



Home Office

CMA consultation on mobile radio network services market investigation draft order (the Consultation)

Home Office early response submission

Introduction

1. The Home Office welcomes the CMA's Final Report¹ and its well-reasoned decision to correct or mitigate the adverse effects on competition and impose a charge control, saving the Home Office and Great Britain's emergency services and, ultimately, UK taxpayers a significant amount of money.²
2. The Home Office is also grateful for the opportunity to review and comment on the Draft Order before it is finalised. The Home Office is currently reviewing the Draft Order in detail and will submit a full response to the Consultation setting out all of its observations before the deadline on 16 June 2023.³ In the meantime, the Home Office would like to ask the CMA for clarification on a number of matters and highlight a few potential inconsistencies between the Final Report and / or the Draft Order and / or the materials accompanying the Draft Order. If possible, and to the extent that the CMA considers this necessary or prudent to ensure all responses to the Consultation can be as full and informed as possible, the Home Office would be grateful for clarification from the CMA on these points ahead of the deadline on 16 June 2023, so that the Home Office may accurately reflect the correct position in its substantive response to the CMA's consultation.
3. The queries on which the Home Office is looking for clarity from the CMA are in relation to the following matters:
 - a. the scope of the charge control;

¹ CMA, Mobile radio network services, Final Report, 5 April 2023, published 13 April 2023: [Final report \(publishing.service.gov.uk\)](#), [Appendices \(publishing.service.gov.uk\)](#) and [Glossary \(publishing.service.gov.uk\)](#).

² The Home Office does, however, observe that, in the exercise of its discretion, the CMA has made a number of valuable concessions in Motorola's favour between its preliminary findings in the Provisional Decision Report and the CMA's Final Report, which the Home Office estimates amount to approximately £260 million over the life of the control (once indexation has been taken into account).

³ In addition to the Draft Order, the Home Office is reviewing, and intends to respond to, the accompanying consultation documents: the 'Draft explanatory note', the 'Charge control model for Order – Draft' and the 'Notice of intention and public consultation'.

- b. the CMA's guidance on the level of the charges for the Other Menu Services;
- c. the WACC estimate in the Final Report;
- d. indexation of the depreciation allowance; and
- e. a formula in the Charge control model.

We discuss these in turn below.

The scope of the charge control

- 4. The Home Office's understanding of the CMA's intention as expressed in the Final Report is that:
 - a. the revenue cap will cover the revenue earned from all goods and services provided by all of Airwave Solutions' business lines, to all customers, save only for those business lines and goods and services that are specifically excluded and listed in paragraph 8.20(b) of the Final Report;
 - b. the focus of the charge control is on Core Services and Police Menu Services; and
 - c. the charging arrangements for services forming the Other Menu Services will not be affected by the charge control remedy, as these services are affected by volumes; but
 - d. the revenues for these Other Menu Services will nonetheless be estimated for the purpose of assessing the maximum level of revenue that would be recoverable each year based on a 2022 revenue estimate, uplifted each year of the control by an indexation factor being the weighted average of the percentage increase to the level of charges for Other Menu Services between 2022 and each year of the control⁴; and
 - e. this would have the effect, should Airwave increase the actual charges for Other Menu Services, of increasing the weighted average described in (d), thus reducing the allowable revenue for Core Services and Police Menu Services, thereby creating an indirect constraint on the Other Menu Services' charges, even if these charges are not themselves capped, i.e. the mechanism restrains Airwave Solutions from seeking to recoup its lost profit on Core Services and Police Menu Services, from the Other Menu Services; but

⁴ The Home Office notes that the CMA's position has altered slightly from that set out in the Final Report, Appendix K, paragraph 67(b), in that the CMA had previously indicated the increase would be related to the allowable contractual inflation adjustment for the charges for the services concerned.

