



## The Home Office's Response submission to the CMA's Issues Statement

### Introduction

1. As part of its Market Investigation into the mobile radio network for the police and emergency services, the CMA published an Issues Statement and invited parties to submit their views. This submission sets out the Secretary of State for the Home Department, as part of the Crown, acting via the Home Office (the **Home Office**)'s views on the Issues Statement (the **Submission**).
2. Generally, the Home Office agrees with the CMA's approach; however, there are a number of specific areas, particularly around Market Definition and Remedies, where the Home Office would encourage the CMA to extend its approach and enquiries.
3. The Home Office considers that there is a technology neutral market for the provision of land mobile radio communications for emergency and security services, and that this market includes TETRA based services, such as Airwave, and 4G/LTE MCPTT services, such as Kodiak, and urges the CMA to reconsider its proposed market definition.
4. The Home Office also encourages the CMA, if it is not already doing so, to expand its enquiries beyond Airwave, to review Motorola's activities and approach to ESN and 4G/LTE MCPTT services.
5. [REDACTED].<sup>1 2</sup>
6. That said, the Home Office observes that:
  - a. [REDACTED] to agree to the acquisition proceeding, putting in place the best protections it could, given its relatively weak bargaining position;
  - b. these protections were predicated on Motorola delivering on its ESN Lot 2 commitments by 2019; [REDACTED], as is clear when actual delivery is contrasted with Motorola's original ESN proposal;

---

<sup>1</sup> [REDACTED]

<sup>2</sup> [REDACTED]

- c. the resulting current contractual structure and levers available to the Home Office [✂];
- d. even if the Home Office were to terminate the ESN Lot 2 contract and seek an alternative supplier of all those services, including an alternative MCPTT application to Kodiak, the requirement for interworking between Airwave and ESN means that Motorola – has effectively - ‘locked-in’ its critical position in the delivery of ESN; and
- e. this ‘lock-in’ as well as other features of the market, such as the considerable level of information asymmetry, results in Motorola holding significant unilateral market power.

It is therefore important that the CMA look beyond just Airwave and understand Motorola’s wider strategy, from 2015 to date, and how that strategy has developed over the period.

7. To effectively address these features of the market that give rise to the adverse effects on competition initially identified by the CMA, and the resulting customer harm, the Home Office further encourages the CMA to consider a wider range of remedies than those currently proposed; remedies that would address the pricing of Airwave services, information asymmetry and appropriately incentivise the delivery of Motorola’s ESN obligations or, alternatively, ensure effective interworking for other MCPTT service providers.

### **Confidentiality**

8. The Home Office requests the CMA to please treat this Submission as confidential and to not disclose the Submission, or any information contained within the Submission, to any third-party without the Home Office’s consent.

### **The focus of the CMA’s investigation**

9. In respect of the contractual and commercial relationship with Airwave Solutions the Home Office agrees it is sensible that the CMA seeks to understand how the market has developed over time, and in particular the nature and evolution of the commercial and contractual relationships between Airwave Solutions and its customers, including those aspects lists (a) thru (f) at paragraph 17 of the Issues Statement.
10. Additionally, if the CMA is not already doing so, the Home Office would encourage the CMA to explore:
  - a. the role and effectiveness of the Deed of Recovery;
  - b. the commercial and contractual arrangements available to ensure an effective and timely interworking solution during the required transition

- period, as users migrate between the Airwave and ESN networks, should Kodiak need to be replaced;
- c. the contractual protections against double recovery as between different customer contracts; and
  - d. the commercial and contractual relationships between Airwave Solutions Limited and Motorola Solutions, Inc. for the licensing and supply of LMR and TETRA technology.
11. In particular, if it would be helpful to the CMA, the Home Office would propose to provide additional evidence and submissions, focusing on, amongst other things:
- a. the role of Guardian's various parents in the development of the Airwave network and the commercial relationships between the Home Office and Airwave. For example, Macquarie's role in Airwave including the concern held by the Home Office about Macquarie's management of and investment in Airwave in the period before Guardian's acquisition by Motorola Solutions, Inc. in early 2016. Specifically, the Home Office's concern (reasonably held) [redacted];
  - b. the [redacted] Home Office control over the change of ownership of the Airwave network, the Home Office's only contractual remedy being termination, [redacted] given the vital critical national infrastructure (**CNI**) role played by the Airwave network;
  - c. the effect on the market and commercial relationships of the lack of an effective exit mechanism in the original PFI agreement (for example, for the network or relevant parts of the network, to revert to HMG on termination) to control or mitigate the risk of a continuing monopoly;
  - d. with hindsight, the failure of the Deed of Recovery's [redacted] to sufficiently incentivise Motorola to deliver its ESN Lot 2 commitment on time, or to at least [redacted]. The Deed of Recovery is a poor comparison to the tools regulators have at their disposal, such as Ofcom's ability to fine licensees 10% of turnover should they breach their regulatory obligations;
  - e. the impacts of the significant asymmetry of information and absence of financial transparency as between Motorola and the Home Office, resulting in the Home Office [redacted]; and
  - f. the circumstances surrounding the award of ESN Lot 2 to Motorola, in particular, the [redacted] at that time and the situation of other potential bidders.

