

*Case No COMP/M.2095 -
SEXTANT / DIEHL*

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.08.2000

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP/M.2095 – Sextant / Diehl

Notification of 27.07.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 27.07.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ (“the Merger Regulation”) by which the undertakings Thomson-CSF Sextant S.A. (“SEXTANT”) and INTEGRA Vermögensverwaltungs- und Beteiligungsgesellschaft mbH (“INTEGRA”), a holding company controlled by DIEHL Stiftung & Co (Nuremberg, Germany) (“Diehl”), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company (“NEWCO”).
2. NEWCO shall combine all the activities of the pre-existing Sextant / Diehl joint venture VDO-L as well as the activities of Bodenseewerk Gerätetechnik GmbH (“BGT”, a subsidiary of the DIEHL group) in the area of control and navigation systems.
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

4. INTEGRA is a holding company and an indirect wholly owned subsidiary of DIEHL. DIEHL is a diversified industrial group, active in numerous business areas, including metallurgy, control systems, equipment for automobile industry and military vehicles and avionics.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

5. BGT, an indirect subsidiary of the DIEHL group, is engaged in the development, production, sale and product support of avionics equipment (engine control and flight control), land navigation equipment, missile systems and missile components. Prior to the notified operation, INTEGRA owns 80% of BGT's shares, the remaining 20% being held by Aerospatiale Matra. Aerospatiale Matra will however not retain any share in NEWCO and is therefore not a party to the operation.
6. SEXTANT is a wholly owned subsidiary of THOMSON-CSF, a French company active in professional electronics and defence systems. SEXTANT is active in the following business areas : production and sale of avionics for civil and military aircraft, including flight controls, displays and navigation systems, as well as industrial and domestic appliance components.

II. THE OPERATION

7. BGT has two separate business divisions : "Missiles" and "Control and Navigation Systems". Only the latter is concerned by the operation : in the first step of the operation, BGT's Control and Navigation Systems division will be split-off into a new company (Diehl Avionik Systeme Gmbh). In a second step, Diehl will purchase, through its subsidiary Integra, the shares of this new company held by Aerospatiale Matra: as a result of this, Diehl will own indirectly, through Integra, the whole of Diehl Avionik Systeme Gmbh . Finally, VDO-L will be merged into Diehl Avionik Systeme Gmbh, to form NEWCO.
8. Therefore, NEWCO shall combine the activities of the pre-existing SEXTANT/DIEHL joint venture VDO-L and the activities of BGT's control and navigation systems division. The operation can thus be analysed as the transfer to the existing joint venture VDO-L of a new business division by one of its parents.
9. The creation of VDO-L was approved by the Commission on 21 December 1992, in application of Art. 6.1.b of the Merger Regulation (case IV/M.290 – SEXTANT/BGT-VDO, decision of 21.12.1992). VDO-L is a full-function joint-venture without coordination effects. VDO-L is 49.5% owned by Sextant and 50.5% by BGT.
10. NEWCO will be 49 % owned by Sextant, and 51% by Diehl (through Integra).

III. CONCENTRATION

Joint-control

11. Pursuant to the Articles of Association of NEWCO, the examination and adoption of business plans and budgets, the taking up or granting loans of more than DM 2 million, investment of more than DM 500,000 shall require the unanimous resolution of the shareholders (i.e. Sextant and the Diehl group, through BGT). As a result, the parties will control NEWCO jointly.

Full-function joint venture

12. VDO-L is already a full-function joint-venture². NEWCO will continue to exercise all the activities currently carried out by VDO-L. In addition, NEWCO will extend VDO-L's activities by taking over the Control and Navigation Systems Division of BGT.

² Cf. case IV/M.290 – SEXTANT/BGT-VDO

13. NEWCO will thus develop, manufacture and commercialise equipment and instrument for aerospace applications. It will have a management dedicated to its day-to-day operations. According to its articles of Association, NEWCO shall exist for an unlimited period of time.
14. Although NEWCO will continue to be a sub-contractor to SEXTANT for the AIRBUS programs, this will probably represent less than 25% of NEWCO's sales, according to the parties. NEWCO will therefore have separate activities with third parties. It will thus stand as a separate identifiable company in the market, which will perform on a lasting basis all the functions of an autonomous economic entity.
15. In view of the above, the operation falls under Art. 3.2 of the Merger Regulation and therefore constitutes a concentration within the meaning of Art. 3.

IV. COMMUNITY DIMENSION

16. The combined aggregate world-wide turnover of the undertakings concerned exceeds EUR 5000 million (Thomson-CSF: EUR 6,889 million; Diehl : EUR 1,610 million) and the aggregate Community-wide turn over of each party exceeds EUR 250 million (Thomson-CSF: EUR 4,031 million; Diehl : EUR 1,367 million). The parties do not achieve more than two thirds of their Community-wide turnover in one and the same Member State. The operation therefore has a Community dimension within the meaning of Art. 1.2 of the Merger Regulation.

