

ANTICIPATED ACQUISITION BY VIASAT, INC. OF CONNECT TOPCO LIMITED

SUMMARY

Overview of the decision

1. The Competition and Markets Authority (**CMA**) conducted a phase 1 investigation into the anticipated acquisition by Viasat, Inc. (**Viasat**) of Inmarsat Group Holdings Limited (**Inmarsat**) (the **Merger**).
2. After examining a range of evidence, the CMA believes that the Merger meets the threshold for reference to an in-depth phase 2 investigation, giving rise to a realistic prospect of a substantial lessening of competition (**SLC**). The CMA considers that it has jurisdiction to review the Merger because it believes that it is or may be the case that each of Viasat and Inmarsat is an enterprise, that these enterprises will cease to be distinct as a result of the Merger, and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). Viasat and Inmarsat (together, the **Parties**) have until 13 October 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

About the satellite industry

4. Satellite connectivity is used in many different industry sectors. These include home and office internet, government (including military and non-military applications), maritime, and aviation. Satellite connectivity is often used in circumstances where terrestrial alternatives are not available.
5. Demand for satellite connectivity is increasing rapidly, driven by growing use of the internet and data-intensive applications (such as video streaming, and cloud computing).
6. Satellite connectivity can be served from satellites orbiting at different distances from the Earth's surface. Historically, satellite network operators (**SNOs**) supplied

connectivity from geo-stationary satellites (**GEOs**), which are positioned 36,000 kilometres above the Earth's surface, allowing them to travel at the same rotational rate as the Earth and provide connectivity from a fixed point in the sky. Over time, SNOs have launched non-geostationary satellites (**NGSOs**) which orbit closer to the Earth's surface and have different characteristics. The most recently developed NGSOs are low-earth orbit (**LEO**) satellites, which orbit closest to the Earth's surface.

7. The satellite industry is undergoing a period of major change. In particular, a number of players with significant financial backing, such as SpaceX and OneWeb, have launched or have plans to launch NGSO constellations.

The CMA's assessment

8. The Parties supply satellite connectivity to a range of industries but compete most closely in the supply of in-flight connectivity (**IFC**) for aircraft.
9. The CMA has found that demand for IFC is growing and many airlines consider it a 'must-have' to meet passengers' desire to stay connected during flights. The CMA has focused its investigation on the services that are most likely to impact UK consumers, which are IFC services supplied to commercial airlines flying from/to and within Europe.
10. The CMA has gathered a substantial volume of evidence from a range of sources, including from the Parties and from third parties.
11. The evidence shows that the Parties are two of a small number of suppliers that offer IFC. They compete head-to-head in tenders and airlines regard them as close alternatives. In particular, as SNOs, both Parties are vertically integrated IFC providers and control their own satellite capacity, which is considered important by airlines as it enables the Parties to offer lower rates and more service flexibility. Although Viasat currently offers more limited geographic coverage than Inmarsat, and Inmarsat has limited capacity in certain regions, both Parties are launching additional satellite capacity and will soon offer near-global coverage. The Parties would have therefore become stronger competitors absent the Merger.
12. Of the other IFC providers, the evidence shows that: Panasonic, which was the first-mover in IFC and still has a high share of supply, is in decline, due to its reliance on capacity from third-party SNOs and airlines' perception that it is expensive and offers old technology; Anuvu competes only for short-haul flights and is considered a weak option by airlines; and Intelsat occupies a modest position in the market and it is uncertain how it will develop in the future.

13. In short, the CMA believes that the Parties are currently the strongest IFC providers available to airlines and that the constraint from existing suppliers is insufficient to prevent significant competition concerns from arising.
14. The CMA notes that certain NGSO operators, namely SpaceX and OneWeb, are taking steps towards supplying IFC services. They have operational constellations in orbit, are supplying connectivity to fixed broadband customers, and are marketing their services to airlines. SpaceX has won an IFC contract with Hawaiian Airlines. However, none currently has an IFC service that is proven to work.
15. Based on the evidence available to it, the CMA believes that NGSOs still face many financial, operational, technical, regulatory, and commercial barriers before they can supply IFC services on board aircraft. Although NGSOs have significant financial backing, a number of the barriers to entry are complex technical and regulatory requirements that cannot be overcome through financing alone.
16. Moreover, although NGSOs have strong incentives to overcome these barriers, given the substantial sunk costs they have incurred, the evidence available to the CMA indicates that their incentives to supply IFC are not unlimited. Ultimately, NGSOs need to demonstrate that they can achieve a return on investment in aviation. Evidence available to the CMA suggests that the business case for NGSO constellations is not contingent on offering IFC to airlines (having regard to the many other industry sectors that are served by satellite connectivity).
17. Given the Parties' strong position, even if NGSOs do succeed in launching IFC services, it is likely to be some time before they could compete at the same scale as the Parties. In particular, NGSOs need certifications to be installed on each aircraft model, national licences around the world, and to scale up technology and support networks to cope with increasing volumes of data traffic.
18. The evidence also shows that it is difficult for airlines to switch providers once they have installed an IFC solution. As such, the CMA is concerned that the Parties could effectively lock in a large part of the customer base before NGSOs might become more credible options.
19. Accordingly, the CMA believes that there is not sufficient evidence available to establish that NGSO entry would be timely, likely, and sufficient to constrain the Parties post-Merger and, given the limited constraints from established suppliers (as described above), therefore considers that the Merger gives rise to a realistic prospect of an SLC in commercial aviation.
20. The CMA notes that the Parties also supply IFC services to business aviation customers. The CMA has considered these services separately to commercial aviation due to the differing requirements of customers and differing sets of IFC

providers. Nevertheless, the CMA's assessment largely corresponds to its assessment in commercial aviation and the CMA believes that the Merger also gives rise to a realistic prospect of an SLC in business aviation.