

Appendix A: Review of responses to Draft Order consultations

General observations

The Order

1. The purpose of what, following the consultations, is now the Order is to give effect to the obligations with which Airwave and Motorola must comply with regard to the price of relevant Airwave Network services, and to do so in a way that is consistent with, and gives effect to, the CMA's decisions in the Report. In particular, the purpose of the Order is to specify:
 - (a) the detailed methodology and mechanisms for the calculation of the total revenues Airwave and Motorola are allowed to earn from services within the scope of the charge control (and how forecasts and prices are to be set and subject to reconciliation with out-turns); and
 - (b) obligations on Airwave and Motorola to account for those revenues and demonstrate compliance with the Order,so that¹ the detrimental effect on customers, so far as it has resulted from, or may be expected to result from, the adverse effect on competition (**AEC**) the CMA found is remedied, mitigated or prevented.
2. In fulfilling that purpose, the CMA has regard, as we did in the Report, to the need to achieve as comprehensive a solution as is reasonable and practicable to the AEC and any relevant detrimental effects resulting from it. It does not necessarily follow that the Order should set out not only Airwave's and Motorola's obligations but also every precise step they should take to meet them. The purpose of the Order is as described in the previous paragraph. It is not to prescribe detailed operational processes for Airwave's and Motorola's businesses in complying with obligations imposed to achieve that purpose, where that is not necessary to give effect to the decisions in the Report and remedy, mitigate or prevent the relevant detrimental effects.
3. The approach the CMA adopted in the Draft Order reflected the above points. It did not, save where stated, specify how Airwave and Motorola must comply with their obligations – for example, by requiring them to take particular

¹ As part of a package of remedies with the recommendation the CMA decided to make.

operational or accounting steps – where there may be more than one means available to comply with those obligations.

The consultations

4. The purpose of the consultations was to explain, and to seek representations, on the Draft Order. In particular, on whether it was consistent with, and would give effect to, the CMA's decisions in the Report. The specific purpose of the Second Consultation was to seek representations on the proposed modifications to the Draft Order.
5. The purpose of the consultations was not to reconsider, or enable the CMA to make further decisions on, any of the matters which were decided upon in the Report: for example, on whether there is an AEC and that the imposition of the charge control, as set out in the Report, would be part of an appropriate and proportionate remedy.
6. In the context of those points, the CMA has considered the responses to the consultation carefully. In particular, with a view to making an Order which is consistent with the purpose described. Where necessary or appropriate for that purpose, the CMA has made modifications to the Draft Order.
7. The CMA also notes the following points:
 - (a) A number of the consultation responses related to matters that were the subject of the CMA's decisions in the Report. The CMA has already decided those matters and is not re-opening and deciding them afresh. Where that is the case in respect of specific points raised in the consultation responses, that is set out in the table below.
 - (b) The consultation responses also raised a number of points relating to how Airwave and Motorola comply with their obligations under the Order – ie the detailed operational steps it should take to achieve compliance. The CMA has made considered judgements both as to (i) the matters necessary and appropriate to include in the Order in order to specify the obligations with which Airwave and Motorola must comply; and (ii) the means of compliance – for example, the operational processes – that are for them to determine (whilst meeting their obligations under the Order) and should not be included in the Order. Again, the table below identifies specific issues where this is the case.
 - (c) The responses to the Second Consultation, which was specifically concerned with the proposed modifications to the Draft Order, contained a number of points that related to the means of compliance with the Order

and / or had already been raised in response to the First Consultation.
There were limited comments on the proposed modifications.

Airwave and Motorola's response to First Consultation

Section / paragraph number	Issue raised	CMA assessment and comments	Proposed changes to Draft Order and/or Explanatory Note
1	High-level observations		
3(i)	The Draft Order makes clear that network investment made by Airwave would not necessarily be recovered to the extent incurred. The Airwave network has always been maintained to the highest standard on a 'whatever it takes' basis, in return for the agreed price. The Draft Order abandons that contractual principle, and it should be for the Home Office, not Airwave, to assume the risk and consequences of underinvestment in Airwave.	These comments relate to the way in which risks are to be allocated under the charge control. This was consulted on in the CMA's Provisional Decision Report (PDR) and determined in the Report (the Report). The Order is concerned only with implementing the decision in the Report.	The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.
3(ii)	The Draft Order assumes that Motorola remains the owner of the Airwave network. The CMA should 'future proof' the Draft Order by referring to Airwave's parent company in generic terms and/or make provision for a scenario where Airwave is no longer controlled by Motorola.	The Report says the charge control remedy will limit what Airwave Solutions (Airwave) (and its parent company, Motorola Solutions (Motorola)) is allowed to charge its customers. The Order places the duty to comply on Airwave and Motorola and, as set out in Article 4 thereof, relevant contractual terms relating to the price of the supply of Airwave Network services are amended by the Order. Were Motorola to seek to sell Airwave it would require the Home Office's consent (or the Home Office could seek to unwind the transaction). The contractual arrangements between Motorola and the Home Office could provide for the transfer of Airwave to any new owner on appropriate terms,	The CMA has accordingly made no changes to the Order in this regard.

		<p>including as to the price of Airwave Network services provided by any new owner in line with the price level set by the charge control. In those circumstances, Airwave and Motorola could apply to the CMA for the variation of, or their release from, the Order.</p> <p>Were Motorola and Airwave to seek to sell or transfer the Airwave Network assets to another party, they would continue to be bound by their obligations under the PFI Agreement and related services agreements and by the Order.</p>	
3(iii)	<p>For the reasons explained in detail at Section 3, there are considerable uncertainties as to how the Draft Order is intended to operate, such that the proposals are unworkable as currently drafted.</p>	<p>Key aspects of how the charge control is intended to operate were consulted on in the PDR and determined in the Report. Specific issues raised by Airwave and Motorola that relate to the Draft Order (as opposed to the decisions set out in the Report) are considered below.</p>	<p>The CMA comments on specific aspects of the Order and Explanatory Note below.</p>
3(iv)	<p>The Draft Order ignores the fact that Airwave has approximately [3<] billing customers, ie operates pursuant to many contracts, and instead treats the supply of the Airwave service as if it occurs under a single Home Office contract. The CMA's approach masks a vast array of practical and contractual issues that are bound to arise, and for which the Draft Order makes no provision.</p> <p>Additionally, in a letter of 12 July 2023 to the CMA, Motorola said it is:</p>	<p>The potential for unintended consequences to arise from the way in which the charge control is applied was considered in the PDR, and formed part of the reasoning underpinning the decision in the Report that the charging arrangements for Police Traffic Unit, the Amber Lights contracts and</p>	<p>The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.</p> <p>Insofar as Airwave's and Motorola's representations raise matters not consulted upon in the PDR and decided in the Report, the CMA has decided to make no changes to the Order.</p>

	<p>'.... still working through the practical implications of the Draft Order including the question of how it will be possible for Airwave to amend the invoicing processes for the hundreds of service contracts (which do not work from an identical template). The CMA is therefore respectfully requested to allow a transition period during which Airwave, the Home Office and the CMA can discuss how, as a purely practical matter, any final order is to be applied by Airwave.'</p>	<p>Catalogue/Growth services will not be affected by the charge control remedy.²</p> <p>The CMA acknowledges that Airwave and Motorola will be required to reduce the amount they charge to customers, and that will need to be reflected in customer invoices and communicated to customers. We decided in the Report that the Charge Control should specify a reduced overall level of allowed revenues for Airwave and Motorola, with the distribution between customers to be determined by them, subject to the overall cap, rather than being specified by the CMA.</p> <p>As to a transition period more generally, in relation to the services and contractual provisions to which the charge control does apply, the CMA takes account of the following points.</p> <p>First, its decision, as set out in the Report, is that Airwave Solutions and Motorola are able to make supernormal profits of almost £4 million per week. It is important that the detrimental effect on customers in the form of prices set very substantially above the competitive level is addressed as soon as possible.</p> <p>Second, the charge control provided for by the Order sets allowed revenues from the</p>	
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² Report, Appendix K, paragraph 67(a).

		<p>Commencement Date, as defined in the Order and taking account of the point immediately above as to the importance of addressing the price of Airwave Network services as soon as possible. Save insofar as the Order amends the contract price, it will be for Airwave, Motorola (where appropriate including through engagement with the Home Office and relevant individual service users) to work through the relevant contractual and invoicing matters so as to secure compliance with the charge control, including any adjustments that are necessary over time.</p> <p>While we recognise that the Order may necessitate changes to Airwave / Motorola's invoicing processes, we consider that the flexibility built into the Order (for example in making adjustments for over- or under-recovery in subsequent years) is sufficient to enable Airwave and Motorola to comply with their obligations under the Order without a need for a transition period.</p>	
2.1, 2.2, 2.3	Principles for constructing a RAB		
5 - 24	<p>Airwave and Motorola make a number of points, all of which the CMA has considered, including the following.</p> <p>Determining the initial value of the RAB is a key step in setting up any RAB-based regulatory mechanism. Any error made in establishing the proper value of the assets of the regulated firm affects the entire charge control as well as longer term incentives. At the same time, establishing a reliable estimate</p>	<p>Each of these points relates to matters that the CMA assessed at length, consulted upon on in the PDR and decided upon as set out in the Report.</p> <p>The Draft Order does not 'calculate' the opening value of the RAB. The value at which it is appropriate to set the opening RAB (and the reasoning and risks</p>	<p>The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.</p>

	<p>of the value of the assets of the regulated firm is not a straightforward task.</p> <p>The CMA should apply the principles of the Byatt Report to an opening asset valuation of the Airwave network, which means starting from the modern equivalent asset value (for example, the £[§<] million estimate prepared by Analysys Mason) and then discounting that number by the Airwave capex requirements to run Airwave to 2029.</p> <p>The Draft Order calculates the opening asset value as if the PFI Agreement had terminated and the assets were not used to provide the Airwave service after 2019, which of course is not the case.</p> <p>If the CMA seeks to implement its 'not paying twice' concept, such action will not comply with sections 134(4) and (6) of the EA2002 as it will go beyond the CMA's power to remedy an AEC, improperly changing the fundamentals of the PFI Agreement.</p>	<p>associated with that), including the application of the Byatt Report and the use of the modern equivalent asset value, was consulted on in the PDR,³ and the opening value of the RAB was determined in the Report.⁴ The Draft Order consulted upon included that opening value from the Report.</p> <p>The CMA also consulted in the PDR and decided in the Report on its assessment that a remedy in the form of the charge control using the opening value consulted and decided upon was part of a package of remedies that would be effective and proportionate to achieve as comprehensive a solution as is reasonable and practicable to the AEC the CMA found and any detrimental effects on customers so far as resulting from that AEC within the meaning of the Act (and section 134 specifically).</p>	
25	<p>In fact, the Draft Order goes further by implicitly treating the Home Office as if it were effectively the owner of the assets at the end of the charge control period, and not just the beginning. Subtracting the NRV of the assets in the calculation of final settlement charges means that the Home Office is entitled to claim any residual value that the Airwave assets might have after shutdown. The Draft Order is therefore drafted in terms such that the Home Office is effectively gifted</p>	<p>The subtraction of the NRV of the assets in the calculation of final settlement charges was consulted on in the PDR and determined in the Report.⁵ The Draft Order implements this aspect of the decision in the Report.</p>	<p>The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.</p>

³ See sections 6 and 8, and Appendix K, paragraph 152, specifically.

