

MOBILE RADIO SERVICES NETWORK MARKET INVESTIGATION

Summary of the Response Hearing with Motorola Solutions, Inc. (Motorola) held on Tuesday 10 January 2023

Introductory remarks

1. Motorola told us that Airwave Solutions Limited (Airwave Solutions) and the Home Office had removed themselves from the market when they agreed a fixed term contract and so there was no scope for competition until the contract ends. The discussions that took place after the contract had been signed did not represent competitive interactions. The negotiations in 2016 were therefore irrelevant to a competition assessment.
2. Motorola noted that the Competition and Markets Authority (CMA) had not examined why the competitively procured new Emergency Services Network (ESN) had not been delivered. This was a material omission from the market investigation. Suppliers had competed for the market and this should have been central to the CMA's competition analysis.
3. Motorola disagreed with the CMA when it said that the delivery of ESN was taking longer than had been contemplated both when it had been procured, and then later in 2015 when Motorola and the Home Office negotiated terms about what would happen to the Airwave Network. Instead, the parties had provided specifically for what would happen in the event of a delay, and that was addressed by the Deed of Recovery.
4. Motorola noted that the CMA had investigated the acquisition of Airwave Solutions in 2016. Motorola said that had the CMA found that the market had not been working well, and there was an issue it should investigate, the CMA would have done so. Motorola said the documents provided to the CMA at the time indicated that the Airwave Network pricing would continue at the agreed level and would not fall after 2019. Both parties had freely entered into the agreement and so the CMA could not now change the terms at the request of the Home Office. This was why assessing the profitability of the Airwave backup fixed-rate deal as a competition matter was meaningless because it was not the outcome of a competitive process. Motorola believed that a fair assessment of

the Airwave contract clearly showed that the Home Office and the UK taxpayer had received a great deal with Airwave Solutions. The IRR was lower than the government expected to see with much less risky projects and despite the huge costs associated with delivering the Airwave Network service safely. Motorola said Airwave had consistently exceeded the service level agreements and customer satisfaction was consistently extremely high. Motorola said that the only thing that has changed in the contract is the Home Office's attitude towards it and that Airwave Solutions should be allowed to finish the job and deliver what it was contracted to do until the end of the term. For these reasons Motorola said the provisional decision was flawed both legally and economically, and against the background of a well-functioning contract, the proposed charge control was not only grossly disproportionate, it was also dangerous.

5. Motorola considered that there was a procurement rather than a competition problem in the market. If the CMA considered that the market was not working well, then the Home Office should acquire the assets, as had occurred in other jurisdictions. Motorola said that the asset transfer provisions and exit process were clear and straightforward.
6. Motorola said if there was a pricing problem because of a market failure, as opposed to procurement mistakes made by the Home Office, then no remedy was required because the Home Office could and should specify what it wants after 2026 when the current contract expires and invite the market to bid on that basis.
7. Motorola stated there were obvious, equally effective, and far less onerous alternatives to a charge control which were capable of achieving a competitive price objective, if that is what the CMA ultimately decided was necessary. For example, Motorola had proposed a significant discount to the current contract, as it had done previously. At the level proposed by Motorola, this would be a more proportionate choice than a charge control requiring vast resources to manage.
8. Motorola said that it could not have market power in this case because the contract had been freely entered into with a fixed price and end date, and with a clear path to future competition.
9. Motorola said that the CMA should protect and promote legal certainty by and preserving the existing contractual arrangements, to ensure that trust in the system was maintained for the period after 2026 when the market should be bidding safely, securely and predictably. The CMA could also, perhaps, invite the Home Office to reconsider its stance on commercial discounts that had been previously offered.

10. Motorola said that the CMA should recommend that the next tender be realistic, pro-competitive, and technology-neutral, in accordance with current government best practices for contracting and, above all, meet user requirements. It could accommodate, for example, a gradual migration away from LMR voice onto MCPTT as the technology evolves and becomes ready to do that. This would support the emergency services network in a world in which the Home Office continued to pursue ESN, which the Home Office said in its response to the provisional decision was cutting edge technology and might not work.

