

ANTICIPATED ACQUISITION BY VIASAT, INC OF INMARSAT GROUP HOLDINGS LIMITED

Issues statement

8 November 2022

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

The reference

1. On 14 October 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under [section 33\(1\)](#) of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition by Viasat, Inc (**Viasat**) of Inmarsat Group Holdings Limited (**Inmarsat**) (the **Merger**) (together, the **Parties** or, for statements referring to the future, the **Merged Entity**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
2. In exercise of its duty under [section 36\(1\)](#) of the Act, the CMA must decide:
 - (a) Whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) If so, whether the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.

Purpose of this issues statement

3. In this issues statement, we set out the main issues that we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.

4. The CMA's phase 1 decision (the **Phase 1 Decision**)¹ contains much of the detailed background to this issues statement. We are publishing this statement to assist parties submitting evidence to our phase 2 investigation.
5. This statement sets out the issues we currently envisage being relevant to our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should also consider.
6. At phase 2 we intend to focus our investigation on the areas in which the CMA found that the Merger gives rise to a realistic prospect of an SLC, namely the global supply of broadband in-flight connectivity services (**IFC**) to commercial aviation and business aviation customers.²
7. We intend to use evidence obtained during the phase 1 investigation. However, we will also be gathering and considering further evidence on these and any other issues which may be identified during the course of the investigation.

Background

The Parties

8. Viasat is a public company based in the United States listed on NASDAQ that owns and operates satellites with geostationary earth orbits (**GEOs**). Viasat supplies satellite-based connectivity services globally for use in both consumer and commercial applications. Viasat also supplies communications and cybersecurity products and services to governments and manufactures and supplies equipment and network technology for satellite connectivity services. Viasat's turnover in the financial year 2021 was approximately £2,013 million worldwide, of which £[X] million was generated in the UK.³
9. Inmarsat is a private company incorporated in the UK. Its ultimate parent company, Connect TopCo Limited, is owned by funds affiliated with Apex Partners LLP, Warburg Pincus LLC, Canada Pension Plan Investment Board, and the Ontario Teachers' Pension Plan, as well as members of Inmarsat's management. Inmarsat owns and operates GEO satellites and provides satellite connectivity services for government and commercial applications.

¹ CMA, [Phase 1 Decision](#).

² In relation to business aviation customers, at Phase 1, the CMA assessed the impact of the Merger on the supply of IFC for large business jets (which include bizliner jets, large cabin jets and super midsize cabin jets) as the Parties do not overlap in the supply of IFC for small business jets (which include midsize and small cabin jets, very light jets, and turboprops) because the antennas compatible with the Parties' IFC solutions are currently too large to fit on small business jets. CMA, [Phase 1 Decision](#), paragraphs 77 and 79. References to business aviation customers in rest of this issues statement are therefore references to customers of large business jets.

³ Parties, Merger Notice, dated 8 August 2022, Table 1.

Inmarsat's turnover in the financial year 2021 was approximately £983 million worldwide, of which £[X] million was generated in the UK.⁴

The transaction

10. Viasat entered into a share purchase agreement with Inmarsat's shareholders on 8 November 2021 pursuant to which Viasat agreed to acquire 100% of Connect TopCo Limited's issued share capital and therefore, indirectly, 100% of Inmarsat's issued share capital.⁵

Our investigation

11. Below we set out the main areas of our intended assessment in order to help parties who wish to make representations to us.

Assessment of the competitive effects of the Merger

Jurisdiction

12. We shall consider the question of jurisdiction in our investigation.
13. A relevant merger situation exists where the following conditions are satisfied:⁶
 - (a) Two or more enterprises have ceased to be distinct; and
 - (b) Either:
 - (i) The value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the **turnover test**);⁷ or
 - (ii) The enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the **share of supply test**).⁸
14. The CMA found in its Phase 1 Decision that it is or may be the case that:
 - (a) Each of Viasat and Inmarsat is an enterprise and that these enterprises will cease to be distinct as a result of the Merger; and
 - (b) The share of supply test is satisfied on the basis that the Parties overlap in the supply of IFC services to UK-based airlines and have a combined

⁴ Parties, Merger Notice, Table 1.

⁵ Parties, Merger Notice, Annex 4, Share Purchase Agreement dated 8 November 2021.

⁶ Section 23 of the Act.

⁷ Section 23(1)(b) of the Act.