⁴ Report, sections 6 and 8 generally and Appendix K, paragraph 128, specifically.

⁵ The Report, Appendix K, paragraphs 129-136.

	<p>the benefit of Airwave's assets at scrap value at the end of 2019 as well as whatever value Airwave might be able to realise from its assets at the end of the charge control period. The Draft Order therefore goes beyond what is necessary to address the adverse effect on competition that has been identified by the CMA in the Final Decision.</p>		
26	<p>Airwave notes that the NRV for the final settlement charges is to be based on an independent assessment, and respectfully suggests that the same level of independence be brought to bear on the question of the opening asset value.</p>	<p>As noted above, the approach to determining the opening RAB, and the value that should be used for the opening RAB, were consulted on in the PDR and determined in the Report. We note that the use of an independent assessment of the NRV for the final settlement charges was also consulted on in the PDR and determined in the Report.⁶</p>	<p>The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.</p>
3	<p>The Draft Order is lacking crucial details and the resulting remedy is unworkable as drafted</p>		
29	<p>The Draft Order fails to deliver such a [relatively straightforward to operate] charge control regime. It omits essential calculations and estimates that are necessary for a robust and workable RAB-based charge control regime and, as presently drafted, the Draft Order would give rise to a level of uncertainty for Airwave and its customers that is impractical.</p>	<p>As noted above, the key aspects of how the charge control is intended to operate were consulted on in the PDR and determined in the Report. Specific issues raised by Airwave and Motorola that relate to the Draft Order (as opposed to the Report) are considered below. We note that a draft model showing how the implications for charge setting of the formulae set out in Schedule 1 of the Draft Order could be ascertained was published as part of our consultation on the Draft Order.</p>	<p>The CMA has considered where, in its judgment, it is necessary or appropriate to make changes to the Order to give effect to the obligations with which Airwave and Motorola must comply, to produce an Order which is consistent with, and gives effect to, the CMA's decisions in the Report. This is set out below in relation to specific elements of the Order.</p> <p>The CMA is not, however, re-opening the decisions set out in the Report. It</p>

⁶ Report, Appendix K, paragraphs 129 and 135(c).

			has accordingly made no changes to the Order in respect of those parts of Airwave's and Motorola's representations that raise such matters.
3.1	How the allowed revenue translates into charges		
35	<p>The Draft Order defines the charge control in terms of a maximum allowed revenue, from which the maximum revenue that Airwave is permitted to recover from core and police menu services is derived. This structure highlights the fact that the nature of the contractual arrangements between Airwave and its customers is not properly provided for in the Draft Order. Currently, Airwave core and menu fees are charged to and paid by the respective authorities (the Home Office, the Fire Services, the Department of Health and the individual police forces). The CMA needs to articulate exactly how the new charge regime will apply to each of these separately funded authorities.</p>	<p>Save to the extent set out in the Order (eg in Article 4, which amends relevant contractual prices so as to comply with allowed overall revenue limits), the charge control is not intended to specify the contractual arrangements that are to apply between Airwave / Motorola and their customers. Those arrangements are provided for through the agreements Airwave / Motorola have with customers.</p> <p>As set out in the paragraph 8.20 (c) and paragraph 67 of Appendix K of the Report, the charge control introduces limits on the total amount of revenue that Airwave and Motorola are permitted to earn from Core and Police Menu services. It will be for them, working with the Home Office and other customers, to determine precisely how these limits are complied with, subject to other relevant provisions of the Order and to prevailing agreements they have with their customers. This provides flexibility to Airwave and Motorola to enable them to comply with the Order in the way that they find most efficient.</p> <p>Our judgement is that, having specified the obligations with which Motorola must</p>	<p>The CMA has accordingly made no changes to the Order in this regard.</p>

		<p>comply, particularly as to the total allowed revenues for Core and Police Menu Services, this is an appropriate way to proceed. The purpose of the Order is to give effect to the decisions in the Report and so effectively and proportionately to remedy, mitigate or prevent the detrimental effect on customers, so far as it has resulted from, or may be expected to result from, the AEC the CMA found. It is not necessary to prescribe detailed operational processes for Airwave's and Motorola's businesses in complying with obligations imposed to achieve that purpose.</p>	
36	<p>The CMA needs to address the fact of separate contracts with the different customers in relation to the calculation and application of service credits, which in the CMA's approach are treated as a single item. Each of the Police, Fire and Ambulance contracts have differing sets of KPIs against which service credits are calculated. It is commonplace that a service affecting event may result in service credits being paid under, for example, the Ambulance contract but will not necessarily result in service credits being payable under the Police contract due to the differing KPIs. Further, the application of those differing service penalty 'points' must then be applied to the revenue specified in that particular contract. As the CMA has effectively 'conformed' the pricing into a single charge, further detail is needed in the Draft Order to</p>	<p>We consulted in the PDR on whether it would be appropriate to modify the existing service credit arrangements, and concluded in the Report that only one specific change should be required to the operation of the service credit arrangements: a single adjustment factor should be applied such that service credit levels would be broadly in line with those that would have been applied were a charge control not to have been introduced.⁷ That adjustment is provided for by paragraph 13 of Schedule 1 of the Draft Order. Beyond this, the detail of how the service credit arrangements are to be applied is provided for under existing</p>	<p>The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.</p>

⁷ The Report, Appendix K, paragraph 27.

	explain how Airwave should calculate these service credits moving forward.	<p>agreements between Airwave and its customers and is unchanged.</p> <p>In particular, we note that while the total value of Service Credits provided for Core Services and Police Menu Services in relation to the relevant year is taken into account in paragraphs 1, 2 and 3 of Schedule 1 of the Draft Order, these paragraphs do not – and are not intended to – introduce any requirements in relation to the levels at which Service Credits are set. As above, subject to the uplift provided for in paragraph 13 of Schedule 1, that is a matter for Airwave and its customers given the provisions of existing Agreements.</p>	
3.2	How service changes are to be accommodated		
37, 38	The Draft Order does not address the possibility that the scope of services provided under the headings covered by the cap could change. For example, the Home Office has commenced discussions with Airwave about potential significant changes to the service, including expanding coverage to [§<]. Under the Draft Order, Airwave would seem unable to levy any charges for such additional services or, if it can, it is unclear as to the basis on which such charges should be calculated. Accordingly, detailed provisions on how such service changes should be costed and priced are required for the cap on total charges to be workable. Similar considerations apply to special events, control room moves and other user requested activities for which Airwave is	The question of how the charge control should be applied to charges for different network services was consulted on in the PDR, and – as set out in the Report - our decision on this matter included that the charging arrangements for ‘Catalogue/Growth service (and for Police Traffic Unit and the Amber Lights contracts) would not be affected by the charge control remedy (and in arriving at this decision we explicitly considered the potential for undesirable incentive effects to arise under other potential approaches). ⁸	The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.

⁸ The Report, Appendix K, paragraphs 59-68.

	<p>currently entitled to charge a fee, many of which are of critical importance.</p>	<p>Given this, we note that the charge control will not affect Airwave's and Motorola's ability to charge for additional Catalogue/Growth services, and that this would include special events and the scope for other additional services to be provided under existing agreements that fall within these categories.</p> <p>The terms upon which Airwave and Motorola provide such additional services would only affect the amounts of revenue they are permitted to earn from the provision of Core and Police Menu Services to the extent that they resulted in a change in the weighted average of the percentage increases that Airwave had applied to the level of charges for Other Menu Services (such that the indexation factor (IF(MO)t) in paragraph 5 of Schedule 1 of the Draft Order was affected). In other words, the provision of such additional services only affects the revenues Airwave is allowed to earn from Core and Police Menu Services if the price of the additional services is materially higher (or lower) than that of equivalent existing services, not simply if the volume of additional services provided increases.</p>	
39	<p>The charge control mechanism as set out in the Draft Order does not envisage any modification of the Airwave service, for example an evolution towards a hybrid solution through a combination of the Airwave network and other networks more geared towards data services. The charge control provisions for an early termination of the Airwave service are insufficient</p>	<p>The charge control was designed to be consistent with the anticipated transition from Airwave to ESN, based on the evidence the CMA assessed as set out in the Report. The design of the arrangements to be put in place – including the final</p>	<p>The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.</p>

	for this case and if such a development were treated as early termination, the associated rules for the calculation of any final settlement may well give rise to unnecessary disputes.	settlement arrangements - was consulted on in the PDR and determined in Report. As noted above, our decision on the way in which the charge control should be applied took account of the scope for changes in the provision of services through the different approach that was taken to what in the Order are defined as Other Menu Services.	
3.3	Mitigation of foreseeable market distortions		
40(i)	There would appear to be no limit on the extent to which individual customers could demand additional equipment or services at no extra cost to them regardless of the cost implications for Airwave, unless Airwave were entitled to decline such requests. This is unsustainable and unfair both on Airwave as well as its competitors in relation to the competitive elements of the Airwave service.	<p>As noted above in relation to section 3.2 of Airwave and Motorola's First Consultation response, the question of how the charge control should be applied to charges for different network services was consulted on in the PDR, and – as set out in the Report - our decision on this matter included that the charging arrangements for what in the Order are referred to as Other Menu Services would not be affected by the charge control remedy. The CMA's considerations set out in the Report included an assessment of the likelihood of the charge control remedy having unintended consequences.</p> <p>As far as individual customers demanding unlimited amounts of additional equipment or services at no extra cost under the catalogues of each contract are concerned, the charging arrangements for 'Catalogue/Growth service (and for Police Traffic Unit and the Amber Lights contracts) are not affected by the charge control remedy. As described above in relation to section 3.2 of Motorola's First Consultation</p>	The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.

