



Home Office

CMA further consultation on mobile radio network services market investigation draft order, published 11 July 2023

Home Office response submission

Introduction

1. The Home Office is grateful to the CMA for considering its representations made in response to the CMA's first consultation¹ (the **First Responses**) and for the opportunity to review and comment on the proposed modifications to the Draft Order made in response to the representations received from both the Home Office and other parties.
2. The Home Office welcomes the modifications the CMA has made to the Draft Order, which have clarified a number of issues raised by the Home Office in its First Responses. In particular, it welcomes the amendments made to the definition of 'Specified Goods and Services'² to ensure that it is clear that the charge control applies to all customers of Airwave³ in line with the intention expressed in the Final Report. In addition, the Home Office considers the CMA's amendments at Articles 6.2(b) and 6.4(a) and paragraphs 4 and 12 of Schedule 1 of the modified Draft Order both appropriate and sensible.
3. In this response, the Home Office provides its observations following its review of the modified Draft Order and accompanying documents, as well as emphasising some of the issues raised in its First Responses which have not been directly addressed in the modified Draft Order.⁴ Briefly, the issues raised in this submission relate to the following matters:
 - a. the timing of reconciliations;
 - b. the level of detail that must be provided in the opex and capex breakdown;
 - c. the charges forecast;

¹ The First Responses, made in response to the CMA consultation on mobile radio network services market investigation draft order, published 18 May 2023, consist of the Home Office Early Response Submission dated 8 June 2023 (the **Early Response**) and the Home Office Further Response Submission dated 16 June 2023 (the **Further Response**). Unless otherwise specified, the defined terms used in First Responses have been adopted for the purposes of this response.

² Modified Draft Order, Part 1, Article 2.1.

³ Subject to the five specific exemptions.

⁴ In addition to the modified Draft Order, the Home Office has reviewed the 'Notice of intention and public consultation' dated 11 July 2023 (the **Notice**).

- d. the definition of 'Capital Expenditure on external equipment'; and
- e. other drafting issues.

The Home Office's comments in relation to these issues are outlined in turn below.

The timing of reconciliations

- 4. In its First Responses, the Home Office raised concerns about the timeline set out in the Draft Order within which reconciliations to account for deviations between outturns and forecasts are to be made and, in particular, the significant practical challenges the timeline will create for the Home Office in light of its budgeting responsibilities stipulated by UK governmental budgeting requirements.⁵
- 5. These concerns have not been addressed by the CMA in its modifications to the Draft Order.
- 6. The Home Office notes that paragraph 31 of the Notice suggests that guidance may be given in the Explanatory Note in relation to issues raised in response to the first consultation which have not been directly addressed by the modifications.
- 7. The Home Office understands the CMA does not intend to consult on the Explanatory Note. The Home Office therefore wishes to stress the importance of the inclusion by the CMA of guidance in the Explanatory Note to encourage Airwave to, at the very least, provide provisional estimates to the Home Office (and other users) as early as possible in advance of the 31 October deadline and, if possible, by no later than [X]. This will help to ensure that the Home Office and other users are able to forecast more accurately to satisfy its budgeting responsibilities and, most importantly, [X].

Specifying the level of detail that must be provided in the opex and capex breakdown

- 8. As mentioned above, the Home Office welcomes the amendment made by the CMA in Article 6.4(a) of the modified Draft Order to require that Airwave provide a detailed breakdown of the levels of opex and capex shown in its statutory accounts *in addition* to the statutory accounts themselves.
- 9. However, the Home Office notes that the level of detail that Airwave must provide is not specified.⁶ The Home Office asks that the CMA specify the requirements more precisely, at least in the Explanatory Note, for the reasons previously expressed.⁷ Airwave has, to date, provided the Home Office with capex forecasts on a project by project basis. An example of the level of detail

⁵ Further Response, paragraphs 14 to 21.

⁶ As requested in paragraph 38 of the Further Response.

⁷ Paragraph 38 of the Further Response.

that has been supplied previously is provided at Appendix 1.⁸ The Home Office requests that at the very least this level of detail is required, or otherwise such greater detail as was required by the CMA in determining the charge control, to allow the CMA and the Home Office to understand if and where Airwave has re-prioritised capex spends, both to evaluate any new CAPEX plans submitted in the 2026 charge control review and also to understand the health of the Airwave network. However, in addition to the detail provided at Appendix 1, the Home Office would expect to see information as to, (i) labour costs, direct and subcontract, (ii) supplier costs, external and internal, broken down as necessary to show, for example, third-party communication circuit charges (rental and set-up fees) and (iii) other costs.^{9,10}

10. In addition, the Home Office notes that Article 6.4(b) only requires Airwave to reconcile against the statutory accounts and not against the detailed breakdowns that are required in addition to the statutory accounts under Article 6.4(a). The Home Office requests that, to ensure the reconciliation exercise provides the CMA and the Home Office with the information needed to verify compliance with the final order, an addition is made to Article 6.4(b) to reflect the change in Article 6.4(a).¹¹ The Home Office also requests that the Article 6.4(a) modification is reflected in paragraph A(d) of the Schedule 2 compliance statement.