⁸ Section 23(3) and (4) of the Act.

share of supply of approximately [40-50%] (with an increment of [0-5]%) based on the number of committed aircraft with IFC.⁹

Counterfactual

15. We will compare the prospects for competition resulting from the Merger against the competitive situation without the Merger: the latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.
16. In its Phase 1 Decision, the CMA found that the satellite industry is experiencing a number of significant developments. In particular, a number of satellite network operators, such as SpaceX and OneWeb, have launched or have plans to launch constellations of satellites with non-geostationary orbits (**NGSOs**). These orbit closer to the Earth's surface and have different characteristics to the GEO satellites operated by the Parties. The CMA found evidence that operators of NGSOs, including SpaceX and OneWeb, plan to offer services in a number of different industry sectors where satellite connectivity is used, including aviation.¹⁰
17. We intend to consider these developments as part of our competitive assessment rather than considering them in detail in our counterfactual assessment.¹¹

Market definition

18. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'.¹² The CMA is therefore required to identify the market or markets within which an SLC exists. An SLC can affect the whole or part of a market or markets.
19. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.¹³ The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the

⁹ 'Committed aircraft' means in-service aircraft and aircraft in backlog, ie aircraft for which an IFC provider has been contractually appointed but no solution is yet installed and active. UK-based airlines with committed aircraft with IFC capabilities are currently British Airways and Virgin Atlantic. Shares of supply were calculated by the CMA based on data provided by the Parties. (Parties, Merger Notice, Annex 22.12, Q1 2022 - In-Flight Connectivity Tracker - Viasat (Valour Consultancy)).

¹⁰ Other industries or 'verticals' where satellite connectivity is used include fixed broadband (residential and commercial), Government (including for military and non-military applications), maritime and off-shore energy.

¹¹ [MAGs](#), paragraph 3.10. Significant changes affecting competition from third parties which would occur with or without the merger (and which therefore form a part of the counterfactual) are unlikely to be assessed in any depth as part of the CMA's counterfactual assessment. This includes entry or expansion by a third party.

¹² [Section 36\(1\)\(b\)](#), of the Act.

¹³ [MAGs](#), paragraph 9.1.

merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in our competitive assessment.¹⁴

20. In its Phase 1 Decision, the CMA assessed the impact of the Merger on the global supply of broadband IFC services to (a) commercial aviation customers and (b) business aviation customers.
21. In terms of product scope, the CMA considered that the supply of IFC to commercial and business aviation customers should be distinguished due to differences in the requirements of those customers and the identity of providers. The CMA also considered that broadband and narrowband services are not substitutable given that they each serve different customer needs (with broadband, which has more bandwidth and requires higher frequencies, used for more data-intensive applications and narrowband, which can use lower frequencies which are less susceptible to signal interference, used for less data-intensive tasks where resilience is critical).
22. In relation to geographic scope, the CMA found evidence that customers' demand for broadband IFC services varies reflecting differences in their commercial operations and the routes that their aircraft fly.
23. Rather than seeking to draw bright lines between geographic areas, the CMA considered differences between the Parties' and their rivals' strengths in different regions in its competitive assessment.¹⁵ The CMA focused its competitive assessment on those services that are most likely to affect UK customers. In relation to commercial aviation customers, it therefore focused on the potential effects of the Merger on the supply of IFC to aircraft flying (a) short and medium-haul from/to and within Europe (including the UK), and (b) long-haul from/to Europe (including the UK). In relation to business aviation customers, it focused on the potential effects of the Merger on IFC services supplied to large business jets that are used by UK consumers and businesses.
24. We will consider the Parties' and other submissions and evidence on these points but we do not expect market definition to be determinative in the outcome of our assessment.

¹⁴ MAGs, paragraph 9.4.

¹⁵ In many cases, especially those involving differentiated products, there is often no 'bright line' that can or should be drawn (see MAGs, paragraph 9.4).

Theories of harm

25. Theories of harm describe the possible ways in which an SLC may be expected to result from a merger and provide the framework for analysis of the competitive effects of a merger.
26. In its Phase 1 Decision, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in (a) the global supply of broadband IFC services to commercial aviation customers, and (b) the global supply of broadband IFC services to business aviation customers.
27. We intend to focus our competitive assessment on these theories of harm at phase 2.
28. We may revise our theories of harm as our investigation progresses and the identification of a theory of harm does not preclude an SLC being identified on another basis following further work, or our receipt of additional evidence. However, subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger.