		<p>response, the terms on which Airwave and Motorola provide such additional services and equipment would only affect the amounts of revenue they are permitted to earn from the provision of Core and Police Menu Services if the price at which such additional services and equipment was provided was materially higher (or lower) than that of equivalent existing services and equipment (such that the measure of the weighted average of the percentage increases in the level of charges for Other Menu Services (IF(MO)t) was affected) .</p> <p>The effect of the charge control is not, therefore, that individual customers could demand additional equipment or services at no extra cost to them regardless of the cost implications for Airwave or Motorola.</p>	
40(ii)	<p>Under the revenue cap, the Amber Light users (some of which are UK registered charities) will effectively subsidise the Home Office's use of the Airwave service. Airwave cannot see any justification for such an approach and would find it difficult to explain to its non-Blue Light customers why the revenues Airwave collects from them should go towards funding lower charges for the Home Office under core and police menu services.</p>	<p>The question of how the charge control should be applied to the level of charges for different services was consulted on in the PDR and determined in the Report (and that included consideration of submissions related to potential cross-subsidy concerns).⁹ The Order implements the decision as set out in the Report.</p> <p>We note that the Report said that as long as the overall constraints imposed by the charge control are preserved, it should be open to the Home Office, users, Airwave and Motorola to agree a different way in</p>	<p>The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.</p>

⁹ The Report, Appendix K, paragraphs 59-68.

		which the charge control could be applied so as to address concerns related to the relative treatment of different users. ¹⁰ This is provided for in Article 10.1 of the Order.	
40(iii)	The proposed charge control does not expressly deal with any transition to ESN, which might well start within the period of the control. The CMA should clarify that while all or part of the Airwave service is being provided, the allowable revenues should not be affected. Absent such clarification, transition issues may lead to unnecessary disputes, for example if the Home Office refused to pay the contractually agreed flat fee for provision of an Airwave service for any ESN transition groups that are delayed in completing their transition to ESN in the period until the Airwave network is switched off in its entirety.	The Report set out how allowable revenues would be set over the duration of the charge control period, and how the charge control would be applied. The Order implements the decisions in the Report. It is for Airwave and Motorola to comply with their obligations under the Order and the Home Office and other customers to comply with their contractual obligations. Save where specified, the latter are unaffected by the Order, so it is not for the Order to include further, more detailed provisions related to the possibility of billing disputes of the kind referred to in this submission arising.	The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.
3.4	There is no explanation of a suitable asset valuation approach for setting the RAB	As explained above in relation to sections 2.1-2.3 of Motorola's First Consultation response, the opening valuation of the RAB and the process for updating it were consulted on in the PDR and determined in the Report. ¹¹	The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.
3.5	The Draft Order needs to clarify various issues regarding the RAB roll-forward process		
44, 45, 46	The terms of the Draft Order contain no provisions for adjustments of additional spend beyond that contemplated in	The approach to circumstances where actual spend differs materially from that	The CMA is not re-opening the decisions set out in the Report. The

¹⁰ The Report Appendix K, paragraph 68.

¹¹ Report, sections 6 and 8 and Appendix K.

	<p>current plans that Airwave might justifiably have to incur between now and the review period, as envisaged by the Final Decision. If the intention is that such spend is reviewed and, where justified, recovered through higher revenue allowances post the 2026 review, it is unclear as to how this would be dealt with (and how recovery of legitimately incurred cost would be ensured) if the service terminated earlier than at the end of 2029. The terms of the Draft Order also contain no provisions for adjustments of over-spend that Airwave might justifiably have to incur between now and the review period. Future Capex. This issue is particularly concerning given that, so far as Airwave can ascertain, the CMA appears to have struck out many of the already foreseeable capex requirements that will be necessary for the network to function to 2029 (and potentially beyond) from the capex allowances. Again, so far as Airwave can ascertain, the Draft Order seems to have effectively 'stitched together' elements of various capex plans to arrive at allowable capex. This being the case, and having ignored the capex plan to keep the network operational to 2029, the Draft Order needs to clarify how these additional costs will be handled.</p>	<p>used to initially calibrate the charge control (including the use of cost-sharing in relation to non-Motorola sourced capex) was consulted on in the PDR and determined in the Report. The purpose of the 2026 review was also consulted on in the PDR, and the Report included a number of statements concerning how we would expect that review to be undertaken, including in a context where additional capex requirements were identified.¹²</p>	<p>CMA has accordingly made no changes to the Order in this regard.</p>
48	<p>The Draft Order is silent on how disposals (or any other similar changes) in Airwave's accounts are to be accounted for in the RAB.</p>	<p>The opening level of the RAB, and process by which it will be updated over time, was consulted on in the PDR and determined in the Report.¹³ That approach does not focus on the treatment of any specific assets.</p>	<p>The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.</p>

¹² Report, Appendix K, paragraphs 44-46 and 51.

¹³ Report, sections 6 and 8 and Appendix K.

49	The Draft Order is silent on key aspects of the depreciation calculation to be used for setting and rolling-forward the RAB.	The approach to taking depreciation into account in the charge control, and the specific allowances to be made for depreciation, were consulted on in the PDR and determined in the Report. ¹⁴ This addressed the process for taking account of depreciation for the purposes of the charge control. The only aspect of the approach to depreciation that differs between the Order and the Report concerns indexation, and this stems from the approach taken to RAB indexation in the Draft Order (which is considered below). Beyond this, as now, it will be for Airwave and Motorola to determine the approach to depreciation to be used in its accounts.	The CMA is not re-opening the decisions set out in the Report. The CMA has made no changes to the Order in this regard.
3.6, 50	The Draft Order is silent on opex considerations for roll-forward calculations.	The levels of opex allowances to be included over the course of the charge control were consulted on in the PDR and determined in the Report. ¹⁵	The CMA is not re-opening the decisions set out in the Report. The CMA has made no changes to the Order in this regard.
3.7	Airwave is required to project revenues for an extensive list of services		
51	An appropriate process needs to be settled that will facilitate revenue forecasting. Revenue forecasts are likely to be subject to a range of uncertainties, and therefore they may	The CMA agrees that revenue forecasting should be as reliable as possible.	The CMA has amended Paragraph 4 of Schedule 1 of the Order to require that Airwave uses official inflation forecasts,

¹⁴ Report, section 8 and Appendix K.

¹⁵ Report, Appendix K, paragraphs 86 – 108.

	<p>need to be updated frequently to avoid significant discrepancies with actual revenues. Relying on relatively stable revenues over the past is not a satisfactory replacement for undertaking reliable forecasts of future revenues, where these feed into the attribution of revenues to services that is relevant for the calculation of maximum allowable charges.</p>	<p>In the light of responses from Airwave/Motorola, and the Home Office, on this point, we have included (in Paragraph 4 of Schedule 1 of the Order) the requirement that Airwave and Motorola use official inflation forecasts, such as those issued by the OBR and the Bank of England, when setting relevant charge levels. This supplements the requirements in Paragraph 4 of Schedule 1 such that Airwave and Motorola must use such forecasts and that other assumptions they use when revenue forecasting must be based on their best estimates (such estimates likely in any event forming part of their ordinary business practices). This modification was included in the Second Consultation.</p>	<p>such as those issued by the OBR and the Bank of England, and in other respects must use its best estimates, when meeting the requirements included in that paragraph.</p>
3.8	<p>The proposed calculation of final settlement charges treats the Home Office as if it were the beneficial owner of the Airwave assets</p>	<p>As noted above in relation to paragraph 25 of Airwave and Motorola’s First Consultation response, the subtraction of the NRV of the assets in the calculation of final settlement charges was consulted on in the PDR and determined in the Report.¹⁶ The Order implements this aspect of the decision in the Report.</p>	<p>The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.</p>
3.9	<p>Multiple ambiguities and technical issues in relation to various calculations</p>		

¹⁶ The Report, Appendix K, paragraphs 129-136.

53	<p>The reconciliation adjustment for the period t-1 has to be included in determining the revenue allowance for period t, which will in all likelihood have to be determined prior to the final reconciliation for year t-1 being possible (for example, because the final CPI and RPI figures will be published only at some point in year t). This does not appear to be possible.</p>	<p>As in relation to paragraph 51 of Airwave and Motorola's First Consultation response, Paragraph 4 of Schedule 1 of the Order requires that Airwave and Motorola use their best estimates of input values and that would include inflation figures. Given the responses from Airwave/Motorola and the Home Office, we have included a requirement that Airwave and Motorola use official inflation forecasts, such as those issued by the OBR or the Bank of England.</p> <p>We note that, at the start of the calendar year it may not be possible to calculate the reconciliation amount for the previous year, as some relevant data may not be available at that stage. This is not an unusual feature of charge controls generally. It will be for Airwave / Motorola, in consultation with customers, to identify a pragmatic means of concluding the reconciliation process during the calendar year – for example, by calculating charges based on best estimates at the start of the year, and then making any final adjustments once all relevant information is available. Airwave and Motorola will be in possession of information, such as the actual amount of revenue received from Core Services and Police Menu Services in the previous year (after the application of Service Credits), which should facilitate this.</p>	<p>The CMA has amended Paragraph 4 of Schedule 1 of the Order to require that Airwave and Motorola use official inflation forecasts, such as those issued by the OBR and the Bank of England.</p>
54	<p>The provision in relation to the calculation of Service Credits is unclear and suggests that Service Credits should increase by 60% relative to their current level. Service credits are currently</p>	<p>In the PDR we set out our provisional view that the service credits to be applied when Airwave Solutions' performance falls short</p>	<p>The CMA is not re-opening the decisions set out in the Report. The</p>

	<p>calculated with respect to KPIs and amounts billed under each of the Police, Fire and Ambulance service contracts. As the CMA have effectively merged all these individual pricing arrangements into a single charge it is unclear how Airwave is expected to calculate service credits.</p>	<p>of contractually defined target levels should continue to be set at levels equivalent to those that would have applied were a charge control not to be introduced.¹⁷ In its response to the PDR, the Home Office submitted that this approach could be implemented by retaining the current methodology for calculating service credit levels, but applying a fixed multiple to offset the effect of the reduction in charges resulting from the introduction of the charge control remedy. As noted in the Report, Motorola told us that, in its view, the approach the Home Office had suggested as a means of implementing would be practical, provided that a uniform discount was used across all services.¹⁸ The Report set out our decision that the charge control remedy will include the use of a single adjustment factor (for each year) such that service credit levels are broadly in line with those that would have applied were a charge control not to have been introduced.¹⁹ Paragraph 13 of the Order implements this decision. The contractual arrangements in relation to service credits – for example, the circumstances in which they are incurred, how they are applied and to whom they are owed – are otherwise unchanged.</p>	<p>CMA has accordingly made no changes to the Order in this regard.</p>
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¹⁷ The Report, Appendix K, paragraph 17.

