



MOTOROLA SOLUTIONS

Mobile Radio Network Services Market Investigation

Motorola's Second Supplementary Submission to the CMA's Oral Hearing on 10 February 2022

11 March 2022

1. Introduction and Summary

- (1) Following the Oral Hearing on 10 February 2022, Motorola wishes to briefly respond to certain comments made by Group Members concerning the Home Office's views regarding the extent to which Airwave pricing is already agreed for the period up to December 2026.
- (2) For the reasons explained below, it is hopeless for the Home Office to suggest that it is not bound by the terms that were expressly confirmed in 2016. These are unambiguous, contractually agreed, terms that were clearly understood and accepted, and which form the very essence of the commercial arrangements between Airwave and the Home Office. As explained below, in 2016 the then pricing terms were contractually "confirmed" as continuing to apply until National Shut Down.

2. Contractual context

2.1 The PFI Framework (2000)

- (3) The Public Safety Radio Communications Services agreement between PITO and British Telecommunications plc (the "**PFI Framework**") was signed on 29 February 2000. The main purpose of this agreement was to set out the terms on which the government had selected Airwave to provide the contracted services and the basis on which Airwave undertook to provide the same. The scope of the PFI framework was initially confined to the provision of Network services to Police Force customers.
- (4) [§<] of the PFI Framework provided that "*[i]n consideration of the provision of the Network Services in accordance with the terms of the Services Contracts, the Authority and each Customer shall pay their respective portions of the Contract Charges (as set out in each Services Contract), which shall be drawn from the Charging Structure*". The main Charging Structure is set out in [§<] which clearly defines the relevant contractual charges as follows:

"[§<]"

- (5) The PFI Framework, as per [§<], was to "*commence on the Effective Date and, unless terminated before expiry in accordance with the provisions of this Framework Arrangement, shall continue in force until the date of expiry or termination of the last to expire or terminate of any of the Service Contracts*". In the event, the parties agreed in 2016 to extend the term of the PFI Framework prior to its expiry (see below).

2.2 ARP Agreements and Firelink Agreement (2000-2006)

- (6) During the period between the conclusion of the PFI Framework and Motorola's acquisition of Airwave in 2016, the services provided by Airwave were expanded and the ARP Agreements (in relation to the ambulance service) and the Firelink Agreement (in relation to fire services) were entered into. We have set out the details of these agreements in further detail in our previous submissions¹ and as such here we provide summaries of the relevant pricing provisions only.

¹ See, Motorola Response to Question 14 of the CMA's Request for Information dated 13 December 2021.

- (7) In relation to the ARP Agreement (including the ARP (Scotland) Agreement), [X] of each service agreement clearly addresses the Charging and Services Deductions. The term of both service agreements is further defined in [X] as commencing “[X].”
- (8) In relation to the Firelink Agreement, [X] provides as follows: “[X].” [X] provides for the process of payment. [X] then sets out the Charges payable to the Contractor and provides that, subject to [X] and [X], the Contractor shall be entitled to the capital charges calculated in accordance with [X]; and the service fees calculated in accordance with the formula set out in [X]. [X] sets out provisions related to Service Credits. The term of this agreement is defined in [X] as continuing “[X].”

2.3 Binding Heads of Terms and UCCN (2016)

- (9) On 17 February 2016, the 2016 binding Heads of Terms were signed between the Authorities, DCLG, Motorola Solutions UK Limited and MSUKA (the “2016 HOTS”). The 2016 HOTS recorded the agreement by Motorola and the relevant government departments to **continue** the then existing Airwave contracts, including in relation to pricing, **until National Shut Down**, which is defined as the “*shut-down of the Airwave Network such that Airwave will stop providing the Airwave Services on a national basis*”. It was agreed that this would be no earlier than 31 December 2019 (i.e. the National Shut Down Target Date). The Airwave Service Charges set out above were not amended. To the contrary, as [X] makes clear, the Customers expressly committed “*for the avoidance of doubt*” to “*continue*” to pay the Airwave Service Charges until National Shut Down:

[X]

- (10) The National Shut Down procedure is explained at [X] of the 2016 HOTS. As one would expect (since pricing is dealt with at [X]), this procedure is purely mechanical; there is no reference at all to pricing in relation to this wind-down period. In fact, as noted by the Home Office², **the way in which the provisions operate may lead to Airwave making a loss**, depending on how the transition process operates in practice.
- (11) Therefore, Airwave was to continue to provide its services at the “*Airwave Service Charges*” rate which was further defined as meaning the charges payable by the Customers under their respective Blue Light Contracts in respect of the Airwave Services received as referred to in [X] of [X], and which took precedence over “*any other charges agreed by the Customers with Airwave in the Blue Light Contracts*”.³ [X] further clarifies that, in relation to the Home Office Contracts, the current Core Service Charges (as such term is defined in the Home Office Contracts) **shall continue to be payable to Airwave** until the National Shut Down Date.⁴
- (12) The Blue Light Contracts were subsequently amended to incorporate the terms set out in the 2016 HOTS, in what became known as the Umbrella Change Control Note (the “UCCN”). The relevant parts of the Blue Light Contracts were amended as follows:
- (a) [X]: This annex set out the Blue Light Contract CCNs documenting the Airwave Service Charges that will apply to each Blue Light Contract. The Blue Light Contract

² Oral Evidence: Emergency Services Communications dated 16 November 2016 at page 47, question 100: <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/770/770.pdf>

³ Heads of Terms dated 17 February 2016, definition of “*Airwave Service Charges*”.

⁴ Heads of Terms dated 17 February 2016, Schedule 1 (Agreed Charges) at paragraph 1.

CCN in respect of the PFI Framework Arrangement also contains the Pro Forma Services Contract CCN to be offered to each Police Services Contract Customer and documenting the arrangements for extension to Menu Services accommodating National Shut Down. [X] provided that:

“[X]” (Emphasis added.)

- (b) In addition, there were no changes made to the Charges other than “*Delayed Transition Group: Airwave Service Charges*” and “*Non-Recoverable Services*” which were added to [X] of [X].
- (c) [X]: This annex set out the Blue Light Contract CCNs documenting the extension of the term of each Blue Light Contract and the process that will apply to each Blue Light Contract in respect of National Shut Down. It expressly provided that:

“[X]” (Emphasis added.)

2.4 AETS and UCCN2 (2018)

- (13) On 22 September 2018 the Home Office and Motorola agreed to a three-year extension of the National Shut Down Target Date of 31 December 2019. This resulted in the National Shut Down Target Date in the UCCN being amended to 31 December 2022.
- (14) The changes were implemented using the relevant control procedure as described in each Blue Light Contract:
 - (a) [X]: This annex set out the new CCNs documenting (inter alia) the charges that would apply to each Blue Light Contract reflecting an agreed [X]% discount and, for the PFI Framework Arrangement a revised payment profile for the years 2020, 2021 and 2022 which accommodated the Home Office’s budgetary requirements for those specific years. When negotiating the UCCN2 the parties agreed to include a table setting out, for the avoidance of doubt, the monthly charges payable in the years 2020-2022 consistent with the reprofiled model for those years and, in respect of Home Office Contracts only, the principles that will apply to the extension of Menu Services by each Police Services Contract Customer:

“[X]”

“[X].”

3. **Role of benchmarking**

- (15) None of the foregoing is to suggest that the value for money benchmarking provisions are irrelevant as regards the price to be paid under the Airwave contracts. As Motorola has previously explained, the parties agreed to a [X]% discount in Airwave charges in return for the Home Office waiving its rights to trigger the benchmarking provisions. Motorola notes that the [X]% discount was provided in addition to the £[X] million per annum concession which Motorola had already agreed to in 2016. Therefore, as a direct result of these benchmarking related payments, by the current National Shut Down Target Date of 31 January 2026, the Home Office will have received a cumulative discount of over £[X] million (this sum would increase if the parties agreed to any further arrangements after [X] – see further below).

- (16) Taking the contractual arrangements for the ambulance service as an example:
- (a) [X] explains that “[X]”.
 - (b) [X] enables the Authority to “[X]” **every two years**. Under [X], “[X]” (emphasis added).
 - (c) [X] provides that “[X]”.
- (17) These provisions are of direct assistance to the Home Office, should the Home Office not be content about the level of charges. The outcome of any benchmarking process is binding on the parties. The benchmarking provisions can once again be triggered on [X] unless the parties decide, as they have done previously, to waive the benchmarking process in return for a discount on Airwave charges. Given this, the benchmarking provisions must be assumed to play a significant role in pricing after the end of [X]. This in turn means that any proposed intervention to bypass, disapply, supplement or replace those provisions would need to explain very clearly how such intervention would be proportionate.

4. The Home Office has misunderstood the contractual position

- (18) There is, therefore, no doubt as to the contracted position:
- (a) Prices have been **agreed for Airwave until December 2026** (and for any transitional/delay period). In return, Motorola has assumed all the cost and risk associated with keeping the Airwave network operational until such time as the Home Office no longer requires the service;
 - (b) There is no contractual mechanism for prices to be further “agreed”, other than annually for indexation adjustments;
 - (c) Benchmarking provisions are available to verify that prices continue to represent value for money;
 - (d) The issuance of the National Shut Down Notice does not affect pricing. The National Shut Down Notice is merely a procedural notice which set the end date of 31 December 2026. Pricing and other terms are entirely unaffected.
- (19) Therefore, the Home Office’s interpretation of the contractual position is incorrect and misleading. It is unclear to Motorola as to why it has been suggested that there is a need for the pricing terms between Motorola and the Home Office still to be agreed.