

Viasat/Inmarsat: UK Likely to Review Deal Under New Law, Delaying Probe's Start Until at Least January, Attorneys Say

U.S. satellite operator Viasat's (VSAT) plan to purchase British rival Inmarsat for \$7.3 billion is likely to be one of the first deals reviewed under a new UK national security law taking effect on January 4, said attorneys familiar with the country's regulatory processes.

The UK government will probably prefer to examine the deal under the new National Security and Investment Act because the NSI regime is better suited to vetting foreign takeovers of sensitive British assets, said the lawyers, who specialize in international trade and competition.

London-based Inmarsat holds contracts with UK space, defense and civilian agencies, so the Conservative government of Prime Minister Boris Johnson will want to ensure that the company ends up in safe hands, even if that means delaying the start of the review, the lawyers said.

"The Inmarsat/Viasat deal is precisely the sort of deal which the NSI was designed to address," said Tim Maloney, a partner at Dorsey & Whitney in London who has been advising clients on cross-border issues, including regulatory clearances, for over 40 years.

Initial delay. The NSI law creates a special Investment Security Unit (ISU) comparable to the Committee on Foreign Investment in the United States (CFIUS). Housed inside the Department for Business, Energy and Industrial Strategy, the new unit is coming online following a wave of foreign buyouts of strategically important companies in the UK, including defense contractors Cobham and Meggitt.

Although a decision to shunt the Inmarsat deal to the new regime would entail an initial delay, an NSI review might prove advantageous for the merging parties. NSI investigations are meant to be more streamlined and shorter than the "public interest" reviews now conducted under the UK Enterprise Act 2002, which aimed to curb anticompetitive behavior. At the ISU, deals will be vetted solely on the grounds of national security by officials specialized in defense, industrial security and intelligence matters.

The security implications of Inmarsat's services all but guarantee a robust review and some mitigations. But lawyers expect the government to clear the deal. That's partly because Viasat has earned some trust through its contract work for the country's Ministry of Defence (MOD)—and partly because Inmarsat is familiar with UK security reviews, having gained government approval just two years ago for its buyout by Apax Partners, Warburg Pincus and two Canadian pension funds.

The clearance in 2019 came after the buyers promised to safeguard classified information and to keep delivering services to government departments. The UK probably will insist on similar mitigations before approving the Viasat transaction, the lawyers said.

None of the lawyers interviewed for this article are involved in the deal or have firsthand knowledge of it. But they said the government was highly unlikely to review such a sensitive transaction under the old regime when it has the option to apply the new one.

Viasat and Inmarsat announced the buyout on November 8. Under the NSI Act, the government can use the ISU to investigate any deal reached between November 12, 2020, and January 4, 2022, providing it hasn't already been reviewed.

The merger partners have probably already held in informal talks with ISU officials, said Mark Taylor, a partner at Dorsey & Whitney who specializes in UK securities law and mergers and acquisitions.

Passing the case to the ISU would also ease the burden at the Competition and Markets Authority (CMA), which handles cases under the Enterprise Act and is overwhelmed with work, according to an attorney who is involved in other cases before the government.

“The CMA is pretty busy at the moment,” the lawyer said on background. “We have already seen that some of the CMA’s reviews are taking longer than usual.”

Inmarsat and Viasat officials declined to comment. The Department for Business, Energy and Industrial Strategy didn't respond to multiple requests for comment.

Geostationary satellites. Carlsbad, California-based Viasat has agreed to purchase Inmarsat for \$850 million in cash and \$3.1 billion in stock to create a global space-based broadband provider. Viasat has also agreed to assume \$3.4 billion in Inmarsat debt.

The deal would create the world's largest geostationary satellite company, with 19 satellites and 10 more under construction to be launched over the next three years.

The transaction comes as geostationary satellites, which orbit the planet at some 35,000 kilometers (21,748 miles) above the equator, are responding to challenges posed by lower-orbiting communication satellites, including Elon Musk's [Starlink fleet](#) of more than 1,500 spacecraft circling the Earth at an altitude of only some 550 kilometers (342 miles). Starlink and other low-orbit services, such as OneWeb and Amazon's Project Kuiper, aim to provide high-speed Internet to far-flung and often remote locations.

In announcing the deal, Viasat and Inmarsat executives stressed that the merger would expand their global reach and help them to “connect the world.” They said they expected to close the transaction in the second half of 2022.

List X contractor. Inmarsat has played a role in public safety and security ever since its emergence in 1979 as a satellite system for protecting lives at sea by locating distress signals. The service now caters to customers in fields ranging from aviation and shipping to mining and disaster relief.

Inmarsat has also become an important UK government contractor, supplying services to the UK’s defense ministry, including systems that supported ground communications during the war in Afghanistan. Inmarsat helps logistics commanders manage supply chains, supports airborne operations and facilitates communications for the Royal Navy. The company provides services to the UK Space Agency, too.

Inmarsat works so closely with UK defense officials that it’s allowed to carry out work classified as secret or above on its own premises. This makes it a “List X” contractor, the British term for a company holding what other countries call a Facility Security Clearance.

Given that classification, ISU can be expected to explore who will gain access through the merger to sensitive information about the country’s defense and national security.

Déjà vu. Inmarsat has been down this road before. Once listed on the London Stock Exchange, the satellite communications company faced a public-interest review when it went private through the buyout by Apax, Warburg Pincus, the Canada Pension Plan Investment Board and the Ontario Teachers’ Plan Board. That investigation by the CMA sheds light on what Viasat may need to do to secure approval for its takeover of Inmarsat, said Taylor and Maloney.

At the time, the UK required the buyers to keep delivering on Inmarsat’s contractual obligations to the MOD and other government departments. Inmarsat was also obliged to notify the government of any material changes in its operations and promised not to withdraw any specific services for three years.

The parties promised to protect sensitive information, notably classified defense information that Inmarsat needed to fulfill its contracts. In addition, the companies had to employ a security controller to oversee compliance matters.

This time around, the ISU would want to assess whether the 2019 mitigations need to be modified or enhanced, attorneys said. The unit would likely evaluate whether it should revise monitoring arrangements set up to ensure compliance with the previous buyout, they said.

The ISU would investigate whether there are any “features to Viasat’s operations that may warrant additional measures,” said Taylor at Dorsey. The unit would also explore whether “additional threats may now exist which perhaps were not in contemplation when the CMA conducted its review in 2019,” he said.

Viasat’s status as a current MOD supplier would likely smooth the path of an ISU review, lawyers said. “It will assist in achieving a favorable outcome for the deal since Viasat will already have a degree of familiarity with processes and protocols which are expected to be followed in dealings with the MOD,” said Maloney at Dorsey.

Viasat [announced](#) this year that it had won a contract to upgrade Ultra High Frequency network control stations that support military communications satellites operated by Airbus on behalf of MOD. Viasat was also awarded a contract to provide secure UHF satellite communications for the Royal Navy’s new Type 31 frigates, which are being built to replace an older class of ships.

An ISU review of the Viasat/Inmarsat deal would represent a test case for the new regime. It would also offer insights into how smoothly the government can shift away from the old system. Because CMA reviewed the 2019 acquisition of Inmarsat, lawyers expect it to play some role in the upcoming investigation, no matter how busy the watchdog has been of late.

“Given the history—and particularly the prior interaction between Inmarsat and the CMA—we can expect there to be extensive communication between the CMA and the ISU,” said Maloney.