¹⁸ The Report, Appendix K, paragraph 27.

¹⁹ The Report, Appendix K, paragraph 27.

55	Proper attention needs to be paid to all issues that are bound to arise as part of final settlement. It should be made clear that Airwave will be able to recover all costs regarding decommissioning and redundancy, even though, for example, Airwave's redundancy arrangements exceed the statutory minimum.	The final settlement arrangements were consulted on in the PDR and determined by the Report. ²⁰ The Order includes provisions which align with the decision in the Report.	The CMA is not re-opening the decisions set out in the Report. The CMA has accordingly made no changes to the Order in this regard.
56	Airwave does not understand the arrangements in relation to the commencement of the charge control, for example in relation to issues already invoiced or in relation to services where the date on which the order is made falls within a particular billing period.	The charge control will apply from the Commencement Date, and therefore will apply to revenue related to services provided from that date (whether or not invoices for that revenue have already been issued). It will be for Airwave to make arrangements with the Home Office and other relevant customers to ensure that, in respect of 2023, they comply with their obligations under the charge control. These may include adjustments to invoices that have already been issued.	The CMA has accordingly made no changes to the Order in this regard.
3.10	There is a lack of clarity on compliance requirements		
58(i)	Capex. Airwave is required to inform the CMA (and the Home Office) about any material deviation between its actual capex, the capex plans submitted, and the capex that has been allowed for. Given that the allowed-for capex has been set by the CMA based on high-level forecasts after making a number of unclear adjustments, Airwave does not understand what purpose could be served by a three-way capex reconciliation. Furthermore, it is unclear to Airwave what constitutes the relevant base line, or what would be considered 'material'	In its response to the First Consultation, the Home Office also made submissions about the forecasts to which this requirement should relate. Having proposed the modification in the Second Consultation, the CMA has included additional text in the Order (in Article 6.2(b)) to address this point by referring back to the forecasts that were used to determine capex allowances (ie Motorola's May 2021 and April 2022 forecasts). We noted in the Report that, as	The CMA has amended Article 6.2 of the Order by adding reference to the Motorola capex forecasts which underpinned the capex allowances that were determined in the Report (ie the May 2021 and April 2022 forecasts), and to the capex allowances set out in the Report.

²⁰ The Report, Appendix K, paragraphs 129-136.

	changes. Such reconciliation requirements need to be far more precisely specified.	these are Airwave's and Motorola's capex forecasts, their use is appropriate.	
58(ii)	<p>Pro-forma returns. Given the wide-ranging information requirements included in the Draft Order, it would be appropriate and helpful for the CMA to provide pro-forma returns to indicate exactly what information it expects to receive and in what format such information must be provided. Otherwise, there is a high risk of disagreement and lengthy debates about the appropriateness or otherwise of the information provided by Airwave. It would also enable Airwave to confirm that the information can be made available in the form requested and avoid disproportionate costs</p>	<p>Schedule 1 of the Order sets out the detailed methodology for applying the charge control. The information requirements in the Order support this methodology and help compliance to be confirmed. These are consistent with the CMA's duty to monitor the carrying out of the Order.</p> <p>In the CMA's judgement, it is not necessary, for the making of an order that details Airwave's and Motorola's obligations in relation to overall revenue allowances and their obligations to provide evidence of compliance, to prescribe every administrative step they must take. It is for them to ensure they comply with their obligations.</p> <p>That said, the CMA recognises the benefit of Airwave and Motorola developing an appropriate reporting framework / template, to supplement the statement provided for in Schedule 2 to the Order, to help them to meet their reporting obligations. The CMA also sees merit in discussing with Airwave and Motorola, and as appropriate the Home Office, their development of such a reporting framework / template in advance of the relevant reporting deadlines.</p>	The CMA has accordingly made no changes to the Order in this regard.

58(iii)	<p>Authorisation and approvals. There should also be greater clarity on the process for reviewing and signing off compliance with the information provision requirements. It is not clear who is ultimately responsible for confirming that Airwave has complied with its obligations to provide information. Given the involvement of both the CMA and the Home Office, do both parties need to agree that an obligation has been complied with? What happens if one party is satisfied but the other is not? Within what time period should sign-off occur?</p>	<p>The Order places obligations on Airwave and Motorola, including as to evidencing compliance and providing independent assurance. It is for them to, acting through appropriately authorised officers and independent advisers complying with their professional duties, to comply with those obligations.</p> <p>As a matter of statute:</p> <ul style="list-style-type: none"> a. The CMA has a duty to monitor the carrying out of the Order.²¹ b. The duty to comply with the Order is owed to any person who may be affected by contravention of the Order, and they may seek to recover any loss caused to them by a breach. c. Compliance with the Order is enforceable by civil proceedings brought by the CMA for an injunction or for any other appropriate relief or remedy.²² <p>These provisions mean the CMA will assess Airwave's and Motorola's compliance with the Order. The CMA may take action where it considers a breach has occurred. The Home Office may also take action of its own</p>	<p>The CMA has accordingly made no changes to the Order in this regard.</p>
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²¹ Section 162 Enterprise Act 2002.

²² Section 167 Enterprise Act 2002.

		if it considers Airwave and Motorola have committed a breach. Since these are matters set out in the Act, they are not replicated in the Order.	
58(iv)	Other compliance costs	Motorola's submissions on compliance costs were considered in the Report as part of the decision to allow the recovery of reasonable third-party costs associated with assurance.	The CMA is not re-opening the decisions set out in the Report. It has made no changes to the Order in light of these parts of Airwave's and Motorola's representations.
58(v)	Reconciliation. In relation to the calculation of revenues and the reconciliation of information with the information in Airwave's statutory accounts, it is not clear whether this should be done based on the cash position or the revenue accrual. For example, there may be services that are delivered over a multi-year period but invoiced and paid upfront. Similarly, there may be deferred payments for services where revenue has been accrued for accounting purposes, potentially reflecting the risk of non-payment.	The Order places obligations on Airwave and Motorola to comply with defined constraints concerning allowed revenues. It will be for Airwave to demonstrate compliance with the reconciliation requirement in accordance with Article 6 of the Order and to address matters such as these in doing so. As Article 6 requires revenues in each period to be reconciled to Airwave Solutions' statutory accounts, revenue earned in a period is to be treated as revenue is treated in those statutory accounts	The CMA has accordingly made no changes to the Order in this regard. We have added a sentence in the Explanatory Note in the light of this submission.
58(vi)	Independent assessors. In relation to the selection and appointment of independent assessors, the Draft Order should be updated to clarify the selection criteria and the approval process, for example, in terms of the time period within which such an approval has to be made. In particular, it should be made clear whether Airwave's auditors can provide such	The Report did not require that third party assurance had to be provided by assessors other than Airwave's auditors. Articles 6.4 and 8.4 which set requirements on independent assurance provide that the CMA's approvals for the appointment of assessors shall not be unreasonably	The CMA has accordingly made no changes to the Order in this regard.

	assessment or whether this has to be separate, which has implications for the statutory audit process.	withheld. The CMA is also under a public law duty to act reasonably. These apply to the matters Motorola has raised.	
3.11, 59	There is no proper discussion of the approach to capturing inflation in relation to the RAB	Airwave/Motorola comment that the use of a different approach occurred without consultation is not correct. In the First Consultation, the CMA consulted on the approach to capturing inflation in relation to the RAB. The comments are made in response to that consultation process which provided the opportunity for concerns to be raised and representations to be made. The CMA's judgement, notwithstanding Motorola's submission to the contrary, is that the approach proposed was substantially equivalent to that in the Report: it represents a different means of meeting the principles and achieving the effects in the Report.	The CMA has accordingly made no changes to the Order in this regard. We have made a minor adjustment to the description of this approach in the Explanatory Note to take account of Motorola's comments.
3.12	Appropriate compensation needs to be incorporated for Home Office changes	The treatment of differences between allowed and actual costs was consulted on in the PDR and determined in the Report.	The CMA is not re-opening the decisions set out in the Report. It has made no changes to the Order in light of these parts of Airwave's and Motorola's representations.
4	Specific drafting comments		
4.1, 68	Scope for modification or amendment to the Draft Order. The contents of the Article [10.1], despite purporting to be subject to the provisions of the EA2002, appear to be a non sequitur. If the CMA does not intend to fetter its discretion through Article 10.1, then Airwave is unclear as to the purpose behind	The inclusion of Article 10.1 follows directly from the decision in paragraph 72 of Appendix K of the Report. That paragraph said that flexibility to agree modifications to aspects of the charge control arrangements	The CMA is not re-opening the decisions set out in the Report. It has made no changes to the Order in light

	<p>the CMA indicating the conditions under which it would be prepared to consider applications for review, variation or revocation of the Order. The Home Office and Airwave may wish to agree new services that may necessarily imply a “material weakening” of the revenue cap, or indeed a wholly new arrangement in light of future market developments, but Article 10.1 indicates that the CMA would be predisposed against such an arrangement.</p>	<p>should be allowed, but only to the extent that any such modification does not result in a material weakening of the constraints the charge control remedy puts on the overall level of Airwave’s charges.</p> <p>The CMA also disagrees that Article 10.1 is either a non-sequitur or a fettering of the CMA’s discretion. It records and reflects the decision in the Report that the parties may agree arrangements and Airwave and Motorola may apply to the CMA for a variation of the Order. The CMA would consider that in line with its statutory and public law duties, as it would any application, and would at all times consider and comply with all other provisions relating to the review, variation or revocation of the Order.</p>	<p>of these parts of Airwave’s and Motorola’s representations.</p>
4.2, 69	<p>Termination provisions. Article 3.3 provides that the Draft Order may cease to have effect earlier than contemplated in Article 3.2 where “the CMA is satisfied that the whole Airwave Network has been permanently shut down and the contractual obligations between Airwave Solutions and the Home Office have come to an end and that Airwave Solutions and Motorola Solutions have complied with all their obligations under the Order.” This does not allow for the possibility of the Airwave contracts being terminated but the Airwave network continuing to operate. To remedy this, Airwave would suggest removing the words “whole Airwave Network has been permanently shut down and the” from Article 3.3. The remaining wording would,</p>	<p>The Report reflected the CMA’s decision that the Home Office is likely to be reliant on Airwave’s and Motorola’s provision of services using the Airwave Network until the end of 2029.²³ Article 3.3 of the Order is consistent with that, but allows for the possibility that the network shuts down and Airwave and Motorola comply with all their obligations under the Order before that date. In the event of the Airwave contracts being terminated but the Airwave Network continuing to operate, Airwave and Motorola could seek variation or revocation of the</p>	<p>The CMA has accordingly made no changes to the Order in this regard.</p>

²³ See, for example, paragraphs 4.189 – 4.212, 4.273, and 4.280 – 4.283.

	in Airwave's view, still achieve the CMA's intended objective as set out in the Final Decision.	order and the CMA would have obligations to review the position.	
4.3, 70, 71	Confidentiality and legal privilege. Article 6 outlines the compliance information that must be provided to the Home Office and the CMA and provides that such information must be "accompanied by a declaration in the form and meeting the requirements of this Article 6 and Schedule 2." Article 8.5 provides that "[s]ubject to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order." However, this provision (and Part 9) of the Enterprise Act only applies to the CMA; there does not appear to be any provision in relation to the obligations of the Home Office in relation to the confidentiality of this information. Article 8 outlines the information that the CMA can require be supplied to it under the Order. Article 8 should clarify that the CMA is not permitted to compel the production of privileged materials under the Order.	<p>Article 8 of the Order imposes obligations on Airwave and Motorola to provide information to the CMA. The Article reflects that the CMA may, subject to Part 9 of the Enterprise Act 2002, publish that information.</p> <p>Article 8 imposes no obligations to provide information to the Home Office and does not purport to give the Home Office any right to publish information.</p> <p>The CMA would consider any claims of privilege attaching to information that might otherwise fall within Article 8.</p>	The CMA has accordingly made no changes to the Order in this regard.
4.4, 72, 73	Time period for provision of information. Article 7.1 provides that "Airwave Solutions and Motorola Solutions must respond clearly, accurately and in full, and within 10 working days of the date thereof, to reasonable queries and requests from the Home Office or the CMA for further clarification and substantiation of the compliance information provided under Article 6. The CMA may, in exceptional circumstances, allow a longer deadline for responses to such requests." This is unnecessarily prescriptive since the CMA might want information in circumstances that are not exceptional that would take Motorola, acting reasonably, more than 10 working days to produce. The formulation proposed by the CMA	The Draft Order proposed a standard period of time for prompt responses to requirements to provide information. It also proposed that longer periods may be allowed in exceptional circumstances. That is, by way of exception to the standard rule. One set of such circumstances may be where the volume or type of required information is such that even acting promptly would require more than 10 working days for a response. We consider	The CMA has accordingly made no changes to the Order in this regard.

	<p>actually narrows the scope of its powers to request information (since what is a reasonable request would be interpreted by reference to the 10-working-day time limit). On that basis, Motorola and Airwave suggest that Article 7.1 be amended as follows: "Airwave Solutions and Motorola Solutions must respond clearly, accurately and in full, and within 10 working days of the date thereof, to reasonable queries and requests from the Home Office or the CMA for further clarification and substantiation of the compliance information provided under Article 6. <u>Airwave Solutions and Motorola Solutions must respond to such requests within the time period specified in the request, which must be no less than 10 working days of the date thereof.</u> The CMA may, in exceptional circumstances, allow an extension longer deadline for responses to such requests."</p>	<p>this to sufficiently address the matters raised by Airwave and Motorola.</p>	
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Home Office response 1 to First Consultation

Paragraph number	Issue raised	CMA Comments	Proposed changes to draft Order and/or explanatory note
	<p>The scope of the charge control</p>		
4-10	<p>The Home Office asked 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, including Sharer Organisations, and that the contracts list in the definition in the draft Order were not intended to be exhaustive. The Home Office suggested</p>	<p>The reference to specific contracts in the definition of Specified Goods and Services did inadvertently imply a scope which was narrower than the scope of the charge</p>	<p>The CMA has amended the definition of Specified Goods and Services in the Order to align with the scope of the charge control that was determined in the Report.</p>

	amendments to the definition of Specified Goods and Services in line with this.	control determined in the Report. ²⁴ As part of the Second Consultation, the CMA proposed to modify this aspect of the Order.	
	The charges and estimated revenue for Other Menu Services		
11-14	The Home Office noted that 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 revenue and an indexation factor (IF(MO)t), and requested 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). The Home Office also noted that the explanatory note specified that the charge for the Other Menu Services would continue to be subject to existing contractual arrangements, and requested clarity on whether Airwave are restricted in setting new charges if existing contracts expire.	Paragraph 67(b) of Appendix K of the Report sets our decision that the charging arrangements for Police Traffic Unit, the Amber Light Contracts and Catalogue/Growth sales (which together cover what in the Order are defined as Other Menu Services) will not be affected by the charge control remedy. In line with that decision, the Draft Order included no proposed provisions related to how charges for Other Menu Services should be set in future years. In line with that (and with paragraph 67(b) of Appendix K of the Report), the role of the indexation factor (IF(MO)t) in the Draft Order was limited to the updating of the estimated revenue from Other Menu Services (ER(MO)t).	The CMA is not re-opening the decisions set out in the Report. It has made no changes to the Order in light of this part of the Home Office's representations
	The Home Office requested that we 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 would not be impacted by increases in volumes, and requested clarification as to whether the term "charges" refers	The indexation factor is intended to capture (IF(MO)t) price increases, not increases in the overall level of revenue from Other Menu Services, consistent with the decision set out in paragraph 67(b) of Appendix K of the Report. The definition of (IF(MO)t) in Schedule 1 of Draft Order	The CMA is not re-opening the decisions set out in the Report. It has made no changes to the Order in light of those parts of the Home Office's representations that go to such matters.

²⁴ Report, paragraph 8.20 (b).

	<p>to total charges or charges per unit. The Home Office also requested that some clarificatory wording be provided, for example, explaining how the “reasonable estimate” is to be determined, or alternatively (if necessary) that a formula for this clarification be added to the Draft Order.</p>	<p>included an explanation of how it should be calculated, namely that it:</p> <p><i>‘will be equal to a reasonable estimate of the weighted average of the percentage increases that Airwave Solutions has applied to the level of charges for Other Menu Services between 2022 and year t, where the weightings to be used when calculating this weighted average are the value of sales at 2022 prices from the charges to which each different percentage increase in the level of charges has been applied’.</i></p> <p>We also note that there would be risks associated with seeking to specify formulaically in the Order how this weighted average should be calculated, as it covers a large number of relatively low volume services for which charges can be applied to a number of different qualitative dimensions. It is notable also that Airwave and Motorola will need to get third party assurance that they have complied with this (and other) provisions of the Order, and that would be expected constrain how any flexibility that the description in the Order allows for might be used.</p>	<p>The CMA has, however, added the following to paragraph 53(b) of the Explanatory Note to provide an example of how this weighted average might be calculated in a way that was consistent with the requirements of the Order:</p> <p><i>‘The estimated revenue from Other Menu Services will be updated by an indexation factor which will be equal to a reasonable estimate of the weighted average of the percentage increases that Airwave Solutions has applied to the level of charges for Other Menu Services between 2022 and the relevant year. A reasonable estimate of the weighted average of the percentage increases that Airwave Solutions has applied to the level of charges for Other Menu Services between 2022 and the relevant year could be determined by calculating the amount of revenue that would have been earned in 2022 from the provision of Other Menu Services had year t price levels applied (and by comparing this to the actual level of revenue that was earned from Other Menu Services in 2022).’</i></p> <p>Including this guidance as to a possible means of compliance in the Explanatory Note would leave flexibility for Airwave and Motorola to calculate the weighted average in a different way, but would provide a reference point that would be relevant to the assurance process when</p>
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			consideration was given to whether that alternative approach provided for a 'reasonable estimate.'
	Indexation of the depreciation allowance		
15-16	The Home Office noted that, according to the Draft Order, no inflation indexation is applied to the depreciation component of allowed revenue, but that there is a note in the charge control model (which we published alongside the Draft Order) which suggests otherwise. The Home Office requested clarification.	<p>The CMA provides the following confirmation.</p> <p>As set out in the Draft Order (and in line with the approach taken to RAB/WACC indexation in the Draft Order), no indexation is applied to the depreciation component of allowed revenue. The charge control model did not form part of the Draft Order but was provided to assist with the consultation process. It does not mean that indexation would be applied to depreciation and should be ignored.</p>	<p>The CMA has not issued a further version of the model with the Order. The model was simply part of the consultation process and is something that the parties can make use of (and adjust) further to the extent they find that worthwhile.</p> <p>The CMA has made no changes to the Order in this regard.</p>
	The WACC estimate in the Final Report		
17	The Home Office said it estimated – using the individual WACC parameters specified in the Final Report – that the CPI-real pre-tax WACC should have been 5.9% rather than the 6.1% figure shown in the Final Report, and requested that we check the 6.1% estimate.	The CMA has checked the derivation of the 6.1% figure and consider it to be consistent with the approach set out in Appendix J of the Report. We note, in any event, that the Order is concerned with implementing the decision set out in the Report, and that decision was to use 6.1%, updated to reflect relevant movements in gilt yields ahead of the Order being issued (as set out in paragraph 146(b) of Appendix K of the Report).	The CMA is not re-opening the decisions set out in the Report. It has made no changes to the Order in light of this part of the Home Office's representations. It has, however, updated the 6.1% figure as it indicated it would (doing so as part of the Second Consultation).
	A formula in the charge control model		

18	The Home Office observed that to be consistent with the Draft Order, a formula in the charge control model should refer to the WACC adjusted for inflation rather than the real WACC.	We agree that the formula in the model identified by the Home Office should have referred to the WACC adjusted for inflation rather than the real WACC.	<p>The CMA has not issued a further version of the model with the Order. The model was simply part of the consultation process and is something that the parties can make use of (and adjust) further to the extent they find that worthwhile.</p> <p>The CMA has made no changes to the Order in this regard.</p>
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Home Office response 2 to First Consultation

Paragraph number	Issue raised	CMA Comments	Proposed changes to draft Order and/or explanatory note
	How Airwave forecasts future charges		
9-13	The Home Office said that while the reconciliation adjustment under the Draft Order is NPV-neutral to Airwave, it will not be NPV-neutral from the perspective of the Home Office or other users because it is based on Airwave's WACC rather than the WACC of these organisations. Also, the Home Office said that, should outturns deviate materially from forecasts and result in major variations in charges, this would make it difficult for the Home Office (and likely other users) to budget effectively. The Home Office urged us to provide some guidance to Airwave on how it should undertake inflation forecasts, for example, using official forecasts by the Office for Budget Responsibility or Bank of England.	The reconciliation adjustment was decided upon in the Report. As set out in relation to paragraph 51 of Motorola's response to the First Consultation, the CMA has included (in Paragraph 4 of Schedule 1 of the Order) the requirement that Airwave and Motorola use official inflation forecasts, such as those issued by the OBR and the Bank of England, when setting relevant charge levels. This supplements the requirements in Paragraph 4 of Schedule 1 such that Airwave and Motorola must use such forecasts and that other assumptions they use when revenue forecasting must be based on their best estimates (such	The CMA has added to the Order a requirement for Airwave and Motorola to use official inflation forecasts such as those issued by the OBR and Bank of England.