- f. the methodology avoids any unintended consequences of directly controlling the charges for Other Menu Services.⁵
5. However, Specified Goods and Services, the allowed revenue for which is restricted under the charge control, are defined in the Draft Order as follows:

*'[...] the goods and services provided by all the business lines of Airwave Solutions to the police, fire and rescue, and ambulance services (or any of them) pursuant to all or any of the PFI Agreement, the Police Service Contracts, the Ambulance and Scottish Ambulance Contracts and the Firelink Project Agreement (in each case as amended), with the exception of: [...].'*⁶
6. This definition suggests to the Home Office that:
 - a. the charge control's effect is limited to the goods and services provided by Airwave Solutions, by its business lines, to the three blue-light emergency services only, and only under the contracts listed within the definition (which is a significant change from the CMA's stated intention in paragraph 8.20(b) of the Final Report); and
 - b. any other goods and services and any other customers are removed from the scope of the control, whether direct or indirect, including the Home Office.
7. As the CMA will be aware, in addition to the police, fire and rescue and ambulance services, there is a long list of emergency service organisations that have been approved by Ofcom to access the Airwave network and its services.⁷ These organisations are associated with the police, fire and rescue, and ambulance services, but are independent from these services and many have their own contracts with Airwave Solutions beyond the contracts listed in the draft definition of Specified Goods and Services. These organisations suffer the same (if not greater) asymmetry of bargaining power and information as the police, fire and rescue, and ambulance services, and it is the Home Office's understanding that the CMA's financial analysis of Airwave Solutions that found supernormal profits included the costs and revenues associated with all services provided, including to these organisations. Nevertheless, the Home Office's interpretation of the definition outlined above is that the effect of the charge control does not extend to these organisations.
8. The Home Office therefore requests that the CMA clarify the scope of the charge control (including, to the extent necessary, the addition of clarificatory wording in the Draft Order). In particular, the Home Office asks the CMA to confirm that its intention is that the definition of Specified Goods and Services covers services provided to all contracted users of the Airwave network,⁸

⁵ See Final Report, Appendix K, paragraph 65.

⁶ Draft Order, Article 2.1.

⁷ See Ofcom (2023), '[List of Sharer Organisations \(Updated February 2023\)](#)', and for the process of approval, see: Ofcom '[Airwave Sharers List Process](#)'.

⁸ With the exception of those that have been specifically excluded in (a) to (e) of the definition of Specified Goods and Services.

including all Sharer Organisations, and that the contracts listed in the definition are not intended to be exhaustive.

9. Assuming that the CMA did not intend to limit the scope of the charge control as described above, ideally, the definition of Specified Goods and Services in the Draft Order would be amended; the Home Office's suggested amendments are as follows:

*“**Specified Goods and Services** means the goods and services provided by all the business lines of Airwave Solutions to ~~the police, fire and rescue, and ambulance services (or any of them)~~ **any and all of Airwave Solutions' customers, current or future** pursuant to ~~all or any of the PFI Agreement, the Police Service Contracts, the Ambulance and Scottish Ambulance Contracts and the Firelink Project Agreement (in each case as amended)~~, with the exception of:*

- (a) goods or services currently provided pursuant to Ambulance Bundle 2;*
- (b) goods or services currently provided, or goods or services provided in future, by the Pronto business line;*
- (c) goods or services currently provided, or goods or services provided in future, by the Command Central Control Room Solution (CCCRS) business line;*
- (d) radio terminals (except where part of a managed service); and*
- (e) services that are associated with the development and provision of any interface solution required for interworking and provided under the Interface Agreement.”*

10. Further, if (contrary to the Home Office's understanding of the CMA's Final Report) it is the CMA's intention to limit the scope of the charge control to just those Airwave network services supplied to the three emergency services, under the listed contracts, the definition as currently drafted does not include reference to the Home Office, nor the Department of Health or the Scottish Government, which are the organisations that contract with Airwave for the provision of certain services and which are responsible for payment for these services. The Home Office would therefore suggest the CMA consider the addition of some clarificatory wording to ensure that services provided to these organisations (for the benefit of the emergency services) are covered; for example, the addition of the words shown in red text:

*“[...] the goods and services provided by all the business lines of Airwave Solutions to the police, fire and rescue, and ambulance services (or any of them **and which, for the avoidance of doubt, includes goods and services provided to the Home Office, Department of Health and or the Scottish Government on behalf of any of the police, fire and rescue, and ambulance services**)[...]”.*

The charges and estimated revenue for the Other Menu Services

11. In relation to Other Menu Services, the Draft Order explains that the estimated revenue from Other Menu Services (ER(MO)t) would be based on the 2022

actual level of such revenue⁹ and an indexation factor (IF(MO)_t).¹⁰ The Home Office would appreciate the CMA's confirmation that the principle applies only to the estimated revenue from Other Menu Services, i.e. it is not related to the actual charges that Airwave Solutions can set for Other Menu Services.

