

Response to provisional findings in CMA Viasat / Inmarsat merger inquiry

We hereby submit Company C's response to the CMA's provisional findings.

[X] Yet, Company C believes they are not properly addressed in the published provisional findings.

1. WHOLESALE ACCESS TO CAPACITY

We believe the CMA neglected the merging parties' significant market power at the wholesale satellite capacity level, even though the CMA notes itself in point 7.5 of the provisional findings that "*Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at a wholesale level or retail level (or both) and is not limited to end consumers.*"

The risk of these unilateral effects in that scenario would materialize would the CMA fail to block the merger or unconditionally clear the merger. The CMA notes in point 8.6 that it will only assess the IFC market because the merging parties' activities do not materially overlap at wholesale level. This assessment falls short of fully recognizing the ability and incentive of the merged entity to foreclose access to the upstream market.

Today, Viasat does not allow wholesale access to their capacity, while Inmarsat does (as do Intelsat, SES, Eutelsat, Telesat, Hispasat). Since the merged company will be, by far, the largest owner of Ka capacity, restricting access to that capacity will harm service providers, airlines, cruise lines and passengers.

1. Company C believes that the merger will remove a major source of Ka satellite capacity for service providers by allowing Viasat/Inmarsat to discontinue the Inmarsat wholesale channel.
2. Company C asserts that Viasat/Inmarsat should be mandated to retain the wholesale model or, even better, expand that model to include Viasat as well as Inmarsat in that access.
3. In order to ensure a good-faith enforcement of this wholesale-access-requirement, Company C asserts that reasonable guardrails be applied to the merged entity, to discourage unfair practices, such as Viasat/Inmarsat effectively eliminating the wholesale product, by methods such as substantially greater than market pricing or onerous technical or commercial requirements for its prospective customers.

We therefore request the CMA to review its preliminary position and either block the merger on that basis or at least put in place adequate remedies which will ensure continued access to wholesale capacity, as outlined above. Failing that Company C could be left with no choice but to challenge any restriction of access to capacity in future.

2. ABILITY FOR COMPETITORS TO PLACE SATELLITES IN ORBIT

The CMA fails entirely to address the previously highlighted concern of orbital slots in the provisional findings. It appears that this omission is another consequence of the CMA's unreasonably limited focus only on the market for IFC provision, thereby largely ignoring the upstream market for satellite network operation. Yet, orbital slots are a finite and essential resource for satellite operators to which access is at risk of being foreclosed which in turn would have detrimental knock-on effects for IFC providers and consumers.

Despite the current dynamics towards low-earth orbit/non-geostationary satellites outlined in the provisional findings, geostationary satellite capacity will remain a large contributor to the source of satellite capacity for the coming decade or longer.

The merged company will control more prime orbital slot real estate, for future Ka band geostationary satellites, than any other entity, damaging service providers and other satellite operators' access to the precious resource for the foreseeable future. As a consequence the CMA should either block the merger or at least impose the following remedies on the merged company:

1. Relinquish orbital slot grants and re-bid for their access, on a level playing field with competitors; or
2. Make the merged company's owned/controlled high-value orbital slots, over the highest usage areas (such as those over EMEA from 15W to 100E and Americas from 50W to 130W) available to other operators and service providers via commercial arrangement (leasing or selling).

We again request the CMA to take these aspects and proposals into consideration when making a final decision.