

***Case No COMP/M.2931 -
FINMECCANICA /
MARCONI MOBILE
HOLDINGS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 31/10/2002

*Also available in the CELEX database
Document No 302M2931*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31/10/2002

SG (2002) D/232417

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

PUBLIC VERSION

To the notifying party.

Dear Sir/Madam,

Subject: Case No COMP/M.2931 - FINMECCANICA/MARCONI MOBILE HOLDINGS
Notification of 04-10-2002 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 04/10/2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Council Regulation") by which the undertaking Finmeccanica S.p.A (Italy) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Marconi Mobile Holdings S.p.A (Italy/UK) by way of purchase of shares. On 30 July 2002, the Commission granted a derogation under Article 7 (4) of the Council Regulation.

I. THE PARTIES

2. Finmeccanica S.p.A ("Finmeccanica") is a public quoted company controlled by the Italian Ministero dell'Economia e delle Finanze. The remaining shares are widely dispersed. Finmeccanica is active in the design and manufacture of military and civil aircraft, helicopters and satellites; missile systems, radar, components for power generation, trains and information technology services.
3. Marconi Mobile Holdings S.p.A. ("MMH") is a company incorporated under the laws of Italy. MMH is a wholly owned subsidiary of Marconi (Bruton street) Limited, a wholly owned subsidiary of Marconi plc., a global provider of information technologies

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).

solutions, hardware and software for the communication and information industries. MMH is active in design and manufacture of communications and information systems for military customers, police forces and government agencies

II. THE OPERATION

4. Finmeccanica acquires from Marconi (Bruton Street) Limited, the entire issued share capital of MMH. The Share Purchase Agreement was signed and executed by the parties upon derogation granted by the Commission pursuant to Art. 7 (4) of the Council Regulation. Pursuant to the operation, MMH will be a wholly owned subsidiary of Finmeccanica.

III. CONCENTRATION

5. The operation constitutes a concentration within the meaning of article 3(1)(b) of the Council Regulation in that Finmeccanica, pursuant to the transaction, acquires sole control of MMH.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion² in 2001 (Finmeccanica: €5.795 million; MMH: €486,1 million³. Each of them have a Community-wide turnover in excess of € 250 million (Finmeccanica: €4.448 million; MMH: €377,5 million) 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.

V. COMPATIBILITY WITH THE COMMON MARKET

1. Relevant markets

7. The only area where the parties' activities appear to overlap is a segment of military avionics. The parties submit that military avionics should be split into two distinct markets, namely (i) sensor avionics, which could be further delineated into radar, electro-optical and electronic warfare systems and (ii) mission avionics which could be further delineated into flight and CNI [communication, navigation and identification] avionics.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

³ Pro forma accounts for the year 2001, as MMH was established in December 2001.

8. The possible overlap primarily concerns flight avionics, which includes flight control systems, the mission computer, cockpit instrumentation and displays, navigation and attack systems. There is also a minor potential overlap with regard to electronic warfare systems, a segment of sensor avionics, which comprise systems for the passive detection of external threats and active countermeasures to self-protect the aircraft electronically. The parties submit that, within these specific segments (sensors avionics and flight avionics), they manufacture products to such extent specifically conceived and designed that they do not compete against each other. As regards sensor avionics, MMH only supplies one specific product called Laser Warning Receiver. Finmeccanica does not produce a similar product. As regards flight avionics, Finmeccanica manufactures flight control systems, mission computers, large multifunctional cockpit displays and mission support and mission planning systems. In contrast, MMH specialises in components and sub-systems for panels, keyboards and cockpit displays. It does not produce complete stand alone units of this kind. In the light of this arguments, the parties submit that their products do not compete with each other.
9. In geographic terms, the parties submit that markets are world-wide in scope, but they also supply data on a national basis. In previous cases⁴, the Commission considered that market for the supply of military goods are national in case there is a national supplier available for the product in question, due to the remaining preference of Member States' Ministries of Defence to purchase from their national supplier.
10. The Commission's investigation largely confirmed the product market segmentation suggested by the parties, and the geographic market definition applied in previous cases. However, the exact delimitation of the relevant markets can be left open, as the transaction does not lead to competition concerns regardless of the market definition applied.

2. Competition assessment

a) Horizontal relations

11. As indicated above, the transaction only leads to potential horizontal overlaps as regards flight avionics and electronic warfare systems. If considering the narrowest market definition submitted by the parties (i.e. their specific products), there exists no actual overlap, as their products do not compete with each other.
12. If considering broader market definitions, the parties combined market position world-wide is below 5 %, and they are exposed to strong competition from large US and European suppliers such as Northrop Grumman, Raytheon, Lockheed Martin, BAE Systems, Thales, EADS and Ericsson.
13. On a national basis, the parties' activities overlap only in Italy. On the basis of the analysis of sales market data as provided by the parties, the combined shares as regards military avionics in Italy would be between 55 and 72 % with increments between 2 and 25 %, depending on the product market definition applied.

⁴ E.g., Case No IV/M.1198 – BAE/SAAB, para. 22

14. However, for the assessment of the parties' position, it has to be taken into account that in military markets contracts are essentially awarded through tenders published either by the Ministry of Defence or by a prime contractor for supplies at sub-contractor level. Thus, the parties position and their competitive relation has to be analysed primarily on the basis of the bidding history in Italy with regard to the relevant products and the parties' success.
15. The analysis of the bidding history submitted by the parties has shown that, over the past eight years, the parties have never competed against each other, either directly or as members of competing consortia, for the same contract or subcontract. This finding has been confirmed, in the market investigation, by the Italian Ministry of Defence (MoD) and by various market participants. According to the parties and the market investigation, they both won all the contracts they bid for in Italy, with only one single exception in 1997 for MMH. Both parties thus have practically been the exclusive suppliers to the Italian MoD for the specific products they offer in the area of military avionics. It can be thus concluded that the parties have not been in a competitive relationship in the past and that the transaction does not alter the competitive situation as regards competition for contracts awarded directly or indirectