

Peter Baker
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ
United Kingdom

20 March 2023

Dear Mr Baker,

PROPOSED MERGER OF INMARSAT AND VIASAT (THE “MERGER”)

1. We write further to the provisional Phase 2 decision of the CMA regarding the Merger and the provisional finding that it would not result in a substantial lessening of competition in the market for the provision of IFC for commercial aviation (referenced below as the “**Decision**”).

Our concerns that the Merger will result in a substantial lessening of competition

2. [X] serious concerns that the Merger will result in a substantial lessening in competition (SLC) in the market for the provision of in-flight connectivity (IFC) to airline customers [X].
3. In summary, we do not believe there are any current viable competitors to Viasat and Inmarsat for the supply of IFC [X].
4. This means that in the short-term (approximately the next 3 years) at least, there will be no competitor to a combined Viasat/Inmarsat in any tender for IFC [X] for either line-fit or retro-fit. This lack of competition for the provision of such services means that the merger will result in a SLC.
5. [X] is very concerned therefore that, for its pipeline of upcoming IFC [X] tenders [X], the merged Viasat/Inmarsat will be the only viable provider and, as such, Viasat/Inmarsat will be incentivised both to inflate its prices for both the fitting and servicing of its IFC product and to reduce its quality of service.
6. As a result we believe the Merger will have detrimental impacts on consumers (i.e. airline passengers) who will be impacted by either (i) airlines needing to pass through higher costs than may otherwise have been negotiated in a competitive tender process, or (ii) airlines choosing not to fit IFC [X] resulting in a suboptimal product and flying experience. Further, if airlines are forced to wait for the market to regain any competitiveness before installing IFC products, then this also weakens their own commercial product propositions,

reduces customer choice, and distorts competition with other airlines already having IFC fitted on their aircraft.

Our concerns that the potential entry of Starlink will not be timely, likely, and sufficient to act as a constraint on the SLC resulting from the Merger

7. The Decision that the Merger will not result in a SLC is we understand due in large part to the potential entrance of Starlink into the UK market for the provision of IFC to commercial aviation customers.
8. We have very serious doubts that the potential entry of Starlink will be timely, likely, and sufficient to prevent the Merger causing a SLC in the near term (approximately the next 3 years) which will have repercussions for further years to come given that IFC services, once contracted for, tend to be retained for a period of at least 10-15 years given the time to complete installations as we receive new aircraft deliveries as well as the costs of installation and switching. Those concerns are detailed further below.
9. As the potential entry of Starlink is heavily relied upon in the Decision we have kept our comments to those issues, but should the CMA need input on any other aspect please let us know.

Our concerns regarding any entry by Starlink not being timely, likely, and sufficient to impact the SLC the Merger would have on tenders [REDACTED]

10. Our concerns of a SLC are particularly acute in the shorter term, given that we have the following IFC tenders planned [REDACTED] which will conclude with binding contracts [REDACTED]:
 - a. [REDACTED].
11. The outcome of those tenders will have a longer term impact on our business and consumers as once awarded the IFC solution selected will likely be in operation for a period of 10 years or more from completion of the installation across the relevant fleet (so a period of 15 years or more given the timings of contracted aircraft deliveries). Migrating to a new solution is unlikely to occur in a shorter timeframe given the significant investment in equipment involved and the need to align with scheduled heavy maintenance to avoid having to ground aircraft.

Starlink is targeting the business aviation market not the commercial aviation market

12. The Starlink announcements in October 2022 relate to IFC for business aviation (i.e. private jets) and not to commercial aviation as was reflected in

news stories at the time - given the consistency of the reference to private jets in the media at the time it seems likely that reflects the content of a Starlink press release or media briefing provided by Starlink.

13. Despite assertions in the Viasat/Inmarsat submissions that the launch was for both commercial and business aviation it is notable that some of the stories stating the launch was for private jets/business aviation are referenced in their submissions to the CMA for example:
<https://www.reuters.com/technology/spacex-rolls-out-starlink-internet-service-private-jets-2022-10-19/> and <https://www.evaint.com/spacex-rolls-out-starlink-aviation-product-for-satellite-internet-to-private-jets/>
14. We are aware from the Decision and public information of the outcome of tenders by AirBaltic and Hawaiian Air resulting in the award of commercial aviation business to Starlink.
15. However we do not consider those are evidence that Starlink has entered, or will enter, into the UK market for commercial aviation in a way that is likely, sufficient and timely to prevent the Merger causing a SLC in that market given that (a) Starlink has not obtained Supplemental Type Certificates (STCs) or line fit capability for commercial aviation and (b) Starlink is not offering a viable service for commercial aviation for customers in the market [X] as explained below.

Starlink antennae has not been confirmed as being suitable for use on relevant aircraft

16. It is unclear if the antennae developed by Starlink is suitable for use on larger aircraft – deployment to date has been on smaller regional aircraft only. That is a potential issue both in terms of the installation and the throughput (given the much higher passenger numbers on larger aircraft).
17. [X] the process for developing antennae is not straightforward. [X].

Starlink has not obtained the STCs to install the equipment on aircraft

18. We are aware from the information published by Starlink on its website as referenced in the Decision that it has stated plans to obtain STCs for a wide number of aircraft. The timings of it obtaining the STCs remain unstated and unclear.
19. [X] delays are likely as regards that process and that seems to be equally the case for Starlink as it seeks those STCs. [X], it has taken at least one year for other providers to obtain STCs.

Starlink has not obtained line fit capability to install the equipment on aircraft

20. Starlink has not obtained authorisation for line fit capability with any large civil aircraft, which is a process that takes significantly longer than the process to obtain STCs. [X] this process takes at least two years. [X].

Starlink's RFP response raises commercial issues

21. [X] sought (Exhibit 1) and received (Exhibit 2) an RFP submission from Starlink [X]. They did not engage in the process in the way requested and their submission was described by Starlink as being "*our standard RFP response*". [X] informed Starlink of the outcome of the RFP in [X] (Exhibit 3).
22. [X] requested a further proposal (Exhibit 4) from Starlink in [X] and the Starlink response (Exhibit 5) dated [X] was to state that "*At this time, our responses from the previous RFP are still valid.*" We have [X] (Exhibit 6).
23. We understand those responses as being reflective of Starlink approach to the provision of IFC to commercial airlines being 'take it or leave it' as regards the basis on which it will provide IFC to commercial airlines.
24. Based on Starlink's RFP response, we have serious concerns that, even if they were to enter the market for commercial aviation, their commercial model would not be acceptable to many airlines, [X], such that they would not present a competitive choice sufficient to prevent the Merger causing a SLC. These reasons are set out below.

Starlink's solution requires that it is provided to passengers for free and not via any portal

25. The Starlink proposal is on the basis that IFC is provided to passengers without any portal and without any requirement to pay for the service. That restriction is reflected in the [X].
26. The impact of those restrictions is to prevent airlines both from generating revenues from sales of the IFC service to passengers, and from creating other revenue generating opportunities (such as advertising).
27. [X].
28. The prohibition on the provision of a [X].
29. Moving to a fully free service is not commercially viable at this time given the costs of equipment and the data costs, especially after the financial impacts of the pandemic on our sector, [X].

30. This is further exacerbated by the fact that Starlink's costs proposals based on its subscription model are [REDACTED]. These commercial costs are [REDACTED] than for other providers providing IFC [REDACTED].

31. We believe many other commercial airlines will also be similarly impacted.

Starlink provides no service level agreement (SLA)

32. [REDACTED].

33. Given the need to provide a reliable service to customers a proposal without any SLA commitments is [REDACTED].

34. Again, we believe many other commercial airlines would also be similarly impacted by a lack of SLA.

Starlink provides no assurance about its obtaining STCs and other government authorisations required

35. [REDACTED]."

36. [REDACTED].

37. As referenced at paragraph 18 above, it is clear that Starlink does not hold the STC and all other necessary authorisations and it does not have a clear and committed timescale to do so.

38. [REDACTED] IFC providers underestimate the complexity and time to obtain the necessary approvals for their activities from the communications regulators and from the civil aviation authorities that are required. On average we believe such applications take between one to two years.

39. The uncertainty about the delivery of the solution at all and if delivered the timelines means that the Starlink proposal [REDACTED].

40. We believe the same would be true for many other commercial airlines.

Starlink allows itself a [REDACTED]

41. The Starlink proposal provides they can [REDACTED].

42. Given the cost and operational complexity of having equipment installed and the need to provide a reliable service to customers the risk that Starlink could [REDACTED] means the Starlink proposal [REDACTED].

43. We believe the same would be true for many other commercial airlines.

Further engagement on the issues raised on this letter

44. We would welcome any further engagement on the issues raised in this letter that the CMA requires to support its review of the Decision.
45. We believe the issues raised may be capable of being addressed through remedies and would welcome the opportunity to provide further input on the format of those remedies if and when appropriate.