

***Case No IV/M.1438 -
BRITISH AEROSPACE
/ GEC MARCONI***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 25/06/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.06.1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1438 – BRITISH AEROSPACE / GEC MARCONI

Notification of 21.05.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 21.05.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which British Aerospace PLC. (“BAe”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Marconi Electronic Systems Ltd (“MES”).
2. Most of the products concerned by the operation are used only in military applications. The United Kingdom, relying upon Article 296(1)(b) of the EC Treaty, has instructed BAe not to notify the military aspects of this operation. The notification therefore relates only to the non-military aspects of the transaction.
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89¹ and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES’ ACTIVITIES AND THE OPERATION

4. BAe is a British company primarily active in defence and aerospace. MES is the defence electronics business of the General Electric Company plc (“GEC”), which is the parent

¹ As amended by Council Regulation (EC) No 1310/97

company of a group active in telecommunications and information technology, consumer goods, inkjet printing, and medical and industrial equipment.

5. Following the signature of an agreement between GEC and BAe, MES will be separated from GEC, and BAe will acquire all the shares of a new company holding, at that stage, MES. The proposed transaction therefore relates to the acquisition by BAe of sole control over MES.

II. COMMUNITY DIMENSION

6. BAe and MES have a combined aggregate worldwide turnover in excess of EUR 5,000 million (BAe, EUR 10,496 million; and MES, EUR 5,561 million). Each of them has a Community-wide turnover in excess of EUR 250 million (BAe, EUR 3,341 million; and MES, [...]), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. APPLICATION OF ARTICLE 296(1)(b) OF THE EC TREATY

7. As already stated in paragraph 2 of this decision, the government of the United Kingdom, relying upon Article 296(1)(b) of the EC Treaty, has instructed BAe not to notify information which relates to the military aspects of the operation.
8. The Commission has considered the applicability of Article 296(1)(b) of the EC Treaty in the present case. In this context it has noted, on the basis of the information provided by the government of the United Kingdom, that:
 - the part of the concentration which has not been notified only relates to the production of or trade in arms, munitions and war material which are mentioned in the list referred to in Article 296(2) EC;
 - the measures taken by the United Kingdom are necessary for the protection of the essential interests of its security;
 - the measures taken will have no spillover effects on the non-military products of BAe and MES.
9. Therefore, the Commission is satisfied that the measures taken by the United Kingdom fall within the scope of Article 296(1)(b) of the EC Treaty. To the extent that these measures do not have the effect of distorting the conditions of competition in the Common Market, the Commission sees no need to invoke Article 298 of the EC Treaty.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Commercial aircraft sector

10. BAe, both directly and through its interest in Saab AB (“Saab”) and in the Airbus Industrie Groupement d’Intérêt Economique (“Airbus”), is active in regional and large commercial aircraft, aerostructures and flight data recorders.

11. MES is also active in aerostructures, as well as in avionics and aircraft systems (which are components of regional and large commercial aircraft), and in flight data acquisition units (which are components of flight data recorders).

Relevant product markets

12. In previous decisions², the Commission indicated that the markets for regional aircraft are distinct from the markets for large commercial aircraft, that regional aircraft should be categorised into regional turboprop aircraft and regional jet aircraft, and that regional turboprop aircraft, in turn, should be segmented according to their capacity (i.e. 20-39 seats, 40-59 seats and over 60 seats).
13. Aerostructures can be defined as the metal fabrication aspects of aircraft production, intended to produce end products such as wings or fuselages. Aerostructures encompass a wide range of products, from final aircraft building to minor components (e.g. brackets and cables) through major units (e.g. wings, fuselage parts). The notifying party claims that, in spite of this variety of end products, the relevant product market is that for aerostructures generally, because, on the supply side, larger manufacturers can switch readily between products of all tiers.
14. The notifying party also considers that, due to supply-side substitutability, it is not appropriate to segment avionics/aircraft systems products (such as fuel pumps, communication and navigation equipment, flight data recorders, etc.) according to the size or the type of aircraft. Most of the competitors and customers who responded to the Commission enquiries supported that conclusion.
15. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

16. The notifying party states that the relevant geographic markets for all of the above products are worldwide.
17. In previous decisions², the Commission specified that the markets for regional and large commercial aircraft are worldwide. In other decisions³, it also recognised that civil aircraft manufacturers commission and purchase aircraft components worldwide, which further indicates that the geographic markets for civil aircraft components are worldwide.

