

EE's observations in relation to the CMA's Provisional Decision

Approach to Interworking & rebuttal of comments

EE's comments in this document relate to:

- A. the provisional decisions proposed by the CMA in its decision of 19 October 2022 relating to the topic of Interworking; and
- B. address comments made in documents to which the CMA makes reference in its 19 October 2022 decision

References to paragraph numbers are to numbers in the CMA provisional Decision unless otherwise indicated.

INTERWORKING

In this response

- **"Airwave"** should be taken to mean both Airwave Solutions and Motorola
- an **"Interworking Solution"** is taken to mean (in its broadest sense) software that mediates between Tetra and LTE to enable users on both systems to communicate with each other for all services in a seamless way so as to enable a smooth transition from Airwave to ESN. This is not intended to be an exhaustive definition, but rather to differentiate that from an **"Interworking Interface"** by which we mean enabling all requested interfaces on the Airwave network side to allow an Interworking Solution (provided by another) to 'communicate with' the Airwave network.
- **"First Request"** means the first written request to Airwave to provide an Interworking Solution or Interworking Interface (as the case may be) with sufficient, but not necessarily all, appropriate detail to enable the request to be started to be acted upon.
- **"Access Seeker"** means the party seeking an Interworking Solution or Interworking Interface from Airwave

Obligation to enable interworking

1. EE agrees with the CMA's broad conclusion in paragraph 8.69(a) save that:
 - a. those requirements might be identified by a third party seeking access on behalf, or with the agreement, of the Home Office. The rationale for this is that it is unlikely that the Home Office would itself directly deploy an Interworking Solution or MCX application and it may be more expedient to shorten the contracting & delivery chain.
 - b. it should be made explicit in its terms that the alternative Interworking Solution could be developed by a third party rather than by Airwave (we appreciate that this is referenced in paragraph 8.70). The rationale for this is that:
 - i. it is as likely as not that an Airwave Interworking Solution would not be used; but
 - ii. Airwave would still need to make an Interworking Interface available to an alternative Interworking Solution provider.

c. Some additional requirements should be included as described further below.

'timely'

2. We disagree with the CMA's provisional decision as set out at paragraph 8.61 that providing for detailed implementation directions would not be appropriate. Whilst we agree that these things can be difficult to define, if the CMA does not supplement its broad 'timely' direction with some supporting principles it will be difficult for all parties to understand what is to be expected and for the direction to be enforced.
3. EE considers that 'timely' requires more specific definition both at a macro level and at an individual action service level or SLA, and it would depend on whether Airwave is providing the Interworking Solution or just the Interworking Interface:
 - a. At a macro level, if Airwave is providing the Interworking Solution, the maximum period of time within which an effective solution must be provided should be no longer than 9 months from the date of First Request.
 - b. At a macro level, if Airwave is providing just the Interworking Interface, the period of time within which an effective solution must be provided should be no longer than 3 months from the date of First Request.
 - c. At an individual task level, EE proposes that an SLA is established (which might be revised by agreement or under direction of the CMA from time to time as required) that would provide for Airwave to:
 - i. Provide any information or documentation requested within 3 working days
 - ii. Attend meetings or calls with suitably qualified experts and other necessary internal staff (and travel to other locations as requested), with staff prepared to answer and deal with questions, problem solve with the Access Seeker, complete actions and otherwise co-operate
 - iii. Schedule meetings within 2 working days of being requested to do so, so that those meetings take place no longer than 5 working days after request
 - iv. Deliver software or information fixes for any defect or deficiencies found within a period agreed between Airwave and the Access Seeker, and in any event no longer than 7 working days in the case of information and 14 working days in all other cases after the defect or deficiency was notified by the Access Seeker
4. To give effect to this SLA above, Airwave should be required to ensure continuity of its staff members in responding to the First Request through to delivery and in-life support to avoid 'pass the parcel' delays.
5. Airwave should continue to support the Interworking Solution or Interworking Interface until the end of life of Airwave.

6. By reason of the nature of the service, the development of an alternative MCX solution, the testing process and transition process, it may become necessary for the Access Seeker to need to update or amend an Interworking Solution or Interworking Interface from time to time. EE proposes that Airwave should be under an obligation to support those updates or amendments (in a timely and effective way) throughout the life of the transition until such point as the Access Seeker gives notice that the Interworking Solution or Interworking Interface is no longer required. EE proposes that this general obligation can be further supplemented with the following directions:
 - a. Any Access Seeker notice to cease provision of the Interworking Solution or Interworking Interface should be on not less than 3 months' notice to Airwave (unless otherwise agreed)
 - b. The individual task SLA above should apply to any updates or amendments as it did to the original solution.
 - c. Any update or change requested by the Access Seeker (ie not defects or deficiencies):
 - i. If Airwave provides the Interworking Solution, should be delivered (so as to be effective) within 2 months of being requested, and
 - ii. If Airwave provides the Interworking Interface, should be delivered (so as to be effective) within 14 working days of being requested.
 - d. Should Airwave be required to make a change to the Interworking Solution or Interworking Interface (for example due to end of life issues related to Airwave componentry) Airwave must provide a minimum of two years' advance notice to the Access Seeker. Airwave should provide all reasonable technical assistance to aid the Access Seeker to undertake any necessary upgrades on the Access Seeker's side of the interface.