### **Market Definition**

12. The Home Office considers that there is a market in the UK for the provision of mobile radio voice and data communications for the emergency and associated

services (together with associated facilities and services) and that the market definition should be technology neutral, focusing on service deliverables or outcomes, not the technology used to contract the service.

13. While the Home Office accepts that there is no current commercially available and operating alternative to Airwave in Great Britain, this is as a result of the market not functioning effectively, and not an inherent feature of the market structure.
14. The Home Office notes that:
  - a. utilising the EE mobile network service combined with Motorola's Kodiak MCPTT product, mobile radio voice and data communication services are currently being provided to the UK Border Force and the UK Immigration Service in parts of Great Britain, in parallel with Airwave, on a trial basis. [✂];
  - b. FiRelink attempted to compete network provision, based on the proposition that a second network could operate alongside Airwave with the ability to interoperate for relevant talk groups; however, Airwave won the procurement competition;
  - c. in the USA, FirstNet<sup>3</sup> is deploying a 4G/LTE network to provide mission critical broadband services and a phased migration from the thousands of P25 networks<sup>4</sup> currently operated by individual public safety organisations to a fully interoperable national MCPTT service;
  - d. KPN in the Netherlands,<sup>5</sup> and Telia in Sweden<sup>6</sup> are offering Kodiak services to blue-light users on a commercial basis; and
  - e. in the UK, other than for trials, there is no currently available 4G/LTE alternative to TETRA due to Motorola's delay in the delivery of its MCPTT Kodiak product. That a product has been throttled does not mean that it is not within the same market as a product that has been allowed to dominate.

---

<sup>3</sup> For information about FirstNet see:

<https://www.firstnet.com/>

<sup>4</sup> Project 25 (P25 or APCO-25) is a suite of standards for interoperable digital two-way radio services developed by public safety organisations in North America. Further information on P25 can be found on the P25 Technology Interest Group's website at:

<https://project25.org/index.php>

<sup>5</sup> See, for example, The Critical Communications Review: Motorola Solutions and KPN Team Up for Mission Critical Push to Talk over Cellular Service, 4 November 2019:

<https://www.criticalcommunicationsreview.com/ccr/news/100559/motorola-solutions-and-kpn-team-up-for-mission-critical-push-to-talk-over-cellular-service>

<sup>6</sup> See, for example, Critical Communications World: Motorola collaborates on MCPTT in Sweden, 26 June 2020:

<https://critical-communications-world.com/news/articles/motorola-collaborates-on-mcptt-in-sweden>

15. The Home Office strongly disagrees with Motorola's position that ESN was never envisaged as a possible substitute for the Airwave network, and this means it is in a different economic market. The fact that ESN is intended to replace Airwave, in fact, confirms that ESN is a potential demand and supply side substitute for Airwave and therefore could well be in the same economic market as Airwave.
16. There are many products and services that ultimately replace their legacy substitute and, in the transition phase, the innovative product imposes competitive pressure on the legacy product and is effectively in the same economic market. For example, ADSL broadband was initially a substitute for then replaced dial-up internet access, and over the next 3 years Voice over Internet Protocol fixed line voice (VoIP) communications, which are currently a substitute for traditional public switched telecommunications systems (PSTN), will replace those PSTN systems.<sup>7</sup> As each new product was brought to market it imposed a competitive constraint on the legacy products, resulting in lower prices for consumers. The move from TETRA LMR solution to MCPTT over 4G/LTE solution is no different; the availability of an alternative, albeit superior, technology should put competitive pressure on the legacy solution.
17. Further, Motorola's position that ESN will fully replace Airwave thus cannot be in the same economic market as Airwave is wholly inconsistent with its own published positions, which refers to a future in which 4G/LTE and TETRA both co-exist.<sup>8</sup> While such a future is not in line with the Home Office's intention, and is likely to be no more than an attempt by Motorola to prolong the life of TETRA based products, it fully undermines Motorola's main argument that Airwave and ESN operate in separate economic markets.
18. Both TETRA LMR and MCPTT over 4G/LTE serve the same users and customers, with the same base service functions, albeit MCPTT over 4G/LTE provides additional data functionality that is not available on a pure TETRA LMR service, at lower cost. Thus, the Home Office considers that, when considering Airwave as the focal product, the relevant market should encompass both TETRA LMR and MCPTT over 4G/LTE in Great Britain. The additional functionality and lower cost of ESN may mean that, when considering the services delivered by ESN, the market is more narrowly defined, and might not include Airwave, but ESN, but for Motorola's delay, would be a strong competitive constraint on Airwave.