Competitive assessment

Horizontal integration in aerostructures

18. BAe, Saab and MES are all active in aerostructures. However, their combined share of the overall aerostructures sector does not exceed 8% worldwide, and MES is not active in Europe.

² See IV/M.877–Boeing/McDonnell Douglas, IV/M.237–DASA/Fokker and IV/M.53–Aérospatiale-Alenia/De Havilland

³ See, *inter alia*, IV/M.290–Sextant/BGT-VDO, IV/M.368–Snecma/TI and IV/M.1159–Snecma/Messier Dowty

19. If the product market could be further segmented according to the type of aerostructure concerned (i.e. fuselage, doors, wings, brackets, etc.), there would be very limited overlaps, as BAe is only active in the upper tiers (i.e. larger products, such as wings, doors, etc.), and MES and Saab only have modest activities in the lower tiers (i.e. smaller products).

Vertical integration in aircraft and avionics/aircraft systems

20. BAe, both directly and through its interest in Saab and Airbus, manufactures regional turboprop aircraft, regional jet aircraft and large commercial aircraft, while MES offers a number of components for such aircraft (e.g. fuel pumps, flight control systems, communications and navigation equipment, displays, etc.).
21. However, MES's shares for any of these components do not exceed [5-15%] worldwide.
22. Furthermore, although BAe and Saab accounted together for approximately 38% (by value) of the market for 20-39 seat turboprop aircraft in 1998, BAe has recently ceased its activities in that sector, and Saab has publicly announced that it would also withdraw from regional aircraft during 1999. Regional turboprop aircraft also appear to lose ground over regional jets, and their sales have declined by 50% (in volume) since 1996.
23. Similarly, BAe's share of regional jet aircraft did not exceed 12% in 1998. On the narrower segment for 70-120 seat regional jet aircraft, BAe's share did not exceed 26% (by value) in 1998, and has declined in recent years.
24. Finally, in the field of large aircraft, all of BAe's activities are conducted through its interest in Airbus. Airbus's rules of operation cover the procurement process of almost every component required by Airbus (except for engines and buyer-furnished equipment). It appears that, as a result of these rules, and of the workshare arrangements between the four partners in Airbus, the supply of almost all of the components produced by MES are not placed under BAe's responsibility.
25. The only aircraft components to be both manufactured by MES and directly sourced by BAe in the context of large commercial aircraft are low-pressure fuel pumps. However, neither MES's share of low-pressure fuel pumps nor BAe's share of purchases of low-pressure fuel pumps exceeds [10-20%] (in terms of value) worldwide. Furthermore, there remain other substantial suppliers of fuel pumps, such as Intertechnique and Hydroaire. And finally, BAe's capacity to change suppliers of fuel pumps destined to Airbus aircraft will be limited by the fact that any change in equipment suppliers must be ratified by Airbus.

26. BAe also sources slat/flap control systems (which are part of flight control systems), and MES supplies certain components for slat/flap control systems. However, there is no direct vertical relationship between BAe and MES, and BAe's share of purchases of slat/flap control systems for large commercial aircraft does not exceed 10% worldwide.

Vertical integration in flight data recorders and flight data acquisition units

27. BAe manufactures flight data recorders, while MES provides flight data acquisition units, which are components of flight data recorders. However, neither of MES's share of flight data acquisition units or of BAe's share of flight data recorders appears to exceed [5-10%] worldwide.
28. In the light of the above, it can be concluded that, in the commercial aircraft sector, the proposed concentration does not lead to the creation or the strengthening of a dominant position as a result of which effective competition in the EEA or any substantial part of that area.

B. Civil simulation and training ("CST")

Relevant product markets

29. The notifying party submits that military simulation and training systems may be distinguished from their civil equivalents, because, as they require a high level of fidelity and complex scenarios, they are usually based on the use of real equipment, while civil applications generally emulate the system concerned.
30. In previous decisions⁴, the Commission distinguished between civil and military simulators. Although there appears to be increasingly commonality between the technology for civil and military products, military and civil systems still seem to differ substantially in terms of material and software applications employed, which are specific to the different scenarios or applications to be simulated. Consequently, military simulators and civil simulators still belong to separate product markets.
31. CST encompasses a broad range of products, from train-driver or aircraft pilot simulators to nuclear power plant simulators. Although companies active in civil simulation often provide simulation systems for a number of applications (i.e. energy, flight simulation, etc.), the notifying parties submit that, in order to develop a final simulator product, domain specific knowledge of the applications being simulated is required. This would suggest that civil simulation and training should be segmented by application.
32. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

