

CMA PHASE 2

RESPONSE TO THE PROVISIONAL FINDINGS

**CASE ME/6985/22
ANTICIPATED MERGER BETWEEN**



Viasat, Inc.

and



21 March 2023

Table of Contents

TABLE OF ANNEXES..... 1

1 Introduction and Executive Summary..... 2

2 Recent market developments 2

2.1 Anuvu: [CONFIDENTIAL TO VIASAT]..... 2

2.2 Starlink: more feedback on its impressive IFC operational performance..... 2

2.3 OneWeb reaches 99% of the satellites required for global coverage..... 3

2.4 Amazon unveils its new Project Kuiper user terminals 3

2.5 Airline customers known by the Parties to be considering Starlink or OneWeb: [CONFIDENTIAL TO INMARSAT]..... 4

3 Clear evidence demonstrates that Anuvu is a ‘strong’ and not a ‘moderate’ competitive constraint in its core strength of narrowbody (short-haul) tenders 4

4 The competitive significance of Airbus’ HBCplus programme is understated in the PFs 6

5 Clarifications/corrections on points addressed in the PFs 7

TABLE OF ANNEXES

Annex number	Annex content
Annex RPF.01	[CONFIDENTIAL TO VIASAT]
Annex RPF.02	[CONFIDENTIAL TO VIASAT]
Annex RPF.03	[CONFIDENTIAL TO VIASAT]
Annex RPF.04	[CONFIDENTIAL TO VIASAT]
Annex RPF.05	[CONFIDENTIAL TO VIASAT]
Annex RPF.06	[CONFIDENTIAL TO VIASAT]
Annex RPF.07	[CONFIDENTIAL TO VIASAT]
Annex RPF.08	[CONFIDENTIAL TO VIASAT]
Annex RPF.09	Updated Figures in Parties' Written Response to the WPs and AIS – Based on Valour Consultancy Data for 2022 Q4
Annex RPF.10a	Valour Consultancy Data, In-flight Connectivity Update, Q2 2022
Annex RPF.10b	Valour Consultancy Data, In-flight Connectivity Tracker, Q2 2022
Annex RPF.11a	Valour Consultancy Data, In-flight Connectivity Update, Q3 2022
Annex RPF.11b	Valour Consultancy Data, In-flight Connectivity Tracker, Q3 2022
Annex RPF.12a	Valour Consultancy Data, In-flight Connectivity Update, Q4 2022
Annex RPF.12b	Valour Consultancy Data, In-flight Connectivity Tracker, Q4 2022

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1 Introduction and Executive Summary

- (1) This submission sets out the response of Viasat, Inc. (“**Viasat**”) and Inmarsat Group Holdings Limited (“**Inmarsat**” and, together with Viasat, the “**Parties**”) to the CMA’s Phase 2 Provisional Findings (“**PFs**”) dated 1 March 2023 in relation to the proposed acquisition of Inmarsat by Viasat (the “**Proposed Transaction**” or the “**Merger**”).
- (2) The Parties welcome and agree with the provisional conclusion reached by the CMA on the evidence before it that the Transaction may not be expected to result in a substantial lessening of competition (“**SLC**”) in the global supply of broadband IFC services to commercial airlines or business aircraft owners, and in particular with regard to routes that are likely to affect UK customers, principally because the aggregate competitive constraints the Merged Entity will face from other rivals are already significant and only likely to increase.
- (3) This submission sets out supplemental evidence and a handful of clarifications and corrections on the PFs, and is structured as follows:
 - (i) **Section 2** presents some important recent market developments that are relevant to the CMA’s assessment;
 - (ii) **Section 3** presents the Parties’ views on the significant competitive constraint exercised by Anuvu, which the Parties believe has been understated in the CMA’s PFs;
 - (iii) **Section 4** explains why the Airbus HBCplus programme is a milestone development in the IFC industry, which should receive more prominence in the CMA’s assessment; and
 - (iv) **Section 5** provides a few clarifications/corrections on selected points in the PFs.