'effective'

7. We agree with a broad definition of 'effective' that the Interworking Solution or Interworking Interface achieves the "**Overriding Outcome**" that ESN and Airwave are appropriately and securely connected to enable full communication and interoperation between the two networks and users on those networks, thereby also enabling the safe transition of users from Airwave to ESN so that the Airwave network is shutdown. This approach to the CMA's directions should ensure that Airwave is incentivised to deliver the Overriding Outcome.
8. In addition, this Overriding Outcome should be supplemented by some specific further directions to be complied with in a timely and reasonable way to provide greater clarity:

(general)

 - a. We agree with the CMA's view in 8.72 that Airwave should take all steps necessary to facilitate the delivery of a solution, including deploying resources, making key personnel available and incurring cost associated with the provision of the

Interworking Solution or Interworking Interface (as the case may be). However, as to timing, we believe that a direction to provide these within a reasonable period is too subjective without a regulated backstop.

(requirements)

- b. The Interworking Solution or Interworking Interface should meet all requirements specified by the Access Seeker (except to the extent that they are technically impossible). This would include all typical services (including supplementary services) in use (where requested).
- c. Where requested to do so, Airwave should be under an obligation to provide the Interworking Solution or Interworking Interface to comply with international standards and without any technical or commercial constraint.
- d. Where an Interworking Interface is provided, unless otherwise requested by the Access Seeker, Airwave should limit its outward facing boundary to the absolute minimum necessary (i.e. Airwave should not try to extend an Interworking Interface to become a quasi-Interworking Solution). Airwave should not require the Access Seeker to use Airwave development to access interworking features where the Access Seeker proposes a technical solution that doesn't require use of such development).
- e. Airwave should ensure that an Interworking Solution or Interworking Interface it provides will be designed and operated:
 - i. To achieve "real-time" interworking with mission-critical standards of performance to avoid operationally unacceptable latencies;
 - ii. To achieve encryption as required by the Access Seeker using appropriate protocols and key management practices to achieve the Overriding Outcome;
 - iii. not to restrict the scope of services (including for example through features or capabilities, or through restrictions on user, traffic or call group volumes) necessary to achieve the Overriding Outcome; and
 - iv. supported and maintained to at least comparable levels of service & performance as Airwave is today, and so as to ensure that there is no operationally unacceptable downtime (unless otherwise requested).
- f. Airwave should ensure that all necessary licences and certifications are in place, and any other operational dependencies are discharged in a timely way to ensure that there is no delay in giving effect to the Overriding Outcome.

(governance)

- g. All development should be supported in a timely way by detailed project, quality, and testing plans (made available to the Access Seeker).

(testing)

- h. Airwave should provide at all times a representative test bed platform, integration support and test support for any Access Seeker to be able to undertake integration and performance testing
- i. Airwave testing results and root cause analysis of any defects should be provided promptly to the Access Seeker.

(information)

- j. Airwave should provide all information requested by the Access Seeker that is necessary to give effect to the Overriding Outcome (subject to non-disclosure agreements in terms no more onerous than those which applied under Lot 2 of ESN). And for the avoidance of doubt, it should be possible for the Access Seeker to provide the information to another party involved in the interworking aspects of ESN (for example, development, testing, quality assurance) provided that they have a reasonable need to know and are subject to substantially the same confidentiality provisions.
- k. Noting that the time for development, test, verification and commissioning of any new Interworking Solution is a long process, Airwave should, if requested, provide access to all required documentation and information to enable an Access Seeker to commence development of an Interworking Solution under NDA, in advance of signing any formal agreement to deploy such a solution.
- l. To the extent that it is necessary, as suggested by the CMA in paragraph 8.73, Airwave should provide access to relevant source code. This may need to extend to security keys or proprietary information.
- m. It would be unreasonable for Airwave to claim IPR protection or confidentiality obligations as a reason for not providing information or taking other action necessary to give effect to the Overriding Outcome.
- n. Provide all necessary assistance to understand and interpret
 - i. information provided by Airwave, and
 - ii. the way in which the Interworking Solution or Interworking Interface operates,

to achieve the Overriding Objective.

- o. Further, to the extent requested by the Access Seeker, Airwave should deposit all necessary source code in escrow with a recognised escrow provider chosen by the Access Seeker. The terms of such escrow should include a provision that permits

access to the source code in the event that the Overriding Outcome has not been, or is unlikely to be, achieved in a timely way.