33. The notifying party considers that the relevant geographic market for CST is global. However, for the purpose of this case, it is not necessary to further delineate the relevant

⁴ See IV/M.620-Thomson-CSF/Teneo/Indra and IV/M.1258-GEC Marconi/Alenia

geographic market, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

Competitive assessment

34. The only overlap between the activities of the parties occurs in the field of power plant simulation. If the geographic market is global, the parties' sales are relatively marginal, and other important and integrated competitors (such as Thomson-CSF or CAE) remain. If, alternatively, the geographic market is narrower, there is no affected market in the EEA as none of BAe's customers are in that area.
35. In the light of the above, it can be concluded that, in CST, the proposed concentration does not lead to the creation or the strengthening of a dominant position as a result of which effective competition in the EEA or any substantial part of that area.

C. Civil command, control and information (“civil C2I”)

Relevant product markets

36. Civil C2I consist of equipment, systems and services in support of civilian command systems, such as the emergency services and other organisations which need interactive command systems.
37. The notifying party submits that, within C2I, a distinction should be made between civil and military systems. In *GEC Marconi/Alenia*⁵, the Commission recognised that military products are generally much more sophisticated and customer specific than civil ones. Most of the customers and the competitors who responded to the investigation carried out by the Commission also confirmed this conclusion.
38. The notifying party also submits that the supply of all civil C2I would appear to constitute one single product market, as these products are easily adapted for different civil applications.
39. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

40. The notifying party considers that the relevant geographic market for C2I is national. This is supported by the fact that the customers who responded to the investigation carried out by the Commission indicated that, although each local fire service or police service conducts its procurement procedure independently, purchases of C2I are guided by national rules or specifications.
41. On the other hand, procurement takes place through tender procedures published in the EC Official Journal, and customers in the United Kingdom appear to operate a number of different systems supplied by companies from Europe, the USA and Canada.

⁵ See IV/M.1258-GEC Marconi/Alenia

42. However, for the purpose of this case, it is not necessary to further delineate the relevant geographic market, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

Competitive assessment

43. BAe and MES (through its interest in Alenia Marconi Systems NV (“AMS”), a joint venture with Finmeccanica) are both active in civil C2I systems in the United Kingdom. In particular, they have been awarded 6 contracts for civil C2I to the United Kingdom fire services, and believe that only 7 such systems have been sold.
44. However, the results of the investigation carried out by the Commission suggest that more than 7 C2I systems to the fire services have been procured, and that these additional systems have been sourced to companies different from the parties.
45. Furthermore, there is limited overlap between BAe and MES, as MES has only sold [...] (in 1997).
46. In addition, given that only few contracts for C2I systems to the fire services have already been awarded, market shares might not constitute a fully relevant indicator of the actual market power of the companies concerned. Rather, it must be noted that a number of competitors already exist in the United Kingdom and in other Member States, and that other C2I manufacturers, who have sold C2I systems to other customers (e.g. the United Kingdom police services), could probably offer C2I systems to the fire services as well, since there appears to be substantial supply-side substitutability between C2I systems to various customers.
47. And finally, BAe has indicated that its C2I business is currently up for sale and marketed.
48. In the light of the above, it is concluded that, in civil C2I, the proposed concentration does not lead to the creation or the strengthening of a dominant position as a result of which effective competition in the EEA or any substantial part of that area.

V. ANCILLARY RESTRICTIONS

Conduct of business prior to the completion of the transaction

49. BAe and GEC have entered into a number of covenants relating to the period between signing the transactions agreement and completion of the transaction. These clauses concern, inter alia, the conduct of BAe’s and GEC’s businesses, their commitment of substantial capital expenditures, their discussions with other third parties about new transactions, etc.
50. These clauses do not appear to amount to restrictions of competition. However, in the event that the measures concerned lead to such restrictions, they can be considered directly related and necessary to the transaction.

Technology agreements

51. The parties have agreed to continue existing arrangements (between MES and other member of the GEC group) relating to technology developments which are in progress.

52. The parties submit that it would not be commercially viable for either party on its own to continue to develop many of the technologies concerned, and that this clause helps to preserve the value of the MES business transferred. The interruption of these projects would probably result in the loss of the investments carried out to date, and would cause a disruption in the R&D policy of MES and GEC. To the extent that it could constitute a restriction of competition, this clause appears to be directly related and necessary to the operation. These agreements are designed to operate for a transitional period of no more than 3 years. Therefore, they are covered by the present decision for this period only.

VI. CONCLUSION

53. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,