

MOBILE RADIO SERVICES MARKET INVESTIGATION

Summary of the response hearing with the Home Office held on Thursday 15 December 2022

Introductory comments

1. The Home Office told us that the service for blue-light users needed to be safe, reliable, resilient, and provide value for money. It also needed to comprise equipment which could be updated with the best technology available.

Quality of service

2. The Home Office said that the current service level for the Police contract exceeded the contracted Service Level Agreement (SLA). If it fell to the contracted SLA, that would create significant operational issues for users.
3. The Home Office said it was concerned about the potential impact on service quality of the proposed charge control as Motorola's margins would be much lower in future and so its incentive to bear down on costs and investment would be greater, potentially resulting in a degradation of service quality. The Home Office noted that the penalties for missing service levels were not particularly punitive. The Home Office would like some protection against this possibility because of the critical importance of the service. In addition to the reporting and assurance requirements proposed by the CMA, the Home Office said it had identified three proportionate remedies to help address this: asset stewardship and clawback provisions; a ring-fence to secure the financial resilience of Airwave Solutions Limited's (ASL) operations; and an enhanced service performance package.
4. The Home Office explained that the existing contractual levels had been determined at the outset of the original contract, but these were below what the emergency services currently require. Due to its weak negotiating position, the Home Office said it had been unable to revise these to effective levels.
5. The Home Office told us that it had received a letter from Motorola stating that given the charge control, it could not see how its parent company would

continue to keep capital in the business. The Home Office viewed this as a threat to sell the business which was a cause for concern because a change in the ownership and the potential complications arising could pose a risk to the service.

6. The Home Office explained that Motorola had the contractual right to sell the Airwave network but considered this was unlikely as a potential purchaser would not want to buy an asset with high costs, low returns and a contract potentially ending within six years. The Home Office could terminate the contract, but this was of little use because there wasn't an alternative network. The Home Office said it could acquire the assets, but this would only be as a last resort to ensure the continuation of the network.
7. The Home Office told us that currently, the fire and ambulance contracts had higher service levels and targets than the police. It had asked the CMA to increase the service level for the police so that this was brought into line with that for the Fire and Rescue Services (Firelink) contract.

Charge control

8. On the proposed charge control, the Home Office said that non-core services should be calibrated in the same way as core services, so that users were not paying excessive prices. This rebalancing could either take place up front, or by means of internal payment transfers by the Home Office, although it considered this latter option would be quite challenging.
9. The Home Office had reviewed the CMA's calibration of the charge control and found that this had been set conservatively.

Asset transfer and divestiture

10. The Home Office told us that Motorola had prepared a service transfer plan, but the Home Office and Motorola disagreed about which assets were transferable. The Home Office said Motorola had stated that just the new assets BT had constructed at the time of the original PFI were transferable, and not the existing infrastructure, which meant that the Home Office would not be able to operate the network. The Home Office said that it had not seriously considered taking over the assets and so did not consider that it was a good use of public money to pay for a dispute to settle the disagreement.
11. The Home Office explained that the additional remedy proposed in its response to the Provisional Decision Report (PDR), enabling the Home Office to terminate the agreements under which the Airwave network was provided, and, to acquire and retender the operation of the network assets, was an

option of last resort. Retendering Motorola proprietary technology had a high level of risk. The Home Office considered that the best solution would be for Motorola, appropriately incentivised and rewarded and with a reasonable margin, to continue to deliver Airwave.

12. The Home Office said if Motorola decided to dispose of Airwave Solutions, this remedy would enable the Home Office to find a third party to carry out the service for the last few years of its operation. It said that Motorola considered that most of the assets were not transferable, but if this was addressed, then this could be feasible. The Home Office said it did not think it would be feasible to swap the core technology, but some of the control points around investment in infrastructure sites and masts, could be provided by a new supplier, thereby reducing the Home Office's dependency on Motorola.
13. The Home Office was concerned at the possibility that Motorola might walk away from the Airwave network, noting that Motorola had already exited from the Emergency Services Network (ESN) contract.