(changes)

- p. Any changes to the Interworking Solution or Interworking Interface should be made in a timely way to give effect to the Overriding Outcome, and should otherwise continue to follow the directions (as to information, requirements, testing, governance etc).
- q. Airwave should make no changes to the Interworking Solution or Interworking Interface that would have the effect of frustrating or delaying the Overriding Outcome. Such changes would include both the way data egresses Airwave and the way that Airwave ingests data to enable the interworking capabilities.
- r. Further, Airwave should make any modifications that needs to be made to the Interworking Solution, Interworking Interface or Airwave network to support industry standard services (such as location services) as requested by the Access Seeker.

(terms)

- s. Airwave should provide the Interworking Solution or Interworking Interface on terms which are the bare minimum to give effect to these directions, without any term which has the effect of delaying or frustrating the Overriding Outcome.
- t. Given the CMA's provisional decision on charging, it is assumed that the agreement for interworking will reflect that decision if made final.

Cost plus

- 9. EE notes the CMA's proposed decision on cost plus basis. EE's primary concern is to ensure that there is an effective practical, operational, regime to deliver an Interworking Solution and/or Interworking Interface for users to transition to ESN.
- 10. Incentivisation may be sensible to deliver an effective solution.
- 11. But, as EE is not privy to the detailed information on profitability etc that the CMA has, we do not offer any view on whether cost-plus is the right model to drive the desired operational Overriding Outcome.

Reporting requirements

- 12. We consider that a reporting requirement is appropriate to ensure compliance with the interworking obligations (specifically timely and effective). However, EE would make the following observations:
 - a. The frequency should be more regular to ensure its effectiveness – we would suggest the report should change to quarterly starting when any request for interworking access is made.

- b. The report should include requests from Any Access Seeker, not just the Home Office. The report should maintain commercial confidentiality of the Access Seeker.
- c. The report should be available to the Access Seeker .
- d. The report should detail each obligation and confirm compliance to each specific direction (yes/no/partially format) and a narrative to explain any non-compliances and proposed remedial action and timings.
- e. To ensure that the directions are given effect to, EE believes the CMA needs to give consideration to the formality, format and content of the report. For example, EE believes it would be reasonable for the report to:
 - i. confirm that suitably senior individuals (as specified by the CMA) have explicitly instructed their staff to fully comply with both the spirit and the letter of the directions to achieve the desired Overriding Outcome for the Home Office / Access Seeker
 - ii. confirm that neither Motorola, Airwave nor any of its staff, agents or contractors, or anyone acting on their behalf has or will take any steps with the intention or effect of frustrating or delaying in whole or in part the intent of the directions to achieve the Overriding Outcome
 - iii. confirm that those suitably senior individuals have made all necessary enquiries to confirm that Airwave has complied with the terms of the directions
 - iv. confirm that it is a complete, true and accurate report

Independent expert oversight

- 13. EE proposes that there is an independent adjudication process to resolve any dispute on terms or charges, perhaps by appointment of an expert nominated by the President of the Law Society, and that provision of information and development should continue whilst those disputes are resolved.
- 14. EE proposes that provision be made for the CMA to specify an independent expert determination procedure to provide an accelerated determination of any other disputes that arise over the operation of the directions (for example whether a requested feature is technically possible).
- 15. EE also invites the CMA to consider appointing a Monitoring Trustee to oversee the process either from the date of First Request, or if requested to do so by the Access Seeker if any problems are encountered.

Continuity of directions

- 16. EE believes that the CMA should make directions on interworking and that those directions should continue until the Airwave network has closed, regardless of any contractual

arrangement which has or may be put in place to provide for such a solution, and regardless of whether that contract arrangement is made by the Home Office or another Access Seeker.

REBUTTAL OF COMMENTS

17. For the record, EE would also like to formally reject the unfounded comments made by an unnamed executive at Motorola that is mentioned in paragraph 59 of Appendix F to the Provisional Decision where the suggestion is made that the Home Office will be forced to extend the Airwave contract when they realise “the EE network is not good enough and that pseudo commercial devices are not suitable.”
18. EE strongly refutes the suggestion that the EE network will not be good enough to support ESN. EE has delivered against all contracted coverage milestones in its ESN contract. Further, EE continues to work with the users and the Home office to assure coverage on a national basis.
19. In addition, the EE network has won independent Root Metrics awards for having the best network performance for 9 years running. The EE network has also been upgraded so it is more resilient in order to support ESN. EE is entirely confident that its network will be sufficient to meet the demanding requirements of the ESN user community. And, unlike Airwave, the ESN user community continues to enjoy the advantages of EE’s continued investment in its 4G network over and above EE’s contractual commitment to the Home Office. EE looks forward to being able to provide an ESN mobile service that is more advanced and more available than the service the users currently experience on the Airwave network.