Horizontal unilateral effects

29. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that would otherwise provide a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals. Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at a wholesale level or retail level (or both) and is not limited to end consumers.¹⁶
30. Our assessment of mergers is generally forward-looking and we will therefore seek to account for the future evolution of competitive conditions when assessing a merger.¹⁷ This includes developments in the merger parties' competitive offering and the competitive offering of third parties.
31. In order to investigate the horizontal unilateral effects theories of harm identified above, we will consider the closeness of competition between the Parties and the strength of the constraints exerted by their existing and potential rivals. In our assessment, we will consider the extent of competition between the Parties and their rivals over short-term competitive variables (price and non-price aspects of their offerings, which are typically flexed on an

¹⁶ MAGs, paragraph 4.1.

¹⁷ MAGs, paragraph 4.16(b).

ongoing basis) and/or longer-term variables (such as innovation/product development, which are set as part of long-term investment decisions).

32. When assessing the constraint on the Parties from potential rivals, we will consider both (a) any constraint that these potential rivals might exert before entry as a result of the threat of their entry (also referred to as ‘dynamic competition’ in the CMA’s guidance),¹⁸ and (b) any constraint that these potential rivals might exert in the future following entry (also referred to as ‘future competition’ in the CMA’s guidance).¹⁹
33. Firms may use different levers to respond to the threat of entry than to actual entry or existing competition. For instance, firms may respond to the threat of entry by using investment and innovation to protect their profits in the long-run from potential threats, whereas they may be more likely to flex pricing in response to competition from existing competitors.²⁰ We will have regard to this when considering the current constraint that potential rivals might exert on the Parties as a result of the threat of their entry.
34. Future competition can be relevant in two broad scenarios when assessing the constraints that a merged entity will face:
 - (a) Entry triggered by the merger. In this scenario, the CMA will consider the extent to which such entry would replace the constraint eliminated by the merger. This is assessed as a countervailing factor.
 - (b) Entry that would have occurred irrespective of the merger. In such circumstances, even though such entry or expansion would form part of the counterfactual, the CMA will often consider such entry or expansion as a constraint on the merged entity in its competitive assessment.²¹ In its Phase 1 Decision, the CMA found evidence that any potential NGSO entry or expansion in the supply of IFC was taking place independently of the Merger. It therefore considered what, if any, constraint NGSO operators might exert on the Merged Entity in the future as part of its overall assessment of the constraints facing the Merged Entity.²²
35. In its Phase 1 Decision, the CMA found that the Merger gives rise to a realistic prospect of an SLC in the global supply of IFC to commercial aviation

¹⁸ MAGs, paragraph 5.3.

¹⁹ MAGs, paragraph 5.2.

²⁰ MAGs, paragraph 5.24.

²¹ For example, a merger may be characterised as reducing the number of existing competitors from two to one. To the extent the CMA finds evidence that a rival would have entered absent the merger, the merger may be characterised as reducing the number of competitors from three to two. In this scenario, the merger may be concerning even if the entrant was broadly equivalent to the firm eliminated by the merger – unlike where entry is triggered by the merger.

²² CMA, [Phase 1 Decision](#), paragraph 33.

customers. In particular, based on the evidence available to it, the CMA found that:

- (a) The Parties are close competitors in the supply of IFC to commercial aviation customers. They are the only two vertically integrated providers operating in Ka-band²³ and, although Viasat currently lacks global coverage, it will have it soon and already markets it to airlines. Given the Parties' ongoing expansion plans – which will provide both with enhanced satellite capacity – and Viasat's progress towards obtaining line-fit certifications,²⁴ absent the Merger the Parties are likely to compete even more closely in the near future;
- (b) The Parties' three main competitors already active in the supply of IFC services to commercial aviation customers exert, and will exert in the future, a materially weaker constraint on the Parties than the Parties exert on each other. In particular:
 - (i) Panasonic does not have direct access to satellite capacity but provides IFC services by leasing Ku-band capacity from third parties. Despite having a significant customer base, especially in widebody aircraft, its market position appears to be in decline;
 - (ii) Anuvu does not have direct access to satellite capacity and has a small customer base. As of today, it only offers regional coverage and holds a limited number of line-fit certifications;
 - (iii) Intelsat has recently become a vertically integrated IFC provider by acquiring Gogo and, through its own satellites, it provides global coverage in Ku-band. Evidence from internal documents and third parties, including information on tenders, however, indicates that currently Intelsat only provides a moderate constraint on the Parties;
- (c) There was not sufficiently robust evidence available to show that entry by NGSO operators in providing IFC to commercial aviation customers would be timely, likely and sufficient to constrain the Merged Entity. The CMA found that the available evidence showed that substantial uncertainty remains as to if and when NGSO operators will be able to overcome the financial, operational, technical, regulatory, and commercial barriers necessary to compete effectively in the supply of IFC services to

²³ Satellite connectivity can be delivered over different frequencies. In its Phase 1 Decision, the CMA noted that according to a number of market participants, Ka-band frequency offers better performance (particularly in terms of higher speeds and increased data capability/bandwidth) and lower costs per MB than IFC services based on Ku-band frequency. CMA, [Phase 1 Decision](#), paragraph 110.