		estimates likely in any event forming part of their ordinary business practices).	
	The timing of reconciliations		
14-21	The Home Office said that the timeline of reconciliations in the Draft Order implies that – if actual revenue in year t-1 is lower than the allowed amount – it would need to make the reconciliation payment in November or December of year t, with notice only having been provided after 31 October of that year. The Home Office said that such a timeline would provide very limited opportunity for the reconciliation calculation to be verified, and would create practical challenges for the Home Office due to its budgeting process (which mean it needs to know the final amount of Airwave charges for year t by mid-September of year t). The Home Office requested that we bring forward the date Airwave is due to provide the reconciliation calculations and amount to no later than 15 September.	We note that the Order would not require the Home Office to make any balancing payment related to year (t-1) by the end of the year t. Rather, the requirement is on Airwave and Motorola to have requested such an amount from users by the end of year t. Payment arrangements in relation to such amounts will be for Airwave / Motorola and relevant users to agree in the context of the relevant prevailing agreements. It would also be for the Home Office and Airwave / Motorola to agree arrangements for forecasting purposes that facilitate payments being made in line with relevant budgeting processes.	The CMA has accordingly made no changes to the Draft in this regard.
	The final reconciliation amount		
22-26	The Home Office said that, under the Draft Order, no return and inflation adjustment (ARett) is applied to the reconciliation amount if shutdown occurs before the end of 2029 and that this is inconsistent with the approach to reconciliation in other years and would not be NPV-neutral. The Home Office asked that we ensure all reconciliation adjustments are NPV-neutral, and that we specify whether 31 December would be considered to be before or after the end of the year for the purpose of the methodology.	We agree that a minor change to Order formula is appropriate for consistency with NPV-neutral statement in the Report. This modification was included in the Second Consultation.	The CMA has adjusted the formula and description of Recon(CPM)FINAL in paragraph 12 of Schedule 1 of the Order to provide for an NPV-neutral approach (by including an ARett adjustment), and ensuring consistency across different potential charge control termination circumstances.

	RAB indexation		
27-36	<p>The Home Office noted that we had acknowledged (in the explanatory note) that the approach in the Draft Order differs from the approach outlined in the Final Report but had stated that it is simpler, broadly equivalent and consistent with the Final Report. The Home Office said it had compared the two approaches (using three inflation scenario assumptions) and, although it agreed that the two approaches result in broadly similar allowed revenue amounts, said that they imply different inflation risk profiles. The Home Office also said that the approach included in the Draft Order was novel and technically did not involve RAB inflation indexation, and requested that we give further consideration to whether it is sufficiently consistent with the approach proposed in the Final Report.</p>	<p>The analysis presented by the Home Office can be understood as supporting the view that the approach adopted in the Draft Order has substantially equivalent effects to a RAB indexation approach, as even under the 'extreme' scenarios it considered, the identified differences amounted to no more than 0.3% of Allowed Revenue. We note, however, that even this level of difference can be understood as related to the specific form of RAB indexation that the Home Office assumed in its analysis, which aligns with the simplified approach we adopted at the PDR stage. As we noted in the Report, when commenting on the allowed revenue model that underpinned the PDR proposals, the Home Office requested that we consider whether using an NPV neutral RAB – as is used by Ofgem - would be more appropriate.²⁵</p> <p>The CMA's judgement, accordingly, is that the approach proposed was substantially equivalent to that in the Report: it represents a different means of meeting the principles and achieving the effects in the Report.</p>	<p>The CMA has accordingly made no changes to the Order in this regard.</p> <p>We have made a minor adjustment to the description of this approach in the Explanatory Note to take account of the Home Office's comments (and Motorola's representations in this connection).</p>

²⁵ Report, Appendix K, paragraph 145.

	Specifying the level of detail that must be provided in the opex and capex breakdown		
37-38	The Home Office noted that, under the Draft Order, Airwave and Motorola Solutions would be required 'to provide to the Home Office and the CMA the Statutory Accounts of Airwave Solutions for each relevant year, including a detailed breakdown of the levels of opex and capex shown in those accounts'. The Home Office said, however, that the level of detail in the Statutory Accounts would be insufficient to understand any cost drivers, suggested that alternative wording be used highlighting that the detailed breakdown is required in addition to the Statutory Accounts. The Home Office also asked that we specify the requirements more precisely to ensure sufficient detail is provided to enable sources of any deviations between actual and forecast costs to be assessed.	The intention of Article 6.4(a) of the Order is to require a detailed breakdown of the opex and capex levels shown in the Airwave's statutory accounts, not a breakdown that at a level of detail that is equivalent to that provided in the statutory accounts. In the Second Consultation, the CMA proposed a minor modification to address the potential for ambiguity which, in light of responses to that consultation, it has decided to adopt.	The CMA has substituted 'and' for 'including' in Article 6.4(a) of the Order.
	Forecasts of future charges		
39-44	The Draft Order does not specify the detail or frequency at which Airwave must forecast its charges. However, to comply with budgeting requirements imposed by HM Treasury, to be able to approve invoices raised by Airwave when they come in, and to be able to fulfil its responsibility for the Full Business Case of ESMCP (which includes Airwave), relatively detailed and frequent forecasts are necessary. To be able to verify invoices as they come in, the Home Office and other users of the Airwave network would also require a forecast of the breakdown of the charges by invoice.	<p>The CMA decided in the Report that the Charge Control should specify a reduced overall level of allowed revenues for Airwave and Motorola, with the distribution between customers to be determined by them, subject to the overall cap, rather than being specified by the CMA.</p> <p>The CMA acknowledges that Airwave and Motorola will be required to reduce the amount they charge customers, and that will need to be reflected in customer invoices and communicated to customers.</p> <p>Save insofar as the Order amends the contract price, Airwave, Motorola and the</p>	The CMA has accordingly made no changes to the Order in this regard.

		<p>Home Office (and relevant individual service users) will be able to deal with the contractual and invoicing matters so as to secure compliance with the charge control, including any adjustments that are necessary over time. They should be able to address issues as to the form of invoicing, subject to compliance with the Order, as they have in the past.</p> <p>As to forecasting, the Order sets requirements with which Airwave and Motorola must comply for the purposes of the charge control, to address the detrimental effects arising from the AEC. Subject to the those, they and the Home Office will be able to discuss and agree other forecasting arrangements.</p>	
	Other drafting comments		
47	The terms 'Airwave Network' and 'Statutory Accounts' are sometimes capitalised in the Draft Order but are not defined.	'Airwave Network' is a proper name and does not require a definition. It will be capitalised where used in the Order. Statutory accounts will be uncapitalised.	The CMA has capitalised all occurrences of 'Airwave Network,' and uncapitalised all occurrences of 'statutory accounts' in the Order.
48	Motorola Solutions is defined as Motorola Solutions, Inc. The Order does not specify whether this definition includes all Group Companies and affiliated entities and therefore clarification is requested. If it is intended that the Order applies to subsidiaries/affiliates of Motorola Solutions, the Home Office suggests that the addition of the following wording may help to clarify: "This Order applies to any subsidiaries and affiliates of Motorola Solutions that supply, or may during the	The Order is not intended to impose obligations on other Motorola companies.	The CMA has accordingly made no changes to the Order in this regard.

	life of the charge control supply, the Specified Goods and Services”		
49	The Draft Order allows Airwave, Motorola Solutions and the Home Office to agree alternative arrangements to those specified in the Order, as long as they 'do not result in a material weakening of the constraints' that the CMA has put on Airwave. The Home Office requests that the CMA specify whether other Airwave network users are also allowed to agree alternative arrangements with Airwave.	Article 10.1 of the Order refers to the scope to agree arrangements that would differ from those specified in Schedule 1 of the Order. It relates only to Airwave, Motorola and the Home Office. It would be for the Home Office to engage with other users as part of any such process. We note that it would be open to other users to agree to vary the arrangements they have with Airwave and Motorola to the extent that was compatible with their prevailing agreements and with Airwave's and Motorola's compliance with the Order (and the provisions of Schedule 1 in particular).	The CMA has accordingly made no changes to the Order in this regard.
50	Paragraph 1 of Schedule 1 uses CPIt and CPIt-1 but these terms are not defined within this paragraph. A reference to the definition of CPIt included in the later paragraph 7 would be helpful. It would also be useful to have clarity as to whether this definition in paragraph 7 of Schedule 1 applies as a base to all CPI-related figures i.e. CPIt-1 and CPI2021 in addition to CPIt. The same comment applies to RPI notations.	The addition of a cross-reference in the Order addresses this point. This modification was part of the Second Consultation. In light of responses to that consultation, the CMA has decided to adopt that modification.	The CMA has added a cross-reference in the Order to clarify this point.
51	The term DEP is missing a subscript t (to be read as DEPt) in Paragraph 6 of Schedule 1.	The CMA agrees and proposed a correction in the Second Consultation which, in light of responses to that consultation, it has decided to adopt.	The CMA has added the subscript.
52	Article 5 identifies that Schedule 1 specifies the charge control methodology, but does not refer to the final settlement allowance calculation formula in paragraph 12 of that	Article 4.1 of the Order requires Airwave and Motorola to comply with the charge control set in accordance with the methodology in Schedule 1. Article 5 says that 'Schedule 1 specifies the method of	The CMA has accordingly made no changes to the Order in this regard

	Schedule. The Home Office considers that a reference to the final settlement should be included in Article 5.	calculating an overall revenue for each year (or part thereof)'. Those clearly include the obligations in respect of the final settlement allowance in paragraph 12 of Schedule 1.	
53	Paragraph 6.2 (b) of the Draft Order requires Airwave and Motorola Solutions to explain any '[m]aterial deviations between actual capex levels and: (i) those that were included in their capex plans [...].' The Home Office asks the CMA to specify which plans the CMA refers to (i.e. the plans that Motorola has submitted to the CMA to date, the plans underlying annual capex forecasts or other plans).	Motorola also asked for greater clarity on this point. As in relation to paragraph 58 of Motorola's First Consultation Response above, we proposed in the Second Consultation that we modify the Order to refer to the May 2021 and April 2022 forecasts which underpinned the capex allowances determined in the Report. In light of responses to that consultation, the CMA has decided to make that modification.	The CMA has added references to the May 2021 and April 2022 capex forecasts to Article 6.2(b) of the Order.

