

EE's observations in relation to the CMA's Working Paper: Potential Remedies

EE's notes that the CMA's document seeks views on specific issues. EE provides the following input with specific reference to how to make ESN successful for the Emergency Services.

It is clear that delivering the transition from Airwave to ESN as quickly as possible is in the interests of the Emergency Services and the general public. For instance, at its hearing with the CMA on 2 March 2022, the Home Office confirmed that, on the one hand, the Airwave network was out of date. On the other hand, the Home Office observed that ESN would not only provide a comparable voice capability to Airwave but would also add high availability broadband for the use of data to assist the blue-light services in their work in protecting themselves and others, including the mission critical push to talk application ("MCPTT").

For its part, the Public Accounts Committee has stated that ESN will save money by sharing an existing commercial 4G mobile data network instead of building a dedicated public service network. ESN should also provide the Emergency Services with better mobile data capabilities.

In the context of a discussion about appropriate remedies, a key question is whether a charge control on Motorola's provision of Airwave Network services diminishes the benefit to Motorola of prolonging the operation of the Airwave Network to such an extent (in contrast to the benefit it receives from ESN) that it incentivises Motorola to accelerate the delivery of its contribution to ESN, a key component of which is MCPTT.

The evidence suggests that there are unlikely to be any circumstances in which a charge control could diminish the benefit to Motorola of prolonging the operation of Airwave to such an extent. For instance, [REDACTED]. Yet [REDACTED]. It follows that some form of ESN divestment remedy is necessary and that it should be designed in a way which provides for interworking and delivers ESN and the public interest benefits described above as soon and as effectively as possible.

Motorola itself suggests, at Paragraph 20 of the Working Paper, that the proportionate response to address the Adverse Effect on Competition ("AEC") arising from its dual role would be to require cessation of its participation in ESN.

In EE's view, this could resolve the AEC caused by Motorola's dual role but other steps would also be necessary to facilitate the implementation of this divestment remedy for ESN due to the fact that:

- a. The MCPTT software, Kodiak, has been central to the delivery of the ESN solution, and is critical for users to transition away from Airwave. Many significant elements of the eco-system are built around this, including business and operational sub-systems, control room software changes across several suppliers and interworking.
- b. The overall investment of the programme as a whole into building an eco-system around the Kodiak software has been very significant.

1. Guaranteeing interworking is critical

- a. For the reasons set out in EE's comments on the CMA's Issue Statement, EE believes that a charge control on Airwave alone is not sufficient to enable ESN to be successful. Absent an effective interworking solution remedy, it would be very difficult, if not impossible, for the AEC arising from Motorola's dual role to be removed by ceasing activities on ESN alone.

- b. At a minimum, an effective remedy to guarantee Airwave interworking is critical to ensure that Kodiak or any other MCPTX application can be adopted for ESN.
- c. With respect to Paragraph 36 of the Working Paper on service quality and the delivery of defined outputs: EE believes that interworking services will require careful definition to ensure that they achieve the necessary aim, viz enabling interworking access from Airwave to the ESN solution, unfettered by technical, commercial, security, operational or other limitations, and without delay, so that users can transition off Airwave to ESN and Airwave can be closed down.
- d. This remedy is required, in our submission, regardless of whether Airwave is divested or not, regardless of whether there is a charge control or not, and regardless of which MCPTT application is used within ESN.
- e. EE notes and in broad principle endorses the Home Office's (as redacted) Interworking Submission paper recently published by the CMA and dated 28 April 2022.
- f. EE notes Motorola's position that providing interworking is already an accepted principle (though the terms agreed as part of the '2018 reset' are not clear).
- g. We invite the CMA to consult further on the detail of such a remedy including its enforcement.

2. Kodiak Source Code

- a. For Motorola to withdraw from ESN without material cost and delay (which in turn would prolong Airwave), would require the continued provision of Kodiak in a way that removes the possibility of further delay arising from the continuation of a reduced dual role. If Kodiak cannot be provided on such a basis, then the programme would have little choice but to look to alternative applications.
- b. EE submits that deconflicted continued use of Kodiak can only be achieved by a remedy that the Kodiak Software source code be provided to the ESN Programme along with all appropriate documentation and knowledge transfer (with direct access to the relevant Kodiak specialists) on an expedited timeframe so that the Programme could then continue to develop a separate code branch to deliver the software required to make ESN successful.
- c. These types of arrangements are routinely envisaged when escrow agreements are made with software providers.
- d. We invite the CMA to consult further on the detail of such a remedy including its enforcement.

3. Ongoing Kodiak provision unlikely to be sustainable

- a. EE notes that the other alternative is for there to be an ongoing obligation on Kodiak to continue to supply the Kodiak product for so long as required by the ESN programme, on fair and reasonable terms including as to price, as set by the CMA.
- b. However, EE considers that such a remedy would be unrealistic as being too hard to define and enforce in a way that *guarantees* the expeditious shut down of Airwave by removing the AEC arising from the dual role.

4. Control Room development

- a. Motorola is also a provider of Control Room software to user organisations that will transition to ESN. Motorola's control room software will need to be upgraded or continue to be upgraded to work with a MCPTT product (whether Kodiak or any other vendor).
- b. To ensure that there is no barrier to user organisations adopting ESN, we would invite the CMA to consider (and consult as appropriate with Emergency Services organisations) about the provision of control room software and how its timely development can be guaranteed.

5. Other measures

We would also invite the CMA to consider other remedies that ensure user organisations face no barriers to moving from Airwave, including commercial constructs over the way in which Airwave is consumed, control room software is provided, or the way TETRA terminals or any other ancillary services are contracted for.

6. Charge Control

For completeness, EE notes the CMA's thinking on Charge Control, and in particular on profitability and WACC, but makes no comment on whether the CMA's assessment is appropriate or not in the very specific and unique circumstances of Airwave.