²⁴ For installation on new aircraft, IFC equipment must be certified for 'line-fit' by the relevant aircraft original equipment manufacturer (OEM). CMA, [Phase 1 Decision](#), paragraph 72.

commercial aviation customers and – if they do – whether they will exert a sufficient constraint on the Merged Entity to prevent an SLC; and

- (d) Any constraint currently exerted by the threat of entry by NGSO operators is minimal and much weaker than the constraint imposed by existing (GEO) competitors.

36. In order to investigate this theory of harm, we expect to consider:

- (a) How demand for IFC services by commercial aviation customers is likely to evolve over time;
- (b) Customer preferences and requirements and how these might change over time;
- (c) Whether the Parties compete closely with each other for IFC contracts and whether this will change over time;
- (d) The extent of the constraint that the Merged Entity would face from existing suppliers of IFC services to commercial aviation customers and how this might change in the future;
- (e) Whether NGSO operators will enter and/or expand their presence in the supply of IFC services to commercial aviation customers and the extent of the constraint that NGSO operators would exert on the Merged Entity following entry/expansion; and
- (f) Whether NGSO operators currently exert a constraint on the Parties as a result of the threat of their entry and how that constraint might change over time.

37. In our assessment we expect to consider evidence relating to:

- (a) The future plans of the Parties;
- (b) The future plans of both existing IFC players and upstream suppliers of satellite connectivity to IFC players, including recently announced partnerships and acquisitions;
- (c) The future plans of NGSO operators in so far as they relate to the supply of IFC to commercial aviation customers;
- (d) The barriers that NGSO operators face to enter and/or expand their presence in the supply of IFC to such customers and whether these are likely to be overcome and in what timeframe;
- (e) Recent and upcoming tenders for the supply of IFC to commercial aviation customers; and

- (f) Any technological developments in the industry such as the development of interoperable terminals that may facilitate switching between suppliers.
38. In its Phase 1 Decision the CMA also found that the Merger gives rise to a realistic prospect of an SLC in the global supply of broadband IFC services to business aviation customers. The CMA's assessment largely corresponded to its assessment in relation to commercial aviation customers. Based on the evidence available to it, the CMA found that:
- (a) The limited number of other providers that are active would not exert a sufficient constraint on the Merged Entity:
 - (i) Gogo's ATG²⁵ solution, despite its large share of supply, only provides a weak alternative to the satellite-based IFC services provided by the Parties, as it cannot compete for aircraft that intend to fly outside the US; and
 - (ii) Collins Aerospace and Intelsat are materially smaller IFC providers than the Parties, are likely to be behind the Parties in obtaining certifications and are considered weak alternatives by customers;
 - (b) There was not sufficiently robust evidence that entry by NGSO operators would be timely, likely, and sufficient to constrain the Merged Entity and thereby prevent an SLC; and
 - (c) Any constraint currently exerted by the threat of entry by NGSO operators is negligible.
39. We consider that many of the categories of evidence outlined above (for example on barriers that NGSO operators face to enter and/or expand their presence in the provision of broadband IFC services to commercial aviation customers) are equally relevant to assess both theories of harm. As such, we do not intend to gather significant additional evidence relating solely to the supply of IFC services to business aviation customers. We do expect to consider evidence relating to the future plans of existing providers of IFC services to business aviation customers.

Countervailing factors

40. We will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.

²⁵ Air-to-ground. ATG technology uses a ground based (rather than satellite based) connectivity solution to communicate data while in flight.

41. We will also consider any relevant evidence submitted to us by the Parties that the Merger is likely to give rise to efficiencies that will enhance rivalry, such that the Merger may not be expected to result in an SLC.

Possible remedies and relevant customer benefits

42. Should we conclude that the Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
43. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.²⁶

Responses to this issues statement

44. Any party wishing to respond to this issues statement should do so in writing, no later than **5pm on 22 November 2022** by emailing viasat.inmarsat@cma.gov.uk.

²⁶ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15–3.24.