2 Recent market developments

2.1 Anuvu: [CONFIDENTIAL TO VIASAT]

- (4) [CONFIDENTIAL TO VIASAT]
- (5) [CONFIDENTIAL TO VIASAT]¹[CONFIDENTIAL TO VIASAT]
- (6) [CONFIDENTIAL TO VIASAT]² [CONFIDENTIAL TO VIASAT]³
- (7) [CONFIDENTIAL TO VIASAT]

2.2 Starlink: more feedback on its impressive IFC operational performance

- (8) Starlink’s IFC solution continues to gain significant traction, with new reports on a practically daily basis highlighting its impressive service quality.
- (9) In a recent report by an industry specialist, Starlink’s Wi-Fi on JSX’s regional aircraft was hailed as “*the fastest and most reliable inflight internet [the reporter had] ever experienced*”.⁴ The reporter tested Starlink’s Wi-Fi service across a wide span of online activity on multiple devices, from logging in to streaming video, teleconferencing, installing applications, streaming and downloading music, and sending emails. The reporter noted that “*each device measured download speeds in excess of 100*

¹ **Annex RPF.01**, Email from Norwegian to Viasat dated 7 March 2023 regarding decision to award IFC tender to Viasat’s competitor.

² Viasat, Follow up material from MPH (consolidated version), 10 February 2023, paras. 44-59.

³ Viasat, Follow up material from MPH (consolidated version), 10 February 2023, paras. 44-59.

⁴ Holy cow: Testing JSX’s blazing-fast Starlink Wi-Fi with Apple’s new MacBook Pro, The Points Guy, 8 March 2023, available at: <https://thepointsguy.com/news/jsx-starlink-wifi/>. Accessed on 21 March 2023.

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Mbps. Upload speeds, which hovered between five and 20 Mbps, were just as impressive. But the real show-stopper was the ping, a measure that generally indicates how much buffering you'll experience during data-intensive tasks. The ping clocked in between 28 and 150 milliseconds in the four tests — an incredible feat for inflight Wi-Fi.” The conclusion of the article was that “*the service worked perfectly throughout my testing, and my fellow travellers all seemed to agree with my conclusion, too.*”

- (10) Another recent report on Starlink IFC performance on JSX regional aircraft also highlighted Starlink's impressive speeds – especially considering that it was offered free of charge to passengers – and concluded that this constitutes “*a serious advance on connectivity that delivered speeds competitive with 4G and sometimes even 5G.*”⁵
- (11) An additional review of Starlink's IFC on JSX similarly echoes Starlink's impressive performance, and highlights that the JSX CEO is “*unfazed*” by SpaceX placing limits on new terrestrial signups in some regions to avoid oversubscription challenges, noting that “*the company has SLAs in place that are readily being met.*”⁶ [CONFIDENTIALITY RING INFORMATION]⁷[CONFIDENTIALITY RING INFORMATION].

2.3 OneWeb reaches 99% of the satellites required for global coverage

- (12) On 9 March 2023, OneWeb launched 40 more LEO satellites (using SpaceX's launch services), bringing its LEO constellation to 582 satellites – just six satellites below (or 99% of) the 588 which it needs to achieve global coverage.⁸ OneWeb is due to launch an additional 36 satellites later this March, which will result in a constellation numbering 618 LEO satellites, with the 30 satellites above the number required to achieve global coverage serving as in-orbit spares. This is a significant milestone for OneWeb, as it is now reaching a level of resilience (with any satellite failures being easily remedied through spare capacity) which is central to the LEO competitive advantage vis-à-vis GEOs.
- (13) [CONFIDENTIALITY RING INFORMATION]⁹, and OneWeb's innovative collaborations with SSPs (Intelsat, Panasonic), its presence in the IFC space is becoming more pronounced by the day.

2.4 Amazon unveils its new Project Kuiper user terminals

- (14) On 14 March 2023, Amazon revealed at the Satellite 2023 conference its new terminals, which will be used for the operation of its planned 3,200-satellite Project Kuiper constellation of LEO satellites.¹⁰ The new terminals are divided into three categories:
- (i) a “standard” terminal for residential and small business customers, capable of speeds up to 400 Mbps and costing less than \$400 to produce;
 - (ii) an “ultra-compact” and more affordable terminal, offering speeds up to 100 Mbps; and
 - (iii) a “higher end” terminal, providing speeds of up to 1 Gbps, best suited for larger enterprise and government customers.

⁵ Starlink Flight Test: What It's Like Using SpaceX's Broadband for Inflight Wi-Fi, pcmag.com, 9 March 2023, available at: <https://uk.pcmag.com/travel-how-to/145844/starlink-flight-test-what-its-like-using-spacexs-broadband-for-inflight-wi-fi>. Accessed on 21 March 2023.