Motorola / Airwave response to Second Consultation

Section / paragraph number	Issue raised	CMA assessment and comments	Proposed changes to Draft Order and/or Explanatory Note
Item 1 in response	Applicability of Article 7.1 of the Modified Draft Order (defined as the draft Order published on 11 July 2023)		

Paragraphs 8 and 9 of response	Motorola asked whether Article 7.1 of the Order only applies after the first delivery of compliance information in the autumn of 2024?	Article 7.1 relates to clarification and substantiation of information provided under Article 6. Consequently, it applies only after the first delivery of such compliance information, which must take place not later than 31 October 2024.	No changes required to either Order or Explanatory Note.
Item 2 in response	Operation of Article 8 of the Modified Draft Order		
Paragraphs 8 and 9 of response	Motorola asked whether requests made under Article 8 of the Order would reflect the time that will be needed for Airwave to make changes to its internal systems and processes in Autumn 2023, before it could answer such requests?	<p>The Order requires the CMA to specify a “reasonable time period” for Airwave / Motorola to respond to requests for information under Article 8. Such requests are to be made for the purposes of enabling the CMA to monitor the carrying out of the Order or any provision of it, or to review the effectiveness of the operation of the Order or any provision of it. A reasonable time for responding would take account of the obligations the Order places on Airwave and Motorola and that purpose.</p> <p>In line with its usual practice, the CMA would expect to contact Airwave / Motorola in advance of a formal request for the provision of such information to discuss the request and determine what would constitute a “reasonable time” in relation to any information sought. This would be likely to depend on the nature and complexity of the request in question.</p>	No changes required to either Order or Explanatory Note.
Item 3 in response	Does the CMA expect Airwave to make changes to its contracts to reflect the new pricing and service credit regime imposed by the Modified Draft Order?		

<p>Paragraphs 8 and 10 of response</p>	<p>Airwave and Motorola are not clear as to whether the Modified Draft Order requires Airwave to make changes to its contracts to reflect the new pricing and service credit regime imposed by the same. Airwave's and Motorola's concern in this regard is premised on the fact that Airwave's billing and service credit arrangements are extremely complex.</p> <p>The Modified Draft Order does not make clear whether Airwave should make changes to its contracts so as to reflect the new pricing and service credit regimes imposed by the Modified Draft Order. Nor does the Modified Draft Order make clear how the revised revenue under the charge control should be allocated across both customers and products / services. In the absence of contractual changes, Airwave and Motorola are concerned that there will very likely be disputes with customers as to pricing and the application of service credits.</p>	<p>These are substantially similar matters to those raised in paragraphs 35 and 36 of Motorola's response to the First Consultation. The CMA's assessment as set out in that connection above applies here too.</p> <p>Taking account of those points, the CMA's judgement is that the Order is sufficiently flexible to enable Airwave and Motorola to design a pricing framework with its customers to enable it to meet the revenue limits set out in the Order, including any contractual and billing arrangements that comply with the Order. Airwave and Motorola, working with their customers, will be best placed to do this, given their understanding of their own systems and contractual arrangements.</p> <p>The CMA recognises that some customers may query the prices they are being charged. Airwave and Motorola are also well-placed to explain those prices in the context of the revenue limits set out in the Order.</p>	<p>The CMA has accordingly made no changes to the Order in this regard</p>
<p>Item 4 in response</p>	<p>In light of the fact that: (i) changing Airwave's pricing will take time; and (ii) the remainder of 2023 is short in duration, has the CMA considered whether it would be more desirable from the perspective of end users for Airwave to spread the resulting price changes out in order to avoid sharp ups and downs in unit prices (while hitting RevMax across a longer period)?</p>		

<p>Paragraphs 8 and 10 of response</p>	<p>Airwave and Motorola are concerned that the current provision for price changes within the Modified Draft Order mean that Airwave will need to drastically reduce its prices late in 2023, and will then need to increase its prices early in 2024. This issue is related to the question of whether the Modified Draft Order requires Airwave to make changes to its contracts to reflect the new pricing and service credit regime, as discussed at Item 3 above. Airwave and Motorola query whether the CMA has considered whether it would be more desirable to spread the resulting price changes out across 2024 by allowing prices to be set such that revenues would exceed RevMax in 2023 by a certain amount (which would then result in a reconciliation adjustment in 2024).</p>	<p>The CMA recognises that there may be price fluctuations in the initial months after Order implementation, as Airwave adapts its pricing to comply with the revenue limits set out in the Order.</p> <p>However, the CMA does not consider that the scope for such fluctuations would represent a material concern or unduly inconvenience Airwave's and Motorola's customers, particularly given that charges overall are likely to fall. These are matters which can be the subject of appropriate communications between Airwave, Motorola, the Home Office and other customers.</p>	<p>The CMA has accordingly made no changes to the Order in this regard.</p>
	<p>Motorola considers that the formula for the reconciliation adjustment in 2024 (for 2023) given in paragraph 1 of Schedule 1 of the Modified Draft Order is not correct.</p> <p>In its response, Motorola puts forward an amendment to the formula which involves raising the multiplier (1+ARett) to a different power, reflecting that the over / under revenue for 2023 will have been held for (on average) less than a year.</p> <p>Motorola submits that no adjustment is needed to the formula in the Modified Draft Order in other years.</p>	<p>The proposed adjustment is consistent with the decision in the Report that such reconciliations should be made on an NPV-neutral basis. It is a slightly more accurate way of providing for NPV neutrality for reconciliations relating to that part of 2023 to which the Order applies. We have therefore decided to make a further, minor adjustment to the Order. We note that, if Airwave recovered 1% more (or less) revenue than allowed under the charge control for the remainder of 2023, then the downward (or upward) adjustment provided for to account for this, would be lower – as result of the modification – by around £20,000 in 2024 (an amount equivalent to around 0.01% of Airwave's allowed revenue).</p>	<p>We have amended the Order to reflect this submission by raising the (1+ARett) term to the power: 0.708. This is in line with the figure Motorola and Airwave identified as being appropriate if the Commencement Date was August 1 2023. This is not a material change to the Order.</p>

Item 5 in response	Does the CMA have a view on the definition of revenue in the period (e.g., based on accounting revenue recognition)?		
Paragraphs 8 and 10 of response	The Modified Draft Order does not define revenue in the period. During the 19 July Meeting, Airwave and Motorola highlighted that there is a difference between revenue and charges, as there are certain nuances including: (a) the billing of certain customers in advance; (b) deferred revenue; and (c) billing adjustments to account for items such as service credits, and thus a definition would need to be provided. As a related concern, Airwave and Motorola noted that there was uncertainty as to how to treat items that straddle the period both before and after the Final Order. It would be preferable if the definition of revenue in the period were to follow the statutory accounting revenue recognition.	As set out in Article 6 of the Order, revenues in each period should be reconciled to Airwave's statutory accounts. Revenue earned in a period should accordingly be treated in the same way as in those accounts.	The CMA has accordingly made no changes to the Order in this regard, since none are necessary. We have, however, included amended guidance in paragraph 40 of the Explanatory Note to the Order.
Item 6 in response	Can the CMA provide clarity as to the required level of granularity of the reporting of opex, revenue and capex?		
Paragraphs 8 and 10 of response	Airwave and Motorola indicated to the CMA that it would be helpful to know the level of granularity required for the items to be reported pursuant to the Modified Draft Order (i.e., opex, revenue and capex). Airwave and Motorola suggested that the CMA may wish to provide pro-forma templates (or agree these with Airwave and Motorola in advance) so that compliant systems could be built for the purposes of reporting.	These are substantially similar matters to those raised in paragraph 58 of Motorola's response to the First Consultation. The CMA's assessment set out in that connection above also applies here.	The CMA has accordingly made no changes to the Order in this regard.
Item 7 in response	In relation to the calculation of RevMax and associated changes in prices, would it be more efficient to have an explicit mechanism to deal with		

	situations in which data is not available at the point at which new prices have to be finalised?		
Paragraphs 8 and 10 of response	The Modified Draft Order does not always make explicit provision for situations in which data is not available at the point at which new prices have to be finalised, and thus Airwave and Motorola highlighted that prices will need to be set on the basis of forecasts. For example, prices for 2024 will need to be set in late 2023 / early 2024 based on a forecast of RevMax 2024, but this depends on service credits in 2024, which will only be known accurately after 2024 has finished. Whilst the CMA indicated that it expects there to be a reconciliation after the event, Airwave and Motorola stated that it would not be practicable to get to October 2024, find that it was not in line to achieve RevMax, and then be obliged to change its prices again, as this would create the need for prices to be changed more than once per year.	The Order places obligations on Airwave and Motorola to comply with allowed overall revenue limits. It requires them to set charge levels using forecasts based on official inflation forecasts, such as those issued by the OBR and the Bank of England, and other assumptions based on their best estimates (such estimates likely in any event forming part of their ordinary business practices). The Order also provides for reconciliation between forecast charges and allowed revenues. If, at the end of that process, price adjustments did prove necessary to comply with the Order such adjustments can be made (including in agreements with customers where those result in compliance with the Order).	The CMA has accordingly made no changes to the Order in this regard.
Item 8 in response	What process does the CMA envisage for requested changes to the contracts that themselves require additional capex or opex? How quickly would it be possible to agree any required change to the Modified Draft Order?		
Paragraphs 8 and 10 of response	The Modified Draft Order does not directly address the possibility for changes to the contracts that require additional capex or opex, as requested by the customers, nor the process to take into account such changes. Examples of such changes from customers include requests for additional coverage or special events for which bespoke arrangements are required. If additional capex were required, this would then imply significant	These are substantially similar matters to those raised in section 3.2 of Motorola's response to the First Consultation. The CMA's assessment set out in that connection above also applies here. In particular, the question of how the charge control should be applied to charges for different network services was consulted on in the PDR,	The CMA is not re-opening the decisions set out in the Report. It has accordingly made no changes to the Order in this regard.