---

<sup>7</sup> See, for example, Ofcom's statement on the future of fixed telephone services:

<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/future-fixed-telephone-services>. The Home Office also observes that, like legacy PSTN, TETRA based networks are nearing end of life and will become obsolete.

<sup>8</sup> See, for example:

<https://urgentcomm.com/2021/05/26/motorola-solutions-ceo-anticipates-extension-of-airwave-contract-in-uk-by-end-of-year/>

The Home Office therefore disputes the suggested position that ESN and Airwave would coexist as complements given the ultimate desire would be to fully transition to ESN network

19. Turning to the question of whether the provision of a service under a long-term contract, including a PFI agreement, between two parties can constitute a market, the Home Office concurs with the CMA's current view set out in paragraph 23 of the Issues Statement. The Home Office additionally observes that there are two sets of contracts that fall within the relevant market: i) the Airwave set of contracts, and ii) the ESN set of contracts. [REDACTED].

## Theories of harm

20. The Home Office supports the CMA's proposed approach and developing Theories of Harm. Below we set out a number of points of clarification and suggestions for areas for further expansion.

### *Unilateral market power of Airwave Solutions*

21. Motorola has unilateral market power in the provision of mobile radio voice and data communications for the emergency and associated services (together with associated facilities and services).
22. The high barriers to entry to the relevant market, including the availability of spectrum, the high cost of constructing or utilising alternative network infrastructure, the need to secure interworking arrangements with Airwave (arrangement that are ultimately controlled by Motorola), along with Motorola's failure to deliver an operationally viable MCPTT solution based on Kodiak, means that today, Airwave is a monopoly provider of services within the relevant market.
23. The features of the market giving rise to this monopoly enable Motorola to exercise substantial unilateral market power, controlling both the negotiation of price in respect of the provision of Airwave services as well as the delivery of the vital MCPTT and interworking inputs for the delivery of the ESN network.
24. In relation to negotiations over the prevailing emergency services network, Airwave Solutions, Motorola has market power for the following reasons:
  - a. the Home Office has [REDACTED] when negotiating with Motorola. For the reasons set out in paragraph 11 of the Submission, [REDACTED]. In fact, as recognised by the CMA in its Decision to make a market investigation reference, the inability of the Government to negotiate discounts despite a period of national austerity was an important factor contributing to the Government's decision to develop the ESN network.<sup>9</sup> The development of an alternative network would [REDACTED];
  - b. Motorola has an attractive 'inside' option. Absent any agreement over new terms, the Home Office is obliged to continue to support Motorola on the

---

<sup>9</sup> CMA (2021), 'Mobile radio network for the police and emergency services: Final report and decision on a market investigation reference', paragraph 1.29.

prevailing terms. These were originally set in 2000 and, as recognised by the CMA, despite efforts by the Government to ensure a competitive tendering situation, only one company ultimately submitted a bid; thus the terms cannot be considered to be competitive.<sup>10</sup> Moreover, we are now 20 years on, and the network is fully established. It is inconceivable that terms that were satisfactory for investors to take on the risk of building an, at-the-time, innovative new network, are now not excessive when only maintenance of such a network is all that is required. As such, the attractiveness of the 'status quo' to Motorola means there is simply no pressure on Motorola to reach any new agreement with the Home Office; and