Asset transfer

11. Motorola explained that the asset transfer provisions were intended to provide a mechanism for assets to be transferred to the Home Office, or an alternative provider at a fair market value at the end of the contract. The provisions also protected Airwave's investment decisions, namely the risks it had taken in building the market and acquiring sharers.
12. Motorola said that there is a draft service transfer plan (STP) dating back to 2014. As part of the acquisition of Airwave, the Home Office and Motorola agreed that this was to be updated and aligned with the transition plan from the Airwave network to ESN, but the process had stalled because there is no transition plan owing to the delay of ESN.
13. Motorola believed that an asset transfer would have been more challenging in 2014 because of the variety of different users of services and the staggered end dates for the contracts. However, as part of the negotiations for the acquisition of Airwave the core (Police, Fire and Health) and sharers contracts became coterminous. This makes it possible, unlike in 2014, for all the assets needed to provide the service to transfer.
14. Motorola said that it would be able to provide an updated STP plan if the Home Office provided an ESN transition plan or if it relinquished its request that the STP must be aligned with the transition to ESN. Motorola said if the Home Office wanted to enact its rights at the end of 2026 and seek an STP that assumed the transfer of assets at the expiry of the contract, then Motorola would work with the Home Office to update the STP or create a new one. Motorola pointed out that it had just agreed a similar STP as part of its exit from ESN.
15. Motorola said that at the time of the PFI Agreement it was unclear what Airwave Solutions would have to build to provide the service, and so the assumption that the Home Office would have 'paid for the assets' was unjustified. The PFI Agreement did not include an automatic entitlement for the Home Office to

receive the assets at the end of the contract at no cost, or at book value. The transfer would need to be based on a fair market value, which might be the net resale value if the assets were scrapped but would be their economic value if they were continued to be used, potentially by being transferred to another provider. Motorola said it did not agree that the Home Office would be 'paying twice' for the assets if these were transferred at fair market value, not least because significant ongoing investments had been made to maintain the level of service. If Motorola and the Home Office could not agree a price, then the two parties would need to follow the dispute resolution process.

16. In the event of a transfer, Motorola said that it would be content to enter into a support and maintenance agreement with the Home Office. Under the original contract Motorola provided a dedicated field team that supported the Airwave field service teams that solved issues as they arose and a similar arrangement could be used going forward.
17. Motorola said that the Home Office had options available in terms of asset transfer in 2016. It could have exercised its option to acquire the assets in 2019 and could still do so. The Home Office could either conduct a full tender and replace Motorola with another supplier, or it could establish a government owned and operated company, with Motorola providing the ongoing support and maintenance. On the proposition that the Home Office was dependent on Motorola's technology, Motorola said that its equipment could be replaced with that of an alternative provider. Motorola noted that, for example, Huawei technology was being replaced with that of Nokia and Ericsson in relation to the Lot 3 agreement.
18. Motorola said it did not consider that there were any issues with the current Airwave contract, although there were challenges around technology obsolescence. Other challenges included the removal by BT of some of its copper products, its Time Division Multiplex solution (or TDM) necessitating the move to IP transmission and the removal by Ofcom of the spectrum that Motorola used for its wireless connection. Motorola believed that the network could, with the furnishing of spare parts and through the regular upgrading of software, operate at least until 2032 at which point the base stations and the central controllers would start to need replacing. Motorola said there was nothing to suggest that the service itself could not continue to 2035.
19. Motorola said that Airwave Solutions Ltd was contractually required now to start the decommissioning process in the coming years.
20. Motorola said it did not believe there was a basis for intervention. It also noted that the Home Office could have activated its termination or asset transfer rights at any time, but believed that the Home Office had chosen not to rely on the

asset transfer provisions in 2016 because it had procured ESN the year before. Motorola said that the fact that the Home Office had chosen not to exercise its options was not a competition failure.