	<p>changes to the Modified Draft Order with changes to the future RAB, depreciation allowance, etc.</p>	<p>and – as set out in the Report – our decision on this matter included that the charging arrangements for ‘Catalogue/Growth service (and for Police Traffic Unit and the Amber Lights contracts) would not be affected by the charge control remedy. It will not therefore affect Airwave’s and Motorola’s ability to charge for additional Catalogue/Growth services of the kinds referred to in this part of its response.</p> <p>Capex and opex allowances for services whose prices are affected by the charge control were provided for in the decisions set out in the Report. Those decisions also set out the extent to which, and how, differences between Airwave’s actual costs and those allowed for under the charge control would be taken into account, and how this matter may also be considered in the 2026 review that the CMA decided upon.</p>	
	<p>In addition, Motorola and Airwave are concerned by the fact that the Modified Draft Order may have significant distortive effects in terms of competition in the market for equipment, insofar as there is no limit on the extent to which individual customers could demand additional equipment offered under the catalogue of each contract free of charge.</p>	<p>These are also substantially similar matters to those raised in sections 3.2 and 3.3 of Motorola’s response to the First Consultation. The CMA’s assessment set out in those connections above also applies here.</p> <p>In particular, as far as individual customers demanding unlimited amounts of additional equipment or services at no extra cost under the catalogues of each contract are concerned, the charging arrangements for ‘Catalogue/Growth service (and for Police Traffic Unit and the Amber Lights contracts) are not affected by the</p>	<p>The CMA is not re-opening the decisions set out in the Report. It has accordingly made no changes to the Order in this regard.</p>

		charge control remedy. As described above in relation to section 3.2 of Motorola's First Consultation response, the terms on which Airwave and Motorola provide such additional services and equipment would only affect the amounts of revenue they are permitted to earn from the provision of Core and Police Menu Services if the price at which such additional services and equipment was provided was materially higher (or lower) than that of equivalent existing services and equipment (such that the measure of the weighted average of the percentage increases in the level of charges for Other Menu Services (IF(MO)t) was affected). The effect of the charge control is not, therefore, that individual customers could demand additional equipment or services at no extra cost to them regardless of the cost implications for Airwave or Motorola.	
Item 9 in response	Does the CMA have a view on an appropriate materiality threshold in relation to, for example, the calculation of RevMax or the correction of an error?		
Paragraphs 8 and 10 of response	The Modified Draft Order does not include a materiality threshold in relation inter alia to the calculation of RevMax or the correction of an error, which creates a high level of uncertainty.	Schedule 1 of the Order provides for the estimation of charges by Airwave and Motorola and the reconciliation of those charges with allowed overall revenues. It ought therefore be possible accurately to establish compliance with the requirements of the Order. In the event that there is non-compliance, the CMA would consider the appropriate action in line with its statutory powers, duties and administrative	The CMA has made no changes to the Order in light of these parts of Airwave's and Motorola's representations.

		priorities. That may include a consideration of the materiality of any non-compliance.	
Item 10 in response	Overarching topics		
Paragraphs 8 and 10 of response	Motorola is concerned about the length of / level of detail within the Modified Draft Order, and, in turn, is also concerned with regards to the possibility of disputes regarding the Modified Draft Order.	The CMA has made considered judgements both as to (i) the matters necessary and appropriate to include in the Order in order to specify the obligations with which Airwave and Motorola must comply; and (ii) the means of compliance – for example, the operational processes – that are for them to determine (whilst meeting their obligations under the Order) and should not be included in the Order. The obligations placed on Airwave and Motorola by the Order are clear, while providing appropriate flexibility as to how these obligations are met. Airwave and Motorola are in a position to mitigate the likelihood of disputes arising with customers by making appropriate arrangements and engaging in appropriately clear and transparent communications with them.	The CMA has made the modifications to the Order that are explained in this document.
Section 3 of response	Modification of Article 6.2(b)		

<p>Paragraph 13 of response</p>	<p>Airwave and Motorola consider that the modifications to Article 6.2 within the Modified Draft Order are insufficient to address the concerns raised in the response to the first public consultation. In particular, the clarification does not resolve the core issue that the figures in the Report that are being referenced are based on high level forecasts that have been adjusted by the CMA in various ways, cannot form an appropriate baseline for reporting requirements, or for the assessment of whether particular investments are justified.</p>	<p>The matters raised in this part of Motorola's Second Consultation response overlap with those in paragraph 58 (i) of its response to the First Consultation. The CMA's assessment set out in that connection above is also relevant here.</p> <p>In particular, the CMA set out in the Report (Appendix K) the basis upon which we decided to use the capex forecasts that are (now) referred to in the Order. We note that those forecasts included a breakdown of forecast capex across a range of different spend areas. On those grounds, we consider that these forecasts provide a sufficient basis for underpinning the reporting requirements set out in Article 6.2 of the Order. We noted in the Report that, as these are Airwave's and Motorola's capex forecasts, their use is appropriate.</p>	<p>As proposed in the Second Consultation, the CMA has amended Article 6.2 of the Order by adding reference to the Motorola capex forecasts which underpinned the capex allowances that were determined in the Report (ie the May 2021 and April 2022 forecasts), and to the capex allowances set out in the Report. It has made no further modifications to the Order in this connection.</p>
<p>Section 4 of the response</p>	<p>Unintended consequences of the Modified Draft Order</p>		
<p>Paragraphs 14 to 20 of response</p>	<p>Airwave and Motorola submit that Airwave [§<]</p>	<p>These representations relate to matters on which the CMA made decisions in the Report.</p> <p>In particular, as set out in the Report, the CMA decided to increase the opex allowance in the charge control by around £[§<] m per year from 2024 onwards (and included an £[§<] m allowance for up-front capex) in line with Motorola's view of the increase in the costs of the [§<]. In other words, the higher costs to which Airwave and Motorola are referring to</p>	<p>The CMA is not re-opening the decisions set out in the Report. It has accordingly made no changes to the Order in this regard.</p>

		<p>have already been taken into account in the CMA's decision to impose the charge control, as specified in the Report (Appendix K, paragraph 106), and funding has been provided to Airwave and Motorola in respect of the additional costs to the end of 2029 if necessary (with scope for opex allowances to be assessed on a forward-looking basis at the 2026 review). There may be matters of negotiation in which they would need to engage with [§<] and, as appropriate, the Home Office, but those are not matters related to the implementation in the Order of the decisions in the Report.</p>	
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Home Office response to Second Consultation

Section / paragraph number	Issue raised	CMA assessment and comments	Proposed changes to Draft Order and/or Explanatory Note
1	The timing of reconciliations		
4-7	In response to the first public consultation, 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	This part of the Home Office's response to the Second Consultation repeats representations made in paragraphs 14-21 of its response 2 to	The CMA has made no changes to the Order in this regard.

	challenges the timeline will create for the Home Office in light of its budgeting responsibilities stipulated by UK governmental budgeting requirements.	the First Consultation. The CMA's assessment in that connection above applies here too.	
2	Specifying the level of detail that must be provided in the opex and capex breakdown		
8-10	The Home Office notes that the level of detail that Airwave must provide in the opex and capex breakdowns referenced in Article 6.4(a) is not specified. The Home Office asks that the CMA specifies the requirements more precisely, at least in the Explanatory Note, for the reasons expressed in response to the First Consultation. Airwave has, to date, provided the Home Office with capex forecasts on a project by project basis.	<p>This part of the Home Office's response to the Second Consultation raises similar points to those in paragraphs 37-38 of its response 2 to the First Consultation, and to those in paragraphs 58 and 8-10 (item 6) of Motorola's responses to the First and Second Consultations, respectively. The CMA's assessment in those connections above is also relevant here.</p> <p>As we note in those connections, the CMA recognises the benefit of Airwave and Motorola developing an appropriate reporting framework / template to help them to meet their reporting obligations under the Order. The CMA also sees merit in discussing with Airwave and Motorola, and as appropriate the Home Office, their development of such a reporting framework / template in advance of the relevant reporting deadlines.</p>	The CMA has modified Article 6.4(a) of the Order as proposed in the Second Consultation, but otherwise made no changes to the Order in this regard.
8-10	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	The CMA's judgment is that such a modification of the Order is unnecessary. As a whole, Article 6.4, together with other compliance information requirements in Article 6, should require Airwave and Motorola to provide information that will enable their compliance with the Order to be assessed. To the extent any further information	The CMA has modified Article 6.4(a) of the Order as proposed in the Second Consultation, but otherwise made no changes to the Order in this regard.

	with the final order, an addition is made to Article 6.4(b) to reflect the change in Article 6.4(a). The Home Office also requests that the Article 6.4(a) modification is reflected in paragraph A(d) of the Schedule 2 compliance statement.	were required for that purpose, Article 7.1 could be used to require its production.	
3	Forecasts of future charges		
11-12	The Home Office requests that the Draft Order specifies 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 EMSCP (which includes Airwave).	This part of the Home Office's response to the Second Consultation repeats representations made in paragraphs 39-44 of its response 2 to the First Consultation. The CMA's assessment in that connection applies here too. In particular as to forecasting, the Order sets requirements with which Airwave and Motorola must comply for the purposes of the charge control. Subject to the those, they and the Home Office should be able to discuss and agree other forecasting arrangements.	The CMA has made no changes to the Order in this regard.
4	The definition of Capital Expenditure on external equipment		
13-14	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. 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	The CMA's assessment is that no change is necessary to the relevant definition. The CMA would not expect that any relevant capital expenditure could be treated in one way for the purposes of the Order and another in the relevant statutory accounts, particularly in light of the compliance and reconciliation requirements, anchored in those statutory accounts, in Article 6 of the Order.	The CMA has made no changes to the Order in this regard.

	<p>addition (shown in underline) is made to the definition as follows:</p> <p>“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) <u>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.</u>”</p>		
13-15	<p>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.</p>	<p>The Order contains reconciliation, compliance reporting and independent assurance mechanisms (that are subject to the CMA’s approval) that, in the CMA’s judgement, are likely to result in appropriate treatment of assets in line with the charge control objectives and methodology.</p>	<p>The CMA has made no changes to the Order in this regard.</p>
4	<p>Application of the charge control to all Airwave users</p>		
16-17	<p>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.</p>	<p>The question of how the charge control should be applied to different services was considered and decided on in the Report (Appendix K, paragraphs 59 – 68). This included consideration of the effect of the charge control on sharer contracts (Appendix K, paragraph 65). The Order is consistent with and implements the approach decided on in the Report. Home Office concerns about the implications this approach would have for different users was considered in</p>	<p>The CMA is not re-opening the decisions set out in the Report. It has accordingly made no changes to the Order in this regard.</p>

	<p>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.</p>	<p>the Report, and the CMA decided that it should be open to the Home Office, users and Airwave and Motorola to agree a different way in which the charge control could be applied so as to address those concerns, as long as the overall constraints imposed by the charge control were preserved (Appendix K, paragraph 68). This part of the Report is implemented through Article 10 of the Order.</p>	
5	Other points		
18-19 and 47 in 16 June submission.	<p>The Home Office queries why the term Airwave Network capitalised but not defined</p>	<p>The Airwave Network is a specific mobile telecommunications network which constitutes the entirety of Airwave's business. This is widely understood and we do not consider that the term could be confused for anything else. Accordingly, we do not consider that a definition is necessary.</p>	<p>The CMA has made no changes to the Order in this regard.</p>