- c. asymmetry and lack of information provided to the Home Office. The Home Office has very little sight of the activities needed to maintain Airwave, only receiving limited financial information once a year through the often late annual accounts. Its reasonable enquiries to understand why costs are increasing, [REDACTED].<sup>11</sup> In comparison, Motorola has good information on, and in fact controls, the Home Office's only bargaining chip: the date of the delivery of the ESN network.
25. To understand and evidence the expression of Motorola's unilateral market power in the context of negotiations, in addition to focusing on those negotiations set out in sub-paragraphs (a) thru (c) at paragraph 30 of the Issues Statement, the Home Office suggests the CMA also consider:
- a. the commitments made by Motorola in their ESN Lot 2 proposal in 2015, including assurances that the critical functions required for ESN were for the most part already available in commercial products;
  - b. the negotiations resulting on the change out of the MCPTT solution Wave 7000 to Kodiak and the resulting CAN500 change to the ESN Lot 2 contract;
  - c. the negotiation of the Airwave extension in 2018 (extending the PFI contract to 2022); and
  - d. Motorola's control over the negotiation of the Airwave extension in 2021 (extending the PFI contract to 2026).
26. The need for interworking with the Airwave network also means that it can leverage its market power over Airwave, to the delivery of an alternative network. While Airwave is still active, any alternative system will need to be able to interwork with Airwave to allow for a safe transition to the new network. The Home Office encourages the CMA to explore the way in which, through the need for interworking, the TETRA proprietary or closed basis ties the Home Office to

---

<sup>10</sup> CMA (2021), 'Mobile radio network for the police and emergency services: Final report and decision on a market investigation reference', paragraph 1.24.

<sup>11</sup> [REDACTED]

Kodiak, as any competing or potential competing application is excluded due to the incompatibility with open and other standards. For example, without interworking it is effectively impossible for an alternative supplier to provide a centralised service, with proper user and control room floor control, during any transition period or period of substitutional co-working.

27. To assist the CMA the Home Office will provide further examples and additional evidence of the effect of Motorola's unilateral market power on the commercial interactions and negotiations between the Home Office and Motorola / Airwave and further evidence as to the barriers to entry caused by Motorola's control of the underlying TETRA proprietary technology that underpins Airwave.

#### *Dual role of Motorola Solutions*

28. In 2016 it was anticipated (rightly or wrongly) that by 2019 the Airwave network would no longer be used for the provision of services in the relevant market under contract to the Home Office, and that those services would be provided through the ESN contract. Essentially, the competitive interaction between the Home Office and Motorola took place in 2015 and early 2016, through the negotiation of the ESN Lot 2 contract and then subsequently the Deed of Recovery, albeit the features of the market meant Motorola was able to exercise market power at that time.
29. Due to the delay in the delivery of the ESN network, the opportunity for additional competitive interactions arose; however, as these interactions were unforeseen both when the Airwave PFI and other contracts were agreed and when the ESN Lot 2 contract was agreed, the nature of those commercial relationships and other relevant features of the market has meant that Motorola has very significantly benefited from delay, increasing its unilateral market power in the process.
30. Further, as time has progressed and the profitability of Airwave has increased, [X], the financial incentives on Motorola to leverage its position as the key, and currently irreplaceable, provider of the Kodiak MCPTT solution and of interworking and delay the delivery of ESN, and therefore the end of the Home Offices contract for Airwave, have increased. [X], Motorola earns [X] its Airwave contract, all at a cost to the UK taxpayer. [X].
31. The Deed of Recovery has not been as effective as planned, for two reasons:
  - a. substantial growth in Airwave's margins since the Deed of Recovery was developed, such that the [X]% discount (subsequently reduced to [X]%) is not a sufficient penalty to incentivise Motorola to keep to its ESN milestones; and