⁶ Starlink shines on JSX, PaxEx.Aero, 13 March 2023, available at: <https://paxex.aero/jsx-starlink-spacex-review/>. Access on 21 March 2023.

⁷ PFs, para. 9.110.

⁸ SpaceX completes final dedicated launch for OneWeb, SpaceNews, 9 March 2023, available at: <https://spacenews.com/spacex-completes-final-dedicated-launch-for-oneweb/>. Access on 21 March 2023.

⁹ PFs, Appendix D, para. 39.

¹⁰ Amazon unveils Project Kuiper terminals for services starting in 2024, SpaceNews, 14 March 2023, available at: <https://spacenews.com/amazon-unveils-project-kuiper-terminals-for-services-starting-in-2024/>. Accessed on 21 March 2021.

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- (15) Amazon's new terminals are powered by a baseband chip designed by Amazon, which its senior vice president of devices and services has said would give Project Kuiper the processing power of "a typical kind of 5G base station, we have the power of the modem that's in your 5G phone, and we have the power of the most powerful backhaul system".¹¹
- (16) With plans to produce 3-5 satellites in-house daily running up to a regulatory deadline for having half of its proposed 3,236-satellite constellation in LEO orbit by mid-2026, Amazon is expecting to start providing beta services to "large customers" in late 2024 in certain regions.¹²

2.5 Airline customers known by the Parties to be considering Starlink or OneWeb: [CONFIDENTIAL TO INMARSAT]

- (17) [CONFIDENTIAL TO INMARSAT]:
- (i) [CONFIDENTIAL TO INMARSAT][CONFIDENTIALITY RING INFORMATION]¹³
 - (ii) [CONFIDENTIAL TO INMARSAT][CONFIDENTIALITY RING INFORMATION]¹⁴
[CONFIDENTIALITY RING INFORMATION]¹⁵
 - (iii) [CONFIDENTIAL TO INMARSAT][CONFIDENTIALITY RING INFORMATION]¹⁶
 - (iv) [CONFIDENTIAL TO INMARSAT]
 - (v) [CONFIDENTIAL TO INMARSAT]
 - (vi) [CONFIDENTIAL TO INMARSAT]
- (18) [CONFIDENTIAL TO VIASAT]
- (19) All of these updates further reinforce the clear view of the Parties – acknowledged in the PFs¹⁷ – that the competitive constraint by Starlink and OneWeb will grow significantly over the next few years [CONFIDENTIALITY RING INFORMATION]¹⁸
- (20) These developments also provide additional support to the conclusion in the PFs that Intelsat will be a significant competitive constraint in the next few years, boosted by the launch of its hybrid GEO-LEO solution in partnership with OneWeb¹⁹ ([CONFIDENTIALITY RING INFORMATION]).²⁰

3 Clear evidence demonstrates that Anuvu is a 'strong' and not a 'moderate' competitive constraint in its core strength of narrowbody (short-haul) tenders

- (21) The PFs' conclusion that Anuvu's competitive constraint on the Parties is merely "moderate" in narrowbody is inconsistent with objective evidence of Anuvu's ability to win tenders against all rivals. In

¹¹ Amazon unveils Project Kuiper terminals for services starting in 2024, SpaceNews, 14 March 2023, available at: <https://spacenews.com/amazon-unveils-project-kuiper-terminals-for-services-starting-in-2024/>. Accessed on 21 March 2021.

¹² Amazon unveils Project Kuiper terminals for services starting in 2024, SpaceNews, 14 March 2023, available at: <https://spacenews.com/amazon-unveils-project-kuiper-terminals-for-services-starting-in-2024/>. Accessed on 21 March 2021.

¹³ PFs, para 9.279(d).

¹⁴ PFs, para 9.278.

¹⁵ PFs, para 9.37(a).

¹⁶ PFs, Appendix D, paras. 47-49.

¹⁷ PFs, para. 9.450.

¹⁸ PFs, para. 9.248.

¹⁹ PFs, paras. 9.370-9.371.

²⁰ PFs, para. 9.222.

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assessing strengths of suppliers, customers' actions speak louder than their words, and actual winning matters more than any narrative description of competitive pros and cons of a given supplier.