12. Related to this, the Home Office requests that the CMA confirm whether the indexation factor calculation, i.e. the reasonable estimate of the percentage increases that Airwave Solutions has applied to the level of charges for Other Menu Services between 2022 and year *t*, is limited to increases in charges only, and therefore will not be impacted by increases in volumes. Clarification is also requested as to whether the term "charges" refers to total charges or charges per unit.
13. The Home Office also considers that it is currently unclear in the Draft Order as to how the indexation factor (IF(MO)_t) is to be calculated. The Home Office suggests that some clarificatory wording is provided, for example explaining how the "reasonable estimate" is to be determined or, alternatively and if necessary, that a formula for this calculation is added to the Draft Order.
14. Finally, the Draft Order does not specify how the actual charges for the Other Menu Services are to be set by Airwave and whether they are restricted in any way. The Home Office acknowledges that the explanatory note specifies that the charge for the Other Menu Services will continue to be subject to existing contractual arrangements,¹¹ and would appreciate clarity from the CMA on whether Airwave are restricted in setting new charges if existing contracts expire.

Indexation of the depreciation allowance

15. According to the Draft Order, no inflation indexation is applied to the depreciation component of the allowed revenue (DEP_t).¹² However, there is a note in the Charge control model for Order that suggests otherwise. In particular, cell L10 in tab 'Updated_values_after_indexation' states 'CPI Indexation from 2023'.
16. The Home Office kindly asks the CMA to confirm whether its intention is to index the depreciation component of the allowed revenue by CPI or not?

The WACC estimate in the Final Report

17. The Final Report specifies a CPI-real pre-tax WACC estimate of 6.1% (being the upper end of the real pre-tax WACC range).¹³ However, as set out in the following table, the Home Office estimates that using the CMA's individual

⁹ £[>]million, see draft Order, Schedule 1, paragraph 5.

¹⁰ Draft Order, Schedule 1, paragraph 5 and the Draft explanatory note, para. 51 (b).

¹¹ Explanatory note, para. 12.

¹² Draft Order, Schedule 1, paragraph 6. Please note that 'Allowed Revenue' is capitalised as if it is a defined term within the Draft Order, but there does not appear to be an accompanying definition for this term. The CMA may therefore wish to consider making this term lowercase.

¹³ Which will be updated prior to publication of the Final Order using index-linked gilt yields for the period from 1 December 2022 to 31 May 2023. See Draft Order, Schedule 1, paragraph 1, footnote 1.

WACC parameters specified in the Final Report, the WACC should be 5.9%. The Home Office therefore asks the CMA to check its estimate of 6.1% is correct?

Parameter	Formula ¹	CMA Final Report ²	Reconciliation
Risk-free rate (CPI-real)	A	0.7%	0.7%
Equity beta	B	0.55	0.55
TMR	C	7.50%	7.50%
CPI inflaiton	D	3%	3%
Gearing	E	0%	0%
Tax rate	F	25%	25%
Ke post-tax (CPI-real)	$G = A+B*(C-A)$	n/a	4.4% ⁴
Ke pre-tax (CPI-real)	$H = G/(1-F)$	n/a	5.9% ⁴
WACC pre-tax (CPI-real)	$I = Kd \text{ pre-tax} * E + H * (1-E)$	6.1% ³	5.9% ⁴

Source: ¹ CMA Final Report, Appendix J, para 13. ² Ibid., Table J-6. ³ Ibid., para. 95 (a). ⁴ Home Office analysis, based on CMA's parameters and formulas.

A formula in the charge control model

18. The Home Office observes that to be consistent with the Draft Order, a formula in the Charge control model for Order needs to be amended. [§<.]

TLT LLP

8 June 2023