

MOBILE RADIO NETWORK SERVICES

MARKET INVESTIGATION

Notice of provisional findings made under rule 11.3 of the Competition and Markets Authority Rules of Procedure (CMA17)

1. On 25 October 2021, the Competition and Markets Authority (CMA) in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act) made a market investigation reference (MIR) in respect of the supply of the land mobile radio (LMR) network services for public safety (and ancillary services) in Great Britain.
2. The CMA inquiry group (the Group) appointed to consider this reference has provisionally found, pursuant to section 134(1) of the Act, that there are features of the market for the supply of communications network services for public safety and ancillary services in Great Britain which alone or in combination prevent, restrict or distort competition in the supply of LMR network services for public safety in Great Britain, and accordingly that there is an adverse effect on competition (AEC) within the meaning of section 134(2) of the Act.

Provisional findings

3. The Group has provisionally found the following features in the market for the supply of communications networks services for public safety mean that Airwave Solutions Limited (Airwave Solutions), and its ultimate owner, Motorola Solutions, Inc. (Motorola), have unilateral market power and are able to charge prices above the level that might be expected in a competitive market and to make supernormal profits.
 - (a) The Airwave Network is a critical piece of infrastructure on which the emergency services in Great Britain, and ultimately lives, depend.
 - (b) The Airwave Network is the only network of its kind in Great Britain and is provided by a monopolist. No other such networks exist nor are they likely to be constructed and ready for use before the Emergency Services Network (ESN) is able to replace it.
 - (c) The Airwave Network assets have not transferred to the Home Office under the terms of the PFI Agreement, Airwave Solutions still owns them (and the related business) and the Home Office cannot retender or realistically threaten to retender their provision.

- (d) The longer than anticipated lead time for the delivery of ESN and its replacement of the Airwave Network: it will not be ready to replace the Airwave Network until at least 2026 and possibly later.
 - (e) The Home Office and the emergency services in Great Britain are locked in with the incumbent supplier of communications network services – Airwave Solutions (and Motorola) – beyond the period over which its prices were, or should have been, constrained by the terms of the PFI Agreement (and Airwave Solutions should have recouped its investment and a reasonable return).
 - (f) The Home Office has very weak bargaining power.
 - (g) The asymmetry of information between the parties.
 - (h) The lack of effective constraints provided by the terms of the PFI Agreement on the price of the provision of the network after 2019, including the benchmarking provisions which are likely to be ineffective.
4. Two further features strengthen and have the potential to prolong the unilateral market power described above:
- (a) The dual role of Motorola which dulls its incentive to perform its part in the delivery of ESN effectively and efficiently, and which gives it the ability to prolong the operation of the Airwave Network by delaying the delivery of ESN.
 - (b) The role of interworking in strengthening Airwave Solutions' and Motorola's market power, by enabling them to delay, hamper and/or make more costly the transition of users from the Airwave Network to ESN.
5. In the Group's provisional assessment, these two additional features add to the AEC it has provisionally found but they are not determinative of it. The Group would be minded to find an AEC even in the absence of these two additional features.

Provisional decision on remedies

6. The Group has provisionally decided on the following remedies.
7. The Group's main remedy proposals focus on mitigating the detrimental effects of the AEC provisionally identified. The Group proposes to impose:
- (a) A charge control on the price for which Airwave Solutions provides the Airwave Network and services. The charge control relating to the Airwave

Network and services would set the price at a level that would apply in a competitive market, to the extent that Airwave Solutions and Motorola no longer make supernormal profits. The proposed remedy would mitigate the detrimental effects on customers (the emergency services and ultimately taxpayers) from Airwave Solutions' and Motorola's unilateral market power.

- (b) Obligations on Airwave Solutions and Motorola to deliver, and/or facilitate the development and delivery of, an alternative interworking solution in a timely and effective manner, and to provide the services involved in doing so on a cost-plus basis.
8. The proposed remedies referred to in the preceding paragraph would seek also to reduce Motorola's and Airwave Solutions' incentive and ability to delay the delivery of ESN and thereby prolong the operation of the Airwave Network.
9. The Group also proposes to make a recommendation to the Home Office that would supplement those remedies. It should, as soon as possible, implement a plan to ensure that the supply of communications network services for public safety in Great Britain is subject to competitive pricing arrangements, or measures to similar effect, by not later than the end of 2029.
10. The Group's reasons are set out in full in the provisional decision report, which is attached to this notice, and are summarised in the summary of the provisional decision report (see note below).

Next steps

11. The Group now invites interested parties to submit reasons in writing as to why these provisional findings should not become final (or should be varied).
12. Unless otherwise specified to a party, these reasons should be received by the Group no later than 5pm on 7 November 2022.
13. Unless a different date is agreed with any party, the Group will have regard to any such reasons provided by this date in making its final decisions in this investigation.

MARTIN COLEMAN

Group Chair

14 October 2022

Note: A copy of this notice and the summary of the provisional decision report will be placed on the CMA's website on 14 October 2022. The CMA proposes to publish the provisional decision report on its website on the same day or shortly thereafter. The published version of the provisional decision report will not contain any information which the Group considers should be excluded from the report, having regard to the three considerations set out in section 244 of the Act.

Comments should be made by email to MRN@cma.gov.uk