V. MARKET DEFINITIONS

A. Relevant product markets

17. The parties are active in avionics products. The products currently developed and/or sold by BGT and which will be integrated in NEWCO as a result of the operation are the following:
 - Engine control computers for civil and military aircraft and helicopters.
 - Primary and Secondary fight control computers for civil and military aircraft.
 - Flight control units for civil aircraft.
 - Land navigation and survey equipment for military vehicles.
18. The parties submit that the avionics sector should be segmented in different markets, corresponding to the different types of aircraft. This suggestion is in line with the findings of the Commission in the case M.1601 – Allied Signal / Honeywell³. In particular, in that decision, the Commission found that the avionics sector in “*generally divided in six demand segments that are defined by types of aircraft: Air Transport, Regional Transport, Business Aviation, General Aviation, Helicopters and Military/Space Applications. [...] The Commission's market investigation has confirmed that there are different segments defined by the types of aircraft, that the avionics products [...] for each segment are different according to their price, their size and their capabilities, and that the players in each segment are different. [...] However, there is no clear segmentation between the Regional Transport and the Business Aviation segment.*”

³ Decision of 01.12.1999

19. On the basis of the foregoing segmentation, the parties have identified several relevant product markets where the operation could potentially create vertical or horizontal effects:
20. Engine control computers (for Helicopters): an engine control computer is an equipment which ensures the safe operation and the optimal performance of the aircraft engine. BGT's Control and Navigation System Division sells engine control computers in different avionics segments. Sextant is only active in the Helicopters segment.
21. Flight control computers (for Air Transport): a flight control computer ("FCC") is an equipment integrated in fly-by-wire systems and which controls the actuators related to control surfaces (i.e. ailerons, elevators, slats, flaps, etc) of the aircraft. Both Sextant and BGT are active in the area of flight control computers: Sextant sells primary FCCs, whilst BGT's Control and Navigation System Division sells secondary FCCs. The parties submit that primary and secondary FCCs belong to two distinct product markets: primary flight control computers, which control safety critical elements such as ailerons and elevators, should be distinguished from secondary flight control computers, which only command slow moving and less critical control surfaces. However, given that regardless of the considered market definitions, the operation would not create or strengthen a dominant position, the precise definition of the relevant product market can be left open.
22. Flight control units (for Air Transport): a flight control unit is an interface between the pilot, the automatic pilot and the electronic display system in the cockpit. Since an FCU is an interface between the pilot and the automatic pilot, it must be developed taking into account the technical characteristics of the automatic pilot. Sextant is the only party that develops and produces automatic pilots. It also produces FCUs for the Airbus A330/A340 aircraft family. BGT, which does not have the capability to produce automatic pilots, develops and sells to Sextant flight control units which are then integrated in the Airbus aircraft of the A320 family.

B. Relevant geographic markets

23. The parties submit that the relevant geographic markets for civil avionics products is world-wide. In previous decisions⁴, the Commission recognised indeed that the geographic markets for civil aircraft components and avionics are world-wide, in particular because civil aircraft manufacturers commission and purchase aircraft components on a global basis.
24. As regards military equipment, the precise dimension of the geographic markets (national, European or world-wide) may be left open in the absence of affected markets.

VI. COMPETITIVE ASSESSMENT

25. Sextant and BGT's Control and Navigation Systems Division are both producers of Engine Control Computers ("ECCs"). Apart from BGT's Control and Navigation Systems Division, Diehl has no other activity in this area. The only market segment in

⁴ cf. in particular cases IV/M.1601 – Allied Signal / Honeywell and IV/M.1438 British Aerospace/GEC Marconi

which the activities of Sextant and BGT in the area of ECCs overlap concerns Helicopter ECCs. The parties have a cumulated share of the world-wide Helicopter ECCs market of less than 12%. In all other segments of the ECC market, BGT's Control and Navigation Systems Division has a world-wide market share of less than 4%. Therefore, the horizontal effect of the operation in the ECC market clearly does not create any competition concern.

26. Sextant and BGT's Control and Navigation Systems Division are both producers of Flight Control Computers ("FCCs"). Sextant is only active in Primary FCCs for Air Transport and Regional/Business Aircraft, whilst BGT only produces Secondary FCCs for Air Transport and Military/ Space Applications. Therefore, if one considers that Primary FCCs and Secondary FCCs belong to separate product markets, the operation does not result in any overlap in the area of FCCs. Alternatively, should one consider that Primary and Secondary FCCs belong to a single product market, the activities of the parties would overlap in the Air Transport segment. However, the cumulated market share of the parties in the Air Transport segment would not exceed 23%. Therefore, irrespective of the product market definitions considered, the operation would not result in the creation or strengthening of a dominant position for FCCs.
27. As described above, BGT's Control and Navigation Systems Division develops and produces Flight Control Units ("FCUs") for the Airbus A320 aircraft family. BGT is acting a subcontractor of Sextant and could not be a prime contractor of Airbus, because it does not have sufficient expertise concerning automatic pilot technologies. Sextant produces and sells FCUs for the Airbus A330 and A340 aircraft families. Sextant has no other external supplier of FCUs than BGT. Since BGT is only a subcontractor to Sextant, the operation does not result in any horizontal effect in the FCU sector. The operation will strengthen the vertical relation between Sextant and BGT in this sector. However, this vertical integration will not modify the competitive situation, since, even before the operation, BGT only sells FCUs to Sextant and does not have the ability to sell directly to Airbus.
28. There is no other product market where the operation could give rise to significant vertical or horizontal effects. The above described minor vertical and horizontal effects of the operation will not create or strengthen a dominant position as a result of which effective competition would be impeded in the EEA or in a substantial part thereof.

VII. CONCLUSION

29. In view of the above analysis, the operation does not raise serious doubts about its compatibility with the common market.
30. 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,
Günter VERHEUGEN
Member of the Commission