- b. the requirement for the Home Office [redacted]. Motorola is the central party to the transition to ESN, so if there is a delay by Motorola then the whole programme stalls. However, if any portion of a delay, however small, [redacted].
32. To understand and assess the nature of the potential competitive interactions between Airwave Solutions and ESN and whether and how these may be affected by potential features in the relevant market, the Home Office agrees that the CMA should examine the strategy documents of Airwave Solutions at the time of the ESN contract bidding to understand what actions, if any, the company was intending to take to respond to the threat posed by ESN on its revenue, as well as undertaking the assessments listed at (a) and (b) in paragraph 38 and the additional specific analysis set out at sub-paragraphs (a) thru (f) in paragraph 39 of the Issues Statement.
33. We suggest that the CMA should also examine whether Motorola's commitments in its proposal for ESN Lot 2, compared to the subsequent delivery, was instrumental in ensuring that it controlled both sides of the market (Airwave and ESN).
34. We would also encourage the CMA, if it had not already done so, to obtain and examine the strategy, planning, financial forecasting and other associated documents of Motorola group companies, including Motorola Solutions UK Limited and Motorola Solutions, Inc. as to the group's intentions to maximise its return on its investment in the acquisition of Guardian / Airwave in 2016 and at each significant negotiating juncture, including 2018 and 2019.
35. To the extent that the Home Office has further evidence that may assist the CMA's analysis of the proposed theories of harm, the Home Office will provide that additional evidence, for example, in respect of the detailed scope of ESN Lot 2 and Motorola's positioning of its original MCPTT solution as COTS, its approach to the design and the roll-out of the aspects of ESN that it is responsible for, including in relation to software development and to resourcing and the cause of the delays to the ESN project.

## **Outcomes**

36. Generally, the Home Office agrees with the CMA's approach to assessing market outcomes.

### *Profitability*

37. The Home Office will respond separately to the CMA's Profitability Methodology working paper and will not comment further on that that aspect in this Submission.

### *Innovation*

38. The ESN network is intended to bring new functionality to front line and support services, enabling those services to be more efficiently delivered, improving service quality, ultimately increasing citizen safety and well-being, while preventing crime and reducing the draw on the public-purse and taxation. This benefit is invaluable to our society and outweighs any financial consideration.
39. In a competitive market, the Home Office would expect a company in the position of Motorola to have a strong motivation to invest in the delivery of those new and innovative services and to address delays and inefficiencies caused by out-dated processes and below-standard working practices.
40. The Home Office's experience of Motorola is that the organisation, rather than [X].
41. Put simply, Motorola's [X] are stifling innovative and efficient delivery and causing significant delay in the delivery of ESN.

## Remedies

42. As discussed above, the Home Office considers that Motorola currently holds a position of unilateral market power in the provision of emergency services communication, whether this be by mobile radio technology or 4G technology, and that Motorola's dual role as lead/sole contractor for both technical solutions is likely to exacerbate the problems.
43. As a result of Motorola's unilateral market power and dual role, the Home Office considers that the consumers of emergency services communications (the Home Office and blue-light services in the first instance, but UK citizens and taxpayers as the ultimate beneficiaries) are likely to suffer detriment in the form of:
  - a. excessive prices for emergency services communications services; and
  - b. delayed roll-out of a new, more effective (and cheaper) emergency services network. The benefits of the new network go far beyond the financial benefits and savings for the tax-payer. With 4G technology, police forces will be able to automatically share with one another videos and images, helping to expediate the resolution of crimes.
44. If the CMA analysis confirms these concerns by the Home Office, then the Home Office requests that the CMA look at remedies that seek to address both sources of detriment. It is not only the potentially excessive prices Motorola charges for operating Airwave Solutions that the Home Office is concerned results in harm to UK taxpayers, but what appear to be unnecessary and inefficient delays to the roll-out of a new and enhanced emergency services network as well.
45. The Home Office considers the broad types of potential remedies set out by the CMA in its Issues Statement could be effective at addressing both issues, but

also suggests some adaptations to help restore Motorola's incentives for a timely roll-out of its commitments on the ESN network. These suggestions include:

- a. a price-cap remedy that is structured to increase Motorola's incentives to deliver on its ESN commitments. This could be through simply reducing the revenues that Motorola can earn through Airwave Solutions over time, or by making (some of) Motorola's revenues for the operation of Airwave Solutions contingent on the delivery of agreed ESN milestones; or
  - b. alternative structural remedies that increase the contestability of the provision of a 4G emergency services network. These might include mandating Motorola to provide a fully documented and supported interface, including APIs if needed, to Airwave to allow alternative products to Motorola's Kodiak to work alongside Airwave during the Transition Period;<sup>12</sup> and/or providing a mechanism that would allow the Home Office to cancel the existing ESN contracts between Motorola and the Home Office at no cost to the Home Office. The Home Office considers that Motorola has [✂] on its original ESN commitments and thus, the Home Office should have a credible option of restructuring the contracts to enable the Home Office to procure with an alternative provider with a greater incentive [✂] to deliver an ESN in a timely manner.
46. Below we provide our comments on the types of potential remedies the CMA has set out in its Issues Statement, and expand on these additional remedies in a bit more detail. The Home Office would, of course, be very willing to work with the CMA to help define any potential remedies in more detail and is confident that a package of effective and practical remedies can be identified that will address the types of detriment the CMA has provisional concerns about, without a risk of unintended consequences or imposing an undue cost on Motorola or other stakeholders involved.

