
Proportionate Resolution of a Hypothetical AEC as to Airwave Profitability

This submission is made on behalf of Motorola on the strict understanding that Motorola's position remains that (i) the CMA has no lawful basis to interfere with the fixed price contract freely agreed with the Home Office; (ii) no adverse effect on competition has arisen in relation to the supply by Airwave of its mission-critical services; and (iii) even if, hypothetically, an AEC were found to have arisen, it would be disproportionate for the CMA to impose the proposed charge control remedy.

On that basis, the CMA has invited Motorola to submit, without conceding that an AEC has in fact arisen, how Motorola would propose to resolve any future finding of an AEC in relation to Airwave pricing in a proportionate manner. In view of that invitation, in the hypothetical situation that the CMA found such an AEC, and the CMA were willing to accept such proposal as proportionate, Motorola would be willing to [✂] consistent with the terms set forth below.

Introduction

- (1) It would be disproportionate to impose the proposed charge control on the supply of Airwave. As explained below, an alternative structure is available that would be equally effective and no more onerous than necessary in terms of both the resulting prices for Airwave services and the mechanics of implementation (and the corresponding cost), to ensure the desired outcomes as well as to avoid undesired ones.
- (2) Motorola is acutely aware of the need to effect any reduction in prices in a manner and to a level that does not cause incentive problems that could in principle put the safe operation of the network at risk. This requirement assumes a particular importance as the Airwave network is about to undergo a significant and necessary technology refresh and upgrade programme. Motorola's proposal therefore directly addresses the CMA's key provisional concern, viz. the current level of Airwave pricing, and in a manner that would avoid the creation of new problems and costs.
- (3) After careful consideration, Motorola is confident that its proposal would create no adverse incentive effects and Motorola would be able to operate the Airwave service, as it has always done, on the basis that Motorola will do whatever it takes to ensure the network operates to the necessary mission-critical standards.
- (4) Motorola's proposal also avoids unnecessary implementation and enforcement costs that would be associated with a charge control, while affording the CMA appropriate visibility.

Revised Pricing

- (5) The CMA's proposed charge control would serve to cap Airwave's revenue while Airwave's cost base and investment forecasts would remain the same, to maintain the contracted service levels. Contrary to the CMA's calculations, the proposed charge control would be unsustainable since it would not only fall dramatically short of the average profitability of Motorola's relevant businesses, but would result in the local statutory accounts showing losses. The CMA's proposed charge control would yield a gross margin of [REDACTED]%, resulting in a statutory margin of [REDACTED]% over the period 2023 - 2029.
- (6) Given the competitiveness of the industry, it is reasonable to suppose that a competitive¹ price for the supply of Airwave would be consistent with Motorola's gross margins across its other equivalent managed services operations in Europe.
- (7) Accordingly, to avoid such an obviously unsustainable outcome, and to avoid an unnecessary and potentially dangerous charge control regime, the basis of Motorola's proposal would be to undertake to set Airwave prices for Relevant Services (defined below) **within the range of the returns earned by Motorola across its other equivalent business units**. As further explained below, such proposal would satisfy the requirements of proportionality.
- (8) In recent years, Motorola's Gross Margins earned from Europe Managed Services, being the business unit of which Airwave is a part, (excluding UK) were [REDACTED]% (2019), [REDACTED]% (2020), [REDACTED]% (2021) and [REDACTED]% (2022). For comparison, the financial data collected by [REDACTED] on gross margins across a variety of sectors shows a gross margin of [REDACTED]% for Europe and [REDACTED]% globally for the industry sector [REDACTED].²
- (9) Against the background of this business reality, Motorola would undertake to reduce its prices to a level that yields a gross margin of [REDACTED]% (the "**Revised Prices**"). It will be observed that [REDACTED]% is the lowest Gross Margin earned by Motorola across its Europe Managed Services businesses in the past four years, earned in the year that the CMA theorises a new tender might have been organised if the market had been working well.³
- (10) The Revised Prices would apply going forward, subject to the existing indexation arrangements based on RPI since approximately [REDACTED]% of Airwave's annual costs are subject to RPI adjustment.

¹ Para 8.50 of the PDR states that the CMA's goal is to ensure that the service is "subject to competitive pricing arrangements, or measures to similar effect, by not later than 2029". Motorola's proposal would not require waiting until 2029 to achieve that objective.