- (22) Perhaps the understandable explanation for Anuvu's curious "moderate" rating in narrowbody, which the Parties do not see in practice, lies in substantial part in the fact that while some airlines rated Anuvu as strong, more airlines rated Anuvu as moderate and so its strength perception was weaker, relatively speaking, than for the other five key global IFC suppliers. However, while no doubt the CMA asked airlines to comment on whether their assessment of suppliers was stronger for some types of tender and weaker for others, it is not clear that customers responding to written questionnaires opted to engage in such nuances nor whether the CMA had the time to press customers (in calls or virtual meetings) to tease these out.
- (23) Consequently, there is a large risk that Anuvu has been given *de facto* an "average" rating across widebody and narrowbody which significantly dilutes the picture of its strength for tenders for the narrowbody workhorses of European (and global) short-haul aviation, the Boeing 737 and Airbus A320 families. In any event, whatever the view taken for widebody tenders, the evidence does not bear out the assertion that while the Parties, Panasonic, Intelsat and Starlink are significant competitors in narrowbody, Anuvu is a second-tier or moderate competitor.
- (24) The Parties' case, which the CMA should test fully before preparing its Final Report, is that Anuvu is and will remain in future a strong constraint in European narrowbody tenders and that the Merger reduces the number of strong credible bidders for such IFC tenders from six to five, in circumstances where the Parties are not particularly close competitors relative to all their strong rivals. Anuvu won the largest such tender in Europe (Turkish Airlines), has won a major European flag carrier (Air France), and [CONFIDENTIAL TO VIASAT]
- (25) As acknowledged by the CMA in the PFs, in 2019 Anuvu won a significant contract with Turkish Airlines, for the supply of IFC to the largest narrowbody fleet in Europe (104 aircraft).²¹ [CONFIDENTIAL TO VIASAT]²² [CONFIDENTIAL TO VIASAT]²³ [CONFIDENTIAL TO VIASAT]²⁴
- (26) [CONFIDENTIAL TO VIASAT]²⁵ [CONFIDENTIAL TO VIASAT]
- (27) [CONFIDENTIAL TO VIASAT]²⁶
- (28) [CONFIDENTIAL TO VIASAT]²⁷ [CONFIDENTIAL TO VIASAT]
- (29) [CONFIDENTIAL TO VIASAT]²⁸ [CONFIDENTIAL TO VIASAT]²⁹
- (30) [CONFIDENTIAL TO VIASAT]³⁰ [CONFIDENTIAL TO VIASAT]³¹
- (31) [CONFIDENTIAL TO VIASAT]
- (32) [CONFIDENTIALITY RING INFORMATION]³²

²¹ PFs, para. 9.396.

²² Annex RPF.02, [CONFIDENTIAL TO VIASAT]

²³ Annex RPF.05, [CONFIDENTIAL TO VIASAT].

²⁴ Annex RPF.02, [CONFIDENTIAL TO VIASAT]

²⁵ Annex RPF.06, [CONFIDENTIAL TO VIASAT]

²⁶ Annex RPF.07, [CONFIDENTIAL TO VIASAT]

²⁷ Annex RPF.08, [CONFIDENTIAL TO VIASAT].

²⁸ Annex RPF.03, [CONFIDENTIAL TO VIASAT]

²⁹ Annex RPF.03, [CONFIDENTIAL TO VIASAT]

³⁰ Annex RPF.03, [CONFIDENTIAL TO VIASAT]

³¹ Annex RPF.04, [CONFIDENTIAL TO VIASAT]

³² PFs, para 9.236.

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- (33) [CONFIDENTIALITY RING INFORMATION]
- (i) [CONFIDENTIALITY RING INFORMATION]³³
 - (ii) [CONFIDENTIALITY RING INFORMATION]³⁴
 - (iii) [CONFIDENTIALITY RING INFORMATION]³⁵[CONFIDENTIALITY RING INFORMATION]³⁶[CONFIDENTIALITY RING INFORMATION]
 - (iv) [CONFIDENTIALITY RING INFORMATION]³⁷[CONFIDENTIALITY RING INFORMATION]
 - (v) [CONFIDENTIALITY RING INFORMATION]³⁸