#### Transparency may partially address any unilateral market power

47. One of the reasons for Motorola's market power in renegotiations with the Home Office is the asymmetry and lack of information available to the Home Office as to the costs of operating and maintaining the Airwave network. Currently the Home Office has access to little more information than what is contained in Airwave's statutory accounts and therefore cannot effectively challenge Motorola over whether it is running its operations efficiently, and whether the costs being recovered truly relate to the operation of the Airwave network and providing value for money for the UK taxpayer whilst allowing a reasonable margin for Motorola. Therefore, the Home Office supports the CMA's consideration of imposing transparency type remedies which will help address the market failures it has provisionally identified of unilateral market power, and dual control.

---

<sup>12</sup> By Transition Period, the Home Office is referring to the period of time during which Airwave and an ESN product would need to work side-by-side, to ensure a smooth and resilient transition of all users from Airwave to the new system.

48. The sort of transparency or informational remedy that could improve the balance of market power between the Home Office and Motorola in renegotiations, and result in more competitive terms being agreed, would include requiring Motorola to provide:
- a. regular (i.e. quarterly) cost, outcome and profit reporting on Airwave Solutions. Quarterly reporting is in line with standard reporting requirements for regulated firms and publicly listed companies, and is something that Motorola has agreed in the context of the ESN contracts. Such reporting should cover progress on outcomes such as network maintenance plans as well as on costs, revenues and profits, to enable the Home Office to hold Motorola accountable to its commitments on service quality; and
  - b. advance notice of anticipated material increases in costs accompanied with adequate justification. To date, the Home Office only learns about cost increases after the event and, despite efforts, has no ability to effectively challenge whether the remuneration of such costs is fair. For example, the Home Office has yet to receive an adequate response from Motorola as to why it was appropriate to increase Airwave staff by 107 from 473 to 580 between 2016 and 2020, and why an almost doubling of administrative costs (increase from £55m to £80m) between only 2018 and 2020 is justified.

Price control likely to more effectively address unilateral market power as well as dual control

49. As recognised by the CMA, transparency and price controls are complementary remedies. Transparency remedies may only go so far, and where a company has unilateral market power and is earning excessive profits, as is likely to be the case with Motorola, there will be a need for additional measures.
50. In the Issues Statement, the CMA discusses the options of a (i) bottom-up price control, (ii) rate of return regulation or (iii) a safeguard price cap. At this stage the Home Office considers options (i) and (ii) are worth exploring further, as both can address the issue of potentially excessive profits by Airwave, but with differing levels of complexity and incentive properties. However, the Home Office does not see the justification for Motorola to earn a headroom above what would be a competitive or efficient level, so sees less value in further consideration of option (iii) a safeguard price cap.

*Bottom-up price cap*

51. A bottom-up price cap would be the most effective at motivating Motorola to run Airwave efficiently and limiting the ability of Motorola to earn excessive profits. It would involve more analysis upfront, to determine, for example, the value of the asset base and appropriate allowable rate of return. However, there would be synergies with the financial and profitability analysis that the CMA is intending to undertake to inform its assessment as to whether there are AECs.

### *Rate of return regulation*

52. Rate of return regulation requires less upfront involvement. However, as recognised by the CMA, it may require an assessment *ex post* of whether expenditure has been prudent and efficient.

### *Implementation*

53. The Home Office agrees that the CMA could introduce a price control itself and monitor compliance. As recognised by the CMA, it is likely that there is limited need for ongoing monitoring. ESN is intended to provide a competitive alternative to Airwave such that Airwave can ultimately be decommissioned. However, as the CMA suggests, should parts of the Airwave network need to be maintained for longer than currently envisaged, ongoing monitoring and determination of the appropriate price controls would be well-handled by Ofcom.
54. In addition, as noted in paragraph 45 above, the Home Office would urge the CMA to consider a price control structured in such a way to incentivise Motorola to deliver on its ESN commitments in a timely manner. At a high-level, the Home Office has identified two ways that this could be achieved:
  - a. reducing the amount of revenue Motorola earns from operating the Airwave network over time, for example through a glide-path of allowed revenues starting from a level sufficient to earn a return equal to the WACC and progressively declining down to a level that would only cover operating costs and capital expenditure. By not allowing Motorola to earn a margin on operating the Airwave network, this would enhance Motorola's incentives to invest in and deliver ESN in a timely manner; and / or
  - b. making part of the revenues that Motorola earns from operating the Airwave network contingent on the achievement of agreed ESN delivery milestones. Such a price cap would be more complex than simply reducing the revenues that Motorola can earn through operating Airwave, but would also more directly (and therefore, potentially more effectively) address what the Home Office views as the most important detriment - delays to the roll-out of ESN.
55. Such dynamic price caps can be observed in regulated sectors where similar information asymmetries arise. These have been intended to better balance the risks between customers / consumers and regulated firms and ensure regulated firms deliver on their investment plans. As described by Ofgem in its 2021 Determination, such dynamic price controls result in:

*“Greater accountability for what companies are asked to deliver, with around 50% of baseline allowances for gas distribution and 70% of baseline allowances for transmission linked to either uncertainty mechanisms or Price Control Deliverables. This will ensure network companies are only*

*paid for what they deliver, and consumers are refunded for work not carried out.*"<sup>13</sup>

56. Similar mechanisms also apply in the regulated water sector to incentivise water companies to deliver on certain agreed enhancement schemes on time. In the water sector they are referred to as "Outcome Delivery Incentives (ODIs)"<sup>14</sup> and the Home Office notes that the CMA has chosen to include additional ODIs in its 2021 assessment of four water company appeals.<sup>15</sup>
57. The Home Office would be content to work with the CMA to help structure the price control in an effective way. For example, the Home Office can propose practical ESN delivery milestones that the CMA could make Motorola's Airwave revenues contingent on.

#### Other structural remedies to consider as an alternative to Airwave divestment

58. Motorola has [redacted] on its ESN commitments. It was awarded the ESN contract in December 2015 [redacted]. Wave 7000 required too much development, and ultimately the Home Office was forced to agree a reset to the ESN programme, and did so in May 2019 [redacted].
59. The Home Office does not have the information to assess [redacted]. In this context, the Home Office would urge the CMA to consider remedies that provide the Home Office with flexibility to contract with an alternative ESN provider. In particular, the Home Office encourages the CMA to consider:
  - a. mandating Motorola to provide a fully documented and supported interface, including APIs if needed, to Airwave to allow alternative products to Motorola's Kodiak to work alongside Airwave during the Transition Period; and/or
  - b. providing a mechanism that would allow the Home Office to cancel all or part of the existing ESN contracts between Motorola and the Home Office at no cost to the Home Office.
60. Mandating a fully documented and supported interface, including APIs if needed, to Airwave would enable other alternative Mission Critical networks commissioned by the Government to also interwork with Airwave. [redacted].
61. A fully documented and supported interface, including APIs if needed, would avoid the costs and delays that structural separation can be expected to impose,

---

<sup>13</sup> Ofgem (2021), '[RIIO-2 Final Determinations - Core Document \(REVISED\)](#)' February 2021

<sup>14</sup> See, for example, Ofwat (2019) '[PR19 Final Determinations: Delivering outcomes for customers policy appendix](#)', December

<sup>15</sup> See, for example, CMA (2021), '[Anglian Water Services Limited, Bristol Water plc, Northumbrian Water Limited and Yorkshire Water Services Limited price determinations](#)', Final report, March 2021

and has proven effective at stimulating competition and innovation in many other industries, including retail banking.

62. The Home Office recognises that allowing the CMA to restructure its ESN contracts with Motorola at no cost to the Home Office could be considered a severe remedy. However, to the extent that Motorola [✂], it may be the only effective solution to ensure UK citizens and taxpayers benefit from ESN in a timely manner. [✂].

## **Conclusion**

63. The Home Office considers that there is a technology neutral market for the provision of land mobile radio communications for emergency and security services, and that this market includes TETRA based services, such as Airwave, and 4G/LTE MCPTT services, such as ESN, and urges the CMA to reconsider its proposed market definition.
64. Further, to effectively address the features of the market, giving rise to the adverse effects on competition initially identified by the CMA, and the resulting customer harm, the Home Office encourages the CMA to consider a wider range of remedies than those currently proposed; remedies that would address the pricing of Airwave services, information asymmetry, and appropriately incentivise the delivery of Motorola's ESN obligations or, alternatively, ensure effective interworking for other MCPTT service providers.

**10 January 2022**