

Land Mobile Radio Network Services for Public Safety in Great Britain

Board Advisory Steer

Background

1. The CMA's procedural guidance on market studies and market investigations (the Guidance) states that, where the CMA undertakes a market study leading to a market investigation (MI), in addition to drafting the formal terms of reference for the MI, the CMA Board may append an advisory steer to the MIR decision setting out its expectations regarding the scope of the MI and the issues that could be the focus of the investigation. The Inquiry Group is expected to take this into account, although it will continue, as required by the legislation, to make its statutory decisions independently of the CMA Board.^{1 2}
2. The CMA's report on the responses to its consultation on the Guidance notes that the steer is "simply intended to provide additional clarity over the views (if any) of the Board on the expected scope of the MI, including issues to be addressed or issues that it considers do not require further consideration, based on the previous work undertaken."
3. There is some read across here, as we move from one phase of the CMA's work to another (albeit without that previous phase involving a market study). Accordingly, and based on the previous work undertaken in relation to the relevant market, the CMA Board's advisory steer to the Inquiry Group for the MI relating to the supply of Land Mobile Radio (LMR) network services for public safety in Great Britain (the Group) is set out below.

Advisory steer

4. This advisory steer forms part of the CMA's decision to refer the market for LMR network services for public safety in Great Britain. It is separate from, but should

¹ [Market studies and market investigations: Supplemental guidance to the CMA's approach](#) (Paragraph 3.39, CMA3, July 2017)

² In its [Response to the consultation on guidance on market investigations](#) the CMA stated: "We believe [the steer] will help maximise the potential synergies between MSs and MIs carried out by the CMA and reduce the risk of unnecessary duplication, by allowing the Board to take more explicit account of the work undertaken in an MS in setting out its views on the appropriate scope of an MI. We therefore consider that these changes are consistent with the creation in ERRA13 of the CMA as a single competition authority, a key rationale for which was to avoid duplication and to bring about greater efficiencies in markets work, while preserving the independence of decision-making between MSs and MIs which remains central to the regime."

be read in conjunction with, the Terms of Reference.

5. Based on the evidence and analysis gathered to date, our view is that there are reasonable grounds for suspecting that the following features, alone or in combination may prevent, restrict or distort competition:
 - a. the extremely concentrated nature of the current market, in which the price is established through negotiation between a monopoly provider (Motorola Solutions, Inc. (Motorola)) and a monopsony buyer (the Home Office);
 - b. the asymmetry of information between Motorola and the Home Office in relation to key drivers of pricing, for example the level of capital expenditure needed to keep the Airwave network operational;
 - c. Motorola's position as owner of Airwave Solutions and key supplier in the design and roll-out of ESN, which may be resulting in the preservation of weak competitive constraints on Motorola in the supply of LMR network services for public safety, because of:
 - i. the ability of Motorola to shape or otherwise delay the design and roll-out of ESN, and thus hamper the emergence of the significantly different competitive dynamics envisaged by the Home Office when it procured the design and roll-out of ESN; and
 - ii. the incentive on Motorola to do so, arising from the significant profits it derives from operating the Airwave network.
 - d. the delays in the roll-out of ESN (which may or may not have resulted from Motorola's conduct in relation to the design and roll-out of ESN since 2016), that are preserving weak competitive constraints on Motorola in the supply of LMR network services for public safety; and
 - e. the absence of competitive tension in the award of the original contract, with only one supplier taking part in the bidding process.
6. The central concern arising from the work carried out to date is that Motorola has a significant level of market power, derived from the above features, and that, as long as the Airwave network is in operation, it may be able to derive significant levels of excess profits from the exercise of its market power. The burden of any excess profits made by Motorola ultimately falls to the British taxpayer.
7. In light of this, we would expect that in setting its administrative timetable for the inquiry, the Group takes into account the necessity of reaching its conclusions expeditiously. The sense of urgency is acute in this case, and the issues that the

CMA has identified in its preliminary work appear to be relatively contained. While the suspected detriment may come to an end when the Airwave network is replaced, the timing of that is uncertain and the likely detriment high in the meantime.

8. The Group will weigh up the evidence and reach its conclusions independently, but we note that, if it reaches a view that there are features of the markets that give rise to an adverse effect of competition (AEC), any assessment of what remedial action may be required would be shaped by the specific circumstances of this market, including the uncertain time period over which the AEC may persist. The Group should consider the full range of remedies and identify those most suitable in this case. In this respect, the Board reiterates its view that the detriment may be high in this case. If this is true, we would expect a range of remedies to be assessed including remedies that control outcomes and structural remedies, so that ultimately the Group is confident that any remedy it imposes is fully effective in addressing any AEC or detrimental effect on customers.