4 The competitive significance of Airbus' HBCplus programme is understated in the PFs

- (34) The PFs take note of the launch of Airbus' HBCplus programme, a supplier-agnostic IFC user terminal promoted by Airbus, which will enhance interoperability in the market. However, the Parties consider that the PFs understate the significance of this development, which will likely have a ground-breaking impact on the IFC competitive landscape in the next few years.
- (35) The CMA now has at its disposal a large body of evidence indicating that airlines are heavily influenced by the two large aircraft OEMs' (Airbus and Boeing) views on various technical/technological aspects of IFC. A number of airlines have indicated that they place great weight on the OEM's confidence in an IFC solution, before choosing such an IFC solution pre-certification.³⁹ As previously argued in their Response to the Phase 2 Working Papers and Annotated Issues Statement, the Parties consider it reasonable to assume that airlines trusting an OEM's confidence in the reliability of a particular IFC solution pre-certification, would also put their trust in an interoperable solution developed by Airbus.
- (36) As the CMA notes in its PFs, [CONFIDENTIAL TO INMARSAT].⁴⁰ In fact, [CONFIDENTIAL TO INMARSAT].⁴¹
- (37) The Parties note that the PFs, the Phase 2 Working Papers and the Annotated Issues Statement, all point to the conclusion that neither airlines nor SSPs/VARs were explicitly questioned about their views on HBCplus and how it will impact the IFC competitive landscape – and both groups' related commercial decision-making – in the next few years. The fact that Inmarsat is the first IFC supplier to participate in the HBCplus programme was singled out as a factor for Inmarsat's "strong" rating by both airlines and SSPs/VARs.⁴² In view of this, the Parties consider that both airlines and the Parties' competitors would have provided very strong feedback about the market-disruptive potential of HBCplus, if they had been probed on that particular point by the CMA.
- (38) Furthermore, the fact that SES has signed an agreement with Airbus to become the second managed services provider (after Inmarsat) to become catalogue-offerable on HBCplus is an important competitive development, which appears only in a footnote in the PFs main report.⁴³ This is the prime

³³ PFs, para. 9.239.

³⁴ PFs, para. 9.239.

³⁵ PFs, para. 9.241.

³⁶ PFs, para. 9.233(b).

³⁷ PFs, para. 9.235.

³⁸ PFs, para. 9.241.

³⁹ Airline WP, paras. 24(a), 24(b).

⁴⁰ PFs, para. 9.208.

⁴¹ PFs, para. 9.208.

⁴² PFs, paras. 9.290(d), 9. 327.

⁴³ PFs, footnote 646.

example of how a supplier-agnostic IFC solution, developed by one of the two big aircraft OEMs, has the potential to bring about a seismic shift in the IFC market: as opposed to Inmarsat, SES has to date been active only at the SNO level, supplying satellite capacity at the wholesale level, without any direct activity in the retail supply of IFC services to airlines. The key impact of HBCplus is precisely the fact that it will facilitate the entry into direct-to-customer (airlines) IFC of new market players, thereby boosting competition by increasing the number of IFC providers. **[CONFIDENTIALITY RING INFORMATION]**⁴⁴ **[CONFIDENTIALITY RING INFORMATION]**⁴⁵ **[CONFIDENTIAL TO INMARSAT]**.

(39) As stated in the PFs, **[CONFIDENTIALITY RING INFORMATION]**⁴⁶ **[CONFIDENTIALITY RING INFORMATION]**

5 Clarifications/corrections on points addressed in the PFs

(40) In this section, the Parties provide clarifications and minor corrections on a couple of points addressed in the PFs:

- (i) Paragraph 638 of the PFs cross-refers to paragraph 8.258. The Parties believe this is likely a typographical error and is meant to read paragraph 9.258.
- (ii) Paragraphs 21 and 9.334 of the PFs state that the "*Parties have been growing faster than other established IFC suppliers*". While true at the global level, this statement is incorrect at the more relevant UK/EU level. In terms of the number of aircraft installations relevant to the UK, as shown in the Parties' response to the Phase 2 Working Papers and Annotated Issues Statement, Viasat is not adding more IFC installations than other IFC providers. Given the CMA's focus on tenders that are relevant to the UK, the Parties consider that the same focus, if applied when assessing trends in the IFC installation numbers, undermines the above statement in paragraphs 21 and 9.334 of the PFs.

(41) In Annex RPF.09, the Parties provide updated versions of tables and figures that were previously included in the Parties' Response to the Working Papers and Annotated Issues Statements submitted on 27 January 2023, updated to reflect the most recent data from Valour Consultancy 2022 Q4 (the versions in the Written Response to the WPs and AIS were based on Valour Consultancy data up to 2022 Q2). The underlying Valour Consultancy data for 2022 Q2, Q3 and Q4 are provided in Annexes RPF.10, RPF.11 and RPF.12.

⁴⁴ PFs, Appendix D, para. 57.

⁴⁵ PFs, Appendix D, para. 9.254.

⁴⁶ PFs, para 3.49.