Charge control

21. Motorola said that the proposed charge control, which would result in a drop in revenues of around 45 per cent, was draconian. It expressed concern at the numbers and assumptions used by the CMA, which were set to produce the lowest possible number. Motorola noted that the CMA was proposing to put a mechanism in place which was modelled along the lines of a price control of an ongoing business in a regulated industry, which was not suitable for regulating a business that would come to an end. Motorola considered that the ongoing capex and investment reporting requirements accompanying the CMA's proposed charge control seemed disproportionate, not least because a standard price cap approach would typically provide the right incentives for making investments and maintaining service quality.
22. Motorola noted that the discount levels it had offered the Home Office had never been conditional on relaxation of service levels. A discount would enable Motorola, which was responsible for the service levels and the operation of the network both contractually and reputationally to retain control of its investment decisions.
23. Motorola said that the CMA's approach to its CAPEX forecast exposed Airwave to considerable risk. Airwave Solutions would have significant concerns about committing to additional investment if the CMA or Home Office could, ex-post, disallow expenditure which it considered to be unreasonable. Motorola said it thought that underspend would be reflected in some sort of recovery and that the design of the CMA's charge control, as set out in the Provisional Decision Report (PDR), had not inspired confidence in Motorola that it would be able to recover additional investments that might be needed. Motorola's primary concern was having the ability and control to make the business decisions that were necessary to deliver the service its customers wanted and needed.

Service quality

24. Motorola said it believed that the current arrangements on quality of service had provided an effective means of guarding against the risk of poor service quality to date. However, it said that the proposed charge control introduces a problem that doesn't exist today and would bring challenges as Motorola would lose the flexibility to take appropriate investment decisions where it was running on such thin margins.

25. Motorola said that its recent letter to the Home Office stated that it considered that the provisional remedy was disproportionate. The proposed charge control did not consider the risks associated with running a top-grade public safety network and would also make it difficult to continue to be able to operate the service safely.
26. Motorola said that in the event that the remedy became final, the Home Office would need to consider the termination of the contract and the transfer of the assets. However, Motorola would continue to deliver the current service levels while it provided the service.
27. Motorola thought that there probably was an appropriate discount level which did not put the current service levels at risk, and the two parties could probably reach a reasonable decision as to what that looked like. However, the current provisional remedy was not sustainable for Motorola.

Interworking

28. Motorola explained that the biggest risk factor in relation to an interworking solution was the design of a gateway given that there was currently no MCPPT supplier for ESN. However, Motorola did not envisage that there would be any problems provided that any supplier chosen by the Home Office was 3GPP compliant. Motorola said it had held extensive discussions with the Home Office technical team which was content with Motorola's proposals. As part of the new interworking interface contract (signed in December 2022) Motorola had, in addition to agreeing to deliver the required interface ports to connect the Airwave network to ESN, committed to providing some consultancy days for the new gateway provider and providing access to its reference centre to test the solution.
29. Motorola said it had committed to having its interface up and running by 2023. It said it was difficult to know when the Home Office's interworking solution would be implemented because that would require a gateway solution whose design depends on the MCPPT supplier's solution. Motorola said it would test its interface on installation to ensure it worked as specified. Motorola said it provided a managed service which meant it maintained its interface to ensure that the service performed as agreed. Motorola did not expect the new ESN MCPPT supplier to also provide the gateway, which would be provided by another supplier.
30. The interworking solution would need to operate until the transition to ESN had been completed and all the users had been transitioned from Airwave. At this point the Airwave network would be shut down. Motorola said it was difficult to gauge how long the transition would take because the industry had not been

involved in the migration of 300,000 users moving from one technology to MCPTT. Motorola thought that the Home Office's estimate of two and a half years might be adequate.

31. Motorola told us it had agreed to provide a number of ports by December 2023, which removed any concern that it could delay the transition. Motorola said that the parties had worked very hard together to reach an agreement with which they are both satisfied.