



**MOTOROLA SOLUTIONS**

**Mobile Radio Network Services Market Investigation**

*Post Hearing Submission*

13 February 2023

- (1) In the 10 January 2023 response hearing (the “**Hearing**”) the CMA stated, in response to Motorola’s suggestion that the CMA should require a new technology neutral tender as a proportionate remedy:

*“That, with respect, is going well beyond an intervention into a market that appears not to be working the way that it ought to.”<sup>1</sup>*

- (2) Motorola is concerned that the Group is misdirecting itself as to the extent, and appropriate use, of its legal powers to resolve any putative issue in a hypothetical manner. Motorola respectfully reminds the Group that the CMA has previously imposed competitive tenders as a remedy. For example, the Statutory Audit Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014 (the “**Order**”) essentially makes it unlawful to enter into an audit contract within the scope of the Order unless a competitive tender has been carried out.

- (3) It is obvious that a competitive tender process can and should be imposed in this market, if an AEC were to be found. In the Hearing the CMA posed the question:

*“retendering something to come into effect in 2026 that has a shelf life that runs out in 2032 is not really a practical solution, is it?”<sup>2</sup>*

- (4) Motorola strongly disagrees with the premise of the question. As far as Motorola is aware, the year 2032 has no market or technology relevance – it is simply a year plucked out of the air by the Home Office and the CMA. Motorola reminds the CMA that other countries are expecting their LMR requirements to run well beyond 2032. Second, the CMA modelled profitability for a six year period, assuming that a well-functioning market would have allowed a competitive tender for the Airwave service for the same period.

- (5) The point is simply that the CMA does not need to, and should not, impose a charge control.

- (6) Where, as is the case here, a competitive tender could easily be imposed as a suitable remedy, it would be a gross misuse of the CMA’s powers to refuse to require such tender process and instead impose a charge control, with the extreme outcome of denying competitors the opportunity to compete for the market while setting a price as if the CMA runs a command-and-control economy.

- (7) The CMA’s proposed charge control remedy, through setting an opening value of the RAB, would groundlessly replace the determination of the fair market value of Airwave’s assets that would occur through a competitive tender process, with the CMA’s view that the assets should be valued at net resale value. The CMA’s logic is also internally inconsistent since the CMA provisionally says that in a well-functioning market the assets would have transferred to the Home Office. In such circumstance, the assets would obviously have transferred at the market rate, not at scrap value. As Motorola has repeatedly pointed out, the CMA’s implied assumption that fair market value is equal to the scrap value of Airwave’s assets is just not realistic.

- (8) The CMA is once again reminded that competition for this market has previously worked well. In the circumstances, and quite aside from the absurdity of the Airwave asset value chosen by the CMA, the CMA is not entitled to impose its subjective view about the value of Airwave’s assets in 2020 where the CMA has not shown that a tender cannot be expected to work well

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<sup>1</sup> Hearing transcript, page 36, lines 14-15.

<sup>2</sup> Hearing transcript, page 33, lines 19-21.

for the future. This is especially the case where (i) the CMA's proposed charge control remedy crucially depends on a subjective selection of the value of Airwave's assets in 2020 that is completely at odds with the economics of what the parties had freely agreed would happen after 2020, and (ii) a competitive tender would establish this value in accordance with market principles and the contractual provisions.

- (9) In prior market investigations the CMA has respected ongoing contracts and made arrangements for future competition, and the CMA should do the same here. In market investigations that have concluded with significant market-wide remedies, transitional periods have been settled so as to allow companies time to make necessary arrangements. Consistent with the CMA's practice, in this case the existing Airwave contract should run until the Home Office conducts a competitive tender, unless the Home Office prefers to come to an alternative arrangement with Airwave.
- (10) Whether or not the CMA agrees with Motorola's view that ESN represents a procurement failure and not a competition failure, there is no hiding from the fact that the CMA has wrongly failed to explore properly the reasons why ESN has failed, to inform the decision of whether the relevant market really does need to be treated as if it is not working well and cannot now be competed for.
- (11) Commenting on the ESN programme, Sarah Jones MP (Shadow Minister for Policing and the Fire Service), during a parliamentary debate on 8 February 2023 on police funding:
- "The Minister is asking forces to save £100 million and he is investing in IT capabilities, but let us look at the emergency services network programme: £5.1 billion of taxpayers' money has been wasted on that botched Home Office project. That is nearly a third of the overall police budget and it is close to the entire precept allocation for this year, if every force uses it in full. How about some efficiency savings from this Minister for the emergency services network project? It is an unthinkable waste of money, and it is incredibly grating for struggling households to know that higher council tax bills might have been avoided if Ministers had not catastrophically messed up the network"*<sup>3</sup>
- (12) If the Group finds, after appropriate investigation, that the relevant market is not currently working well, the Group is respectfully invited to allow competition to function.

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<sup>3</sup> <https://hansard.parliament.uk/commons/2023-02-08/debates/F6C78A50-3D97-4A03-8207-CA9F9EB6DD8A/PoliceGrantReport>