Forecasts of future charges

11. The Home Office also made a request in its First Responses for the Draft Order to specify the detail and frequency at which Airwave must forecast its charges, requesting that a relatively detailed breakdown is required. This is so that the Home Office (and other users) can comply with its budgeting responsibilities, verify and approve invoices and fulfil its responsibility for the full business case of ESMCP (which includes Airwave).¹²
12. The Home Office notes that no modifications have been made to the Draft Order to this effect, but requests that further detail is at least provided in the Explanatory Note in line with the suggestions made by the Home Office in its First Responses to assist the parties in ensuring the smooth and transparent operation of the charge control. At the very least, a breakdown of the charges by each of the following categories would support the workability of the remedy: (i) by type of charge (e.g. core / menu / other menu / excluded); (ii) by user organisation (e.g. police / ambulance / fire / other (incl. orange light)); and (iii)

⁸ The information in the table at Appendix 1 was provided by Airwave to the Home Office during the 2018 negotiations. A copy of this table was included in a slide deck provided to the CMA during the market investigation dated 17 April 2018 and titled “[X]”, slide 7.

⁹ By way of example, although the Home Office does not necessarily expect this level of transparency, the Home Office notes the content of British Telecommunications Plc’s regulatory financial statements: [Regulatory Financial Statements 2022 \(bt.com\)](https://www.bt.com/regulatory/financial-statements)

¹⁰ This information is needed to enable the Home Office to effectively a) understand risk, b) understand the costed plans to address that risk and finally c) understand how Airwave has worked to those plans.

¹¹ If the CMA does not consider that this amendment should be made to the Draft Order, the Home Office requests that this intention is reflected in the Explanatory Note.

¹² Further Response, paragraphs 39-44.

by country (e.g. England / Wales / Scotland).¹³The Home Office requires (ii) in particular to be able to verify and pay invoices and budget effectively.

The definition of Capital Expenditure on external equipment

13. The Home Office considers that the definition of 'Capital Expenditure (or capex) on external (ie non-Motorola Solutions supplied) equipment' in Part 1, Article 2.1 of the modified Draft Order should be more narrowly defined to ensure it is not open to misinterpretation or misapplication.

14. To ensure that only the expenditure that is meant to be treated as CAPEX on external equipment is treated as such, the Home Office proposes that the following addition (shown in red underline) is made to the definition as follows:

“Capital Expenditure (or capex) on external (ie non-Motorola Solutions supplied) equipment means all investments in fixed assets acquired for the Airwave Network that are purchased from a person other than Motorola Solutions or a subsidiary of Motorola Solutions (within the meaning of section 1159 of the Companies Act 2006) which supplies goods or services to Airwave, and which goods or services are treated as capital expenditure by Airwave Solutions for the purpose of its statutory accounts.”

15. The Home Office is also concerned about how leased equipment and other assets should be treated, in particular where equipment is subject to 'sale and lease back' terms. The Home Office invites the CMA to consider such transactions and provide guidance on this in its Explanatory Note and/or any accompanying guidance.

Application of the charge control to all Airwave users

16. As noted above, the Home Office welcomes the amendments made to the definition of 'Specified Goods and Services' which have provided clarity that the charge control is to apply for the benefit of all customers of Airwave, subject to the five specified exceptions. However, the Home Office notes that Article 4.1 of the modified Draft Order acts to amend and supplement the four listed categories of blue light contracts only and is silent as to its effect on other sharer contracts.

17. The Home Office therefore requests clarification from the CMA in the Explanatory Note as to how the contractual charges should be reduced fairly for all users (for example, in proportion to the percentage difference between the estimated contractual revenue for a given year and the estimated maximum allowed revenue for that year), whether and to what extent the other user contracts are amended or supplemented by the charge control and, if necessary, the CMA's expectation of the parties in agreeing necessary contractual changes.

¹³ The Home Office refers the CMA to Appendix 4 to its Further Response which provides an illustrative template that could be used to populate this breakdown of information.

Other drafting comments

18. The Home Office noted several drafting irregularities or inconsistencies in its First Responses.¹⁴ The CMA has picked most of these up in its modified Draft Order and the Home Office assumes that the rest will be considered and corrected (as appropriate) in the Final Order and accompanying Explanatory Note.
19. In addition, the Home Office wishes to note again that the term 'Allowed Revenue' is capitalised in the modified Draft Order but is not defined therein, nor in the CMA's Final Report, and which therefore may create confusion. If it is considered necessary to define Allowed Revenue, then the Home Office would suggest "*Allowed Revenue means the maximum amount of revenue that Airwave Solutions may earn in accordance with paragraphs 1 , 2 or 3 of Schedule 1 to this Order.*"

18 July 2023

¹⁴ See in particular paragraphs 47-53 of the Further Response.

Appendix 1
 ILLUSTRATIVE EXAMPLE: CAPEX breakdown by project provided by Airwave 2018

Capex	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total	Assumptions
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]