² Most recent datasets, updated January 2023. See [REDACTED]

³ For the avoidance of any doubt, Motorola rejects this as a realistic counterfactual given that the Home Office had already carried out its tender on a technology specific basis (LTE), excluding the Land Mobile Radio (Tetra) technology that Airwave provides.

- (11) It will be recognised that the actual margin earned from the Relevant Services in any given year may be higher or lower than [X]%. This is a customary risk which Motorola is accustomed to managing and would be prepared to carry on the terms of this proposal. A fixed price requires Motorola to manage the delivery risk efficiently (under conditions of contract duration uncertainty), while providing customers with the benefit of certainty as to price. This principle is of course currently reflected in the Blue Light Contracts (being the PFI Framework Arrangement Public Safety Radio Communications Service (PSRCS) together with all associated service contracts, the Firelink agreement, the England and Wales Ambulance agreement and the Scottish Ambulance agreements), which the CMA has provisionally found to have worked well during 2000 – 2019. It is therefore proportionate to carry this principle forward.
- (12) The Revised Prices could therefore safely be assumed to operate at a competitive level and not cause undesirable distortions.
- (13) The Revised Prices would amount to a price reduction of the Relevant Services (defined below) of [X]% ([X]) at 2023 prices for the remaining duration of the Blue Light Contracts, subject only to indexation.

Relevant Services

- (14) All users of the Relevant Services (being all Airwave services except software, Ambulance Bundle 2, Interworking and third party catalogue products (i.e. hardware) resold by Motorola) would be provided with a Rate Card showing clearly how a price reduction of [X]% will apply to the service charges provided under their current contract. The Table below illustrates the effect of the price reduction on sample major contracts.

Effect of Proposed Price Reduction on Selected Major Contracts

	Monthly Charge	Discount	Discounted Rate
Core Charges:			
Police	[✂]	[✂]	[✂]
Fire	[✂]	[✂]	[✂]
Ambulance	[✂]	[✂]	[✂]
Menu Services			
Met Police	[✂]	[✂]	[✂]
Amber Light			
Highways Agency	[✂]	[✂]	[✂]
HMRC	[✂]	[✂]	[✂]
<i>Note: all amounts subject to applicable indexation adjustments</i>			

- (15) The Revised Prices would be applied equally to all services that would be covered by the charge control, in line with the view of the Home Office as expressed in its response to the PDR, and this universal price reduction would be on top of existing discounts. The Revised Prices would therefore be a material enhancement of previously agreed discounts for the Blue Light Contracts, which applied to the Airwave core services only.

Service Quality

- (16) Motorola's commitment to performance quality across the Airwave service endures and is a fundamental tenet of this proposal. Accordingly, Motorola [✂].

Term, Termination, and Related Contractual Matters

- (17) Airwave would prepare a binding offer capable of acceptance to amend the Blue Light Contracts to the effect that:
- Motorola would [✂] the Relevant Services at the Revised Prices to all Airwave customers (while the Blue Light Contracts remain in force) until 31 December 2029;
 - to ensure certainty, and in consideration of the implementation of the Revised Prices, [✂];
 - after expiry of the current National Shut Down Target Date (31 December 2026), the Home Office in conjunction with the other Blue Light Customers [✂].
 - In the event of [✂], Airwave would [✂], consistent with the operation of the CMA's proposed charge control.

Information

- (18) Airwave would provide to the CMA:
- (a) A copy of the Rate Card covering all customers on an annual basis;
 - (b) A copy of relevant Airwave accounting information to allow the CMA to verify compliance by Airwave with the Rate Card; and
 - (c) such other information as the CMA may reasonably require for the purpose of ascertaining that [REDACTED] are being carried out.

[REDACTED]

- (19) [REDACTED]

Duration [REDACTED]

- (20) [REDACTED] would remain in force until [REDACTED] by the CMA, upon earlier termination of the Blue Light Contracts or 31 December 2029.

Final Comments

- (21) If the CMA would be minded to accept [REDACTED] according to the principles set forth above, Motorola would [REDACTED].
- (22) Consistent with the CMA's comments at the 10 January 2023 Hearing (as well as subsequent correspondence), Motorola does not regard the CMA's invitation to make a proposal as an invitation to negotiate, and Motorola has prepared this proposal on such basis. At the same time, Motorola recognises that there may be topics which the CMA would like Motorola to further consider or to address, within the framework of such proposal. Motorola is ready to discuss any such topics.