
**ANTICIPATED ACQUISITION BY VIASAT INC. OF INMARSAT GROUP
HOLDINGS LIMITED VIA CONNECT TOPCO LIMITED**

CMA PROVISIONAL FINDINGS REPORT

RESPONSE OF COMPANY D

21 MARCH 2023

This response to the Provisional Findings Report is provided by COMPANY D, hereinafter referred to as “**COMPANY D**” or “**COMPANY D**”. This response contains business secrets, the disclosure of which would cause material harm to COMPANY D.

I. Introduction

- (1) COMPANY D welcomes the opportunity to comment on the Provisional Findings of 1 March 2023 (“**PFs**”), concerning the proposed Viasat/Inmarsat transaction (the “**Transaction**”).
- (2) COMPANY D has committed significant resource to assisting the Competition and Markets Authority (“**CMA**”) (as well as the European Commission and U.S. Department of Justice) with its review of the Transaction and it is committed to continuing to assist the CMA if the CMA would find that helpful.
- (3) For current purposes, however, COMPANY D only has access to the public version of the PFs, and to the information that COMPANY D itself has provided to the CMA. The CMA, of course, based on the fuller evidence before it, is best placed to determine whether the combination of Viasat and Inmarsat will or will not bring about a substantial lessening of competition (“**SLC**”) in the UK. For the avoidance of doubt, and consistent with its submissions earlier in the CMA’s investigation, COMPANY D does not have a position on whether or not the Transaction will lead to an SLC in the UK.

II. Context

- (4) [✂].
- (5) As the CMA is aware, [✂].

III. The PFs’ findings on the Parties

- (6) The CMA’s Phase I decision concluded that Viasat and Inmarsat (“**Parties**”): “*are currently the strongest IFC providers available to airlines.*”¹
- (7) This conclusion in the Phase I decision appears to be supported by the evidence assessed in Phase I and set out in the PFs. The most notable sources of evidence are the bid data and the airline customer feedback.²
- (8) The bid data examined by the CMA in Phase I and set out in the PFs (and its Appendices) reveals that:

a. The Parties are the strongest two players in the IFC sector

- i. *First*, the Parties participate in the highest amount of tenders.

¹ See the Decision on relevant merger situation and substantial lessening of competition dated 6 October 2022, para. 13.

² The CMA also has evidence from the Parties’ internal documents, but the references to such documents are heavily redacted, so COMPANY D cannot comment meaningfully on the evidence set out in such documents.

1. Inmarsat was invited to bid on *all* 13 tenders considered “in scope” of the CMA’s final tender sample (“**Final Tender Sample**”) and submitted bids in 12 tenders.³
 2. The data from the wider sample of 24 tenders (“**Additional Tender Sample**”) set out in Tables 8-10 of Appendix E to the PFs shows that:
 1. Inmarsat was the only supplier invited to bid on *all* 24 tenders; and
 2. Viasat (invited to bid on 19 out of 24 tenders) was the second most-invited.⁴
- ii. *Second*, the Parties account for the significant majority of tender wins.
1. In the Final Tender Sample, Viasat won 46% of the tenders, and Inmarsat won 31%, for a combined win share of 77%.⁵
 2. In the Additional Tender Sample, Viasat won 46% of the tenders, and Inmarsat 21%, for a combined win share of 67%.⁶
- b. The Parties are each other’s closest competitors in the IFC sector and there is a significant overlap in their bidding activity
- i. In the Final Tender Sample, Inmarsat was the *only* supplier that was invited to bid on 100% of the tenders on which Viasat was invited to bid.⁷
 - ii. The overlap data in the Additional Tender Sample also show that the Parties commonly bid on the same tenders. Inmarsat was the *only* party invited to bid on 100% of the tenders on which Viasat was invited to bid. Inmarsat also *submitted* bids in 94% of the tenders on which Viasat submitted a bid.⁸
 - iii. In addition, Inmarsat was reported as being the runner-up in 60% of the tenders won by Viasat (and for which the runner-up information was available). Similarly, Viasat was the runner-up in 50% of tenders

³ See the Provisional Findings Report, Table 6.

⁴ See the Provisional Findings Report, Annex E, Table 9.

⁵ See the Provisional Findings Report, Table 6.

⁶ See the Provisional Findings Report, Annex E, Table 9.