Interworking

14. The Home Office said it was concerned that Motorola could potentially delay the ESN programme and considered that the CMA's proposed interworking remedy was key to enabling it to transition its users. The Home Office noted that Motorola would have increased opportunity to delay the transition through its acquisition of contracts that delivered software into control rooms. The Home Office asked the CMA to retain the interworking remedy.
15. The Home Office told us it had started the process to replace Motorola in ESN and it hoped to complete it by the first quarter of 2024. The intention was to deliver the roll out of ESN by 2029, when the proposed charge control would come to an end.
16. The Home Office said that in interworking negotiations, Motorola had resisted guaranteeing the service level that it is currently delivering on the Airwave service.
17. The Home Office told us it was holding discussions with Motorola about a potential contract to provide an interface solution into the Airwave network that could connect to ESN, and with some potential suppliers on a product that could sit between the Airwave and ESN networks. There were some technical risks associated with this approach, such as the transfer of identities between the two networks and floor control, but the Home Office thought these were surmountable.

18. The Home Office said it would require Motorola's support and involvement in testing the interface solution and in the ongoing operational quality of service until the Airwave network was switched off. The Home Office said that Motorola had provided assurances that the Home Office's chosen supplier would be granted access to Motorola's application partner programme, which was needed to develop and test the software to facilitate interworking.

Profitability

19. The Home Office considered that the CMA had been conservative in its approach to profitability but agreed with the principles followed in the CMA's profitability analysis and the conclusion that Motorola's profits were excessive. The Home Office said focusing on the 2020 extension period was correct and analysing profitability as far back as 2000 was of little relevance in a market investigation.
20. The Home Office agreed with the CMA's approach to asset valuation and its adoption of the residual value and believed that in a well-functioning market, customers should not pay twice for the same asset as would be the case under the approach advocated by Motorola.
21. The Home Office told us that at one of the Select Committee hearings in 2017 concerning the Airwave network and ESN, and at which Motorola and EE representatives gave evidence, it had been indicated that the Airwave network would be switched off and ESN delivered in 2020. The Home Office said it was clear from Motorola's original proposal, WAVE 7000, that the software was very near completion. This was also reflected in the timelines for the mobilisation stage of the programme and in the implementation plan when the contract was awarded.
22. As a result of Motorola's decision to exit ESN post 2024 and its subsequent request to leave immediately, it had been necessary to extend or recomplete the Lot 2 and Lot 3 contracts. The Home Office said it would not consider TETRA technology which was ageing and would be nearing the end of its life within 10 to 12 years. It was seeking to provide a long-term 4G and 5G LTE solution which would benefit from commercial upgrading over time.
23. The Home Office told us that even if the profitability of the Airwave network was reduced to a reasonable level, the Home Office wanted to run only one network. It had no intention of delaying ESN. The costs of procuring and running the emergency services communications networks had increased because the ESN programme had been delayed, with the biggest single contributor by far being the additional cost of running the Airwave network for much longer.

24. The Home Office said that it did not have buyer power in relation to the 2016 negotiations because its only option would have been to terminate the contract. It had no real option other than to proceed with the acquisition given the problems arising from Macquarie's ownership. At the time of the 2016 negotiations the Home Office did not know how profitable the business was or would be in the future; Motorola had given the Home Office the impression that it was barely profitable.
25. The Home Office said that Motorola had shown that it was not amenable to negotiating on price.
26. The Home Office had not accepted the price discount Motorola had offered in 2018 because it was based on a 10-year contract and the Home Office had been told by Motorola that it would be able to deliver ESN by 2022.
27. The Home Office said that it received a proposal from Motorola in 2021 stating that the contracted price would increase because of CAPEX requirements. When the Home Office asked Motorola to demonstrate that this represented value for money, it did not receive any evidence in response. These negotiations were not concluded because shortly afterwards the CMA started its investigation.