airtime), i.e. the input, to rival SSPs or resellers. The potential effect of this would be to reduce rival SSPs and resellers ability' to compete with the merged entity at the SSP level in the supply of airtime/capacity to end-customers.
- 9.30 The Parties estimate that Inmarsat as an SNO has a global share of supply (by value) in the provision of two-way satellite communication services of around [10-20%] (both mobile and fixed), [20-30%] at an EEA level (both mobile and fixed) and [10-20%] when considering mobile two-way satellite communication services alone at a global level. Even when only the largest six providers (by value) are considered, its share would not exceed [20-30%] for mobile applications. With respect to SNO global share of supply (by value) in the provision of two-way fixed satellite communication services, the Parties estimate that Inmarsat's share of supply is less than [0-5%].⁶⁹
- 9.31 Other SNO providers, including Intelsat, Iridium, and SES, were frequently named by customers.
- 9.32 The CMA therefore considers that rival SSPs have a number of viable alternative providers allowing them to switch away from the merged entity to avoid a hypothetical price rise or the worsening of other parameters of the merged entity offer.
- 9.33 The majority of customers of Inmarsat that the CMA consulted did not raise concerns about input foreclosure.
- 9.34 The CMA therefore does not believe that the merged firm has the ability to engage in input foreclosure, and hence did not have to consider whether the merged firm would have the incentive to engage in input foreclosure or the

⁶⁹ The Parties were unable to provide estimates for other competitors and estimates could not be provided on an EEA-wide basis.

effect on competition of such strategy. Nevertheless, the CMA notes that Inmarsat already has existing significant global and EEA activities as an SSP, while Arqiva's activities as an SSP and reseller are limited and are focussed on specific sub-segments of applications predominantly in the UK, suggesting that the incentive for the merged firm to engage in a foreclosure strategy would be unlikely to change materially post-transaction.

- 9.35 For the reasons described above the CMA believes that the Transaction does not give rise to a realistic prospect of an SLC as a result of input foreclosure in the supply of two-way fixed satellite communication (capacity and airtime) by SNOs to SSPs and resellers in the EEA.

Customer foreclosure

- 9.36 The CMA assessed whether the Transaction gives rise to vertical effects from customer foreclosure whereby the merged entity could stop purchasing or purchase under less favourable conditions from rival SNOs. Depending on the impact of this on rivals at the SNO level, this could reduce their ability to compete with Inmarsat in the supply of capacity and airtime to SSPs and resellers.
- 9.37 Inmarsat's main customers are its distribution partners, namely AST Connections, AND Group, NSSL Global and Spectra Group.⁷⁰ Arqiva is not one of the main customers of Inmarsat and, as mentioned above, it has limited activities as a reseller of two-way satellite communications services provided by Inmarsat (via an existing Inmarsat distributor) to UK Power Networks.
- 9.38 As set out above, Arqiva's share of supply as an SSP are very low and its activities as an SSP are limited and are focussed on specific sub-segments of applications. The CMA therefore believes that Arqiva does not represent an important route for SNOs to end-customers.
- 9.39 Competitors of Inmarsat at the SNO level did not raise concerns about customer foreclosure specific to the Transaction. A small number of competing SNOs told the CMA that vertical integration of Inmarsat with SSPs has in the past lead to lower sales of their capacity and airtime through these SSPs. However, the CMA found the Transaction does not materially change

⁷⁰ These distribution partners, which are free to re-sell to third parties, are responsible for contracting with a range of UK-based end-customers, including a number of government departments. Inmarsat has no direct contracts with any UK government department other than the UK Space Agency which is part of the Department for Business, Environment and Industrial Strategy.

the degree to which Inmarsat is vertically integrated and that Arqiva is not an important route for SNOs to sell to SSPs or end-customers.

- 9.40 The CMA therefore does not believe that the Transaction gives Inmarsat the ability to foreclose competition by customer foreclosure.
- 9.41 For the reasons described above, the CMA believes that the Transaction does not create a realistic prospect of an SLC as a result of customer foreclosure of rival SNOs in their selling of two-way fixed satellite communication (capacity and airtime) to SSPs and resellers in the EEA.

10. Public Interest Consideration

Summary of interested parties

- 10.1 Section 44(3)(b) of the Act requires the CMA to provide a summary of representations it has received, which relate to the public interest consideration in question, national security, and which are or may be relevant to the Secretary of State's decision as to whether to make a reference for a Phase 2 assessment under section 45 of the Act.
- 10.2 The CMA received representations from the MoD and three third parties, a summary of which is set out below.

The MoD

- 10.3 MoD submitted that national security concerns arising from the Transaction were twofold:
- (a) concerns in relation to establishing whether the Transaction created the potential for any parties to the Transaction to have access to information, either held on, or passing through, Inmarsat's systems, which would allow unauthorised persons to understand either the detail of MoD activity, or would allow a more strategic picture of activity to be built up; and
 - (b) concerns that there is continuity of supply, for an appropriate period of time, of specified services that are important to MoD's ability to operate at the present time, with sufficient notice of termination to allow migration to an alternative supplier.
- 10.4 In its investigation the MoD sought to establish whether, following the acquisition, insufficient security controls within the new ownership structure could result in other unauthorised access to sensitive defence and security data held by Inmarsat or carried on their systems. The MoD issued two

information requests to the Transaction parties and conducted a site visit with defence security system subject matter experts. The Government publishes guidance on industrial security and 'List X' status⁷¹ and, through the company's responses and reviewing arrangements on the facilities visit, the MoD has assessed the implications of the Transaction on Inmarsat's continued compliance with that framework.

- 10.5 The further national security concern focussed on the question of whether under the ownership of Connect Bidco and, in turn, with the potential for strategic direction from the Consortium Members, certain capabilities that Inmarsat uses to provide specific services could cease to operate or be sold or transferred abroad, requiring the MoD to put in place alternatives. The MoD noted that under the JBCA each Consortium Member was able to exercise material influence on 'the nature or scope of the business of the Group'. The MoD assessed the level of Defence reliance on Inmarsat services and the implications of service withdrawal. It noted that any gaps in supply could significantly impact the work of the Armed Forces, posing a risk to national security as well as wider public safety. The MoD noted that use of Inmarsat services requires access through dedicated devices, managed by their exclusive software. Transfer to a new service, which would include the need to procure an alternative capability and replace access devices, would require a significant notice period, and carries the risk of a break in service.

Other third parties

- 10.6 A third party informed the CMA that Inmarsat provides software that is critical to flight operation of the Skynet 5 military satellite constellation.
- 10.7 A separate third party told the CMA that Inmarsat was initially established in 1979 as a non-profit intergovernmental organisation at the behest of the International Maritime Organization,⁷² by the convention on the International Maritime Satellite Organization (**INMARSAT**), adopted on 3 September 1976. Inmarsat currently provides a mobile satellite service recognised by IMO for use in the Global Maritime Distress and Safety System (**GMDSS**) .
- 10.8 Following the adoption of amendment to the Inmarsat Convention in 1988, Inmarsat was eventually privatised in 1999 and succeeded by the International Mobile Satellite Organisation (**IMSO**), as an intergovernmental

⁷¹ *Industrial Security: departmental responsibilities*; <https://www.gov.uk/government/publications/industrial-security-departmental-responsibilities>, and *Security requirements for list X contractors*; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/367514/Security_Requirements_for_List_X_Contractors.pdf

⁷² A specialized agency of the United Nations, IMO is the global standard-setting authority for the safety, security and environmental performance of shipping

regulatory body for satellite communications which exercises the intergovernmental oversight of the provision of mobile satellite communication services in the GMDSS.

- 10.9 The CMA was told that while Inmarsat's operational unit was separated and became the UK-based company Inmarsat Ltd., IMSO and Inmarsat Ltd signed a Public Service Agreement (**PSA**) for the above mentioned oversight and imposing public safety obligations on the new company. In particular, as part of the privatisation package, Inmarsat was placed under a duty in its Articles of Association to uphold GMDSS, with this duty protected from change by a Special Share in favour of IMSO.
- 10.10 Following IMO's decision to accept Iridium as a second service-provider, the PSA between IMSO and Inmarsat was amended by the IMSO Assembly in November 2018 in order to create a level-playing field for all GMDSS providers, and now no longer includes the aforementioned Special Share. The CMA was told therefore, that if Inmarsat stopped providing GMDSS services, GMDSS service provision might be at risk, as only one service provider would be left with no specific obligation to uphold GMDSS.
- 10.11 An additional third party set out similar concerns. It emphasised the role of satellite communications in the GMDSS which requires Inmarsat to be the provider of last resort. This third party outlined the need to have measures in place for ensuring that there will always be at least one company providing recognised satellite communication services in the GMDSS.
- 10.12 In this third party's second submission, it suggested that a condition to clearance is required in order to ensure the robust continuing provision of the GMDSS, in the context of potential gaps in the existing tools designed to ensure GMDSS provision.
- 10.13 The CMA considers that the concerns raised by these third parties do not result from the competition effects of the merger. The CMA has raised the GMDSS concerns expressed above with the relevant authorities.

MoD advice on third party representations and national security matters

- 10.14 Separately to representations received by the CMA, the MoD received representations from third parties concerning national security, including from Government departments, Government agencies and law enforcement bodies in the UK. The CMA understands that some of those representations concern highly sensitive national security related matters and materials. The CMA has not seen or considered the representations received directly by the MoD.
- 10.15 The MoD has been considering the specific risks identified in relation to national security matters and possible remedies to address those risks. The CMA understands that the MoD will advise the Secretary of State directly in this regard.
- 10.16 The CMA has no reason to doubt any representations made by the MoD on the appropriateness of the undertakings to remedy or prevent the specific effects adverse to the public interest identified by it and which are briefly described above.
- 10.17 Consistent with section 44(2) and 44(3) of the Act the CMA does not provide in this report advice or recommendations on the national security public interest consideration under section 44(6) of the Act.⁷³

11. Remedies – Undertakings in Lieu

- 11.1 The MoD informed the CMA that it has been considering the specific risks identified in relation to national security matters and possible remedies to address those risks. The CMA understands that the MoD will advise the Secretary of State directly in this regard.
- 11.2 Although the CMA is aware of the general nature of the national security concerns held by the MoD,⁷⁴ the CMA provided no views to the MoD on the substance of any undertakings, were they to be required and offered.

⁷³ See CMA2, paragraph 16.7, fourth bullet.

⁷⁴ As outlined at paragraph 93 above.

12. Assessment and Advice to the Secretary of State

- 12.1 The CMA produces this report to the Secretary of State pursuant to its duty under section 44(2) of the Act, following investigations carried out under section 44(7).
- 12.2 This report contains advice on considerations relevant to the making of a reference under section 33 which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act, namely that the CMA:
- (a) believes that it is, or may be, the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) does not believe that the creation of that merger situation may be expected to result in a SLC within a market or markets in the UK for goods or services.
- 12.3 This report also contains a summary of the representations about the case which it has received (from the MoD and from three third parties) which relate to the national security public interest consideration mentioned in the Notice.
- 12.4 This report does not contain advice or recommendations on the public interest consideration under section 44(6) of the Act.

Alex Olive, Director

17 September 2019