⁷ See the Provisional Findings Report, Table 7.

⁸ See the Provisional Findings Report, Annex E, Table 10.

won by Inmarsat (and for which the runner-up information was available).⁹

- (9) In short, the bid data appear clear: the Parties are – by some distance – the strongest two players in the IFC sector, and they are each other’s closest competitors.
- (10) The feedback from airline customers is also clear on the strength of the Parties’ offerings.
 - a. Both Viasat and Inmarsat “were rated strong or very strong by all but one of the respondents [i.e., airlines] (17 of 18) who rated them”.¹⁰
 - b. The PFs do not reveal how many airline customers considered Viasat and Inmarsat to be “very strong” as opposed to just “strong” but [X] COMPANY D would be surprised given the other evidence in the PFs if the airline feedback did not reveal that the Parties were rated “very strong” by more airlines than rated COMPANY D or others to be “very strong”.
- (11) As such, the key evidence – from customers and from the bid data – appears to show that the Parties are the strongest players in the IFC sector and that they are each other’s closest competitors.
- (12) The PFs nonetheless suggest that the CMA is proposing to clear the Viasat-Inmarsat transaction. The PFs come to this finding in large part because they consider that the merged entity will face sufficient competition from other players in the sector, most notably Panasonic, Intelsat and Starlink.

IV. The PFs’ findings on COMPANY D and other IFC providers

- (13) Panasonic and Intelsat is each described in the PFs as being likely to be a “*significant constraint on the Merged Entity in the next few years*”.¹¹ The PFs also find “*that Starlink would likely become a significant constraint on the Merged Entity in the next few years.*”¹²
- (14) COMPANY D largely agrees with the direction of the PFs in relation to Starlink. As provisionally concluded in the PFs, as a vertically-integrated supplier of IFC, Starlink is already a strong competitor in the IFC sector and its position is only expected to strengthen in the years to come. This is primarily due to Starlink’s:
 - a. plans to significantly expand its base of ISL-enabled satellites, which will further improve the (already high) quality of its IFC service;
 - b. strategy to improve LEO-backed solutions in order to be able to serve areas of high demand (*i.e.*, airport hubs and congested flight zones) and offer global coverage;

⁹ See the Provisional Findings Report, paras. 9.137 (a) and (b).

¹⁰ See the Provisional Findings Report, para. 9.259.

¹¹ See the Provisional Findings Report, paras. 30 and 35.

¹² See the Provisional Findings Report, para. 47.

- c. in-house launch capabilities as a division of COMPANY De X; and
 - d. significant access to financing.
- (15) Insofar as concerns COMPANY D itself, the findings in the PFs are very different to the statements in the Phase I decision. [REDACTED],¹³ [REDACTED],¹⁴ [REDACTED]:
- a. [REDACTED],¹⁵ [REDACTED];
 - b. [REDACTED];¹⁶
 - c. [REDACTED]; and
 - d. [REDACTED].¹⁷
- (16) The PFs seem to rely to a significant extent on the agreement that COMPANY D announced with OneWeb in October 2022.¹⁸ COMPANY D is of course hopeful that its agreement with OneWeb will improve its position in the IFC sector. [REDACTED].
- (17) It is not clear to COMPANY D how much of the PFs in relation to COMPANY D are premised on what might flow from the October 2022 agreement with Oneweb, [REDACTED].
- (18) Indeed, as above, in order to ensure [REDACTED].
- (19) On the basis of the evidence set out in the PFs, and provided to the CMA by COMPANY D, [REDACTED].

V. Closing remarks

- (20) Of course, as above, COMPANY D only has access to the public version of the PFs, and to the information that it itself has provided to the CMA. The CMA, based on the fuller evidence before it, is best placed to determine whether the combination of Viasat and Inmarsat will or will not bring about an SLC in the UK, and consistent with its submissions earlier in the CMA's investigation, COMPANY D does not have a position on whether or not the Transaction will lead to an SLC in the UK. [REDACTED].
- (21) [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ See the Provisional Findings Report, [REDACTED].

¹⁶ See the Provisional Findings Report, [REDACTED].

¹⁷ *Ibid.*

¹⁸ See, for example, the Provisional Findings Report, paras. 9.382–9.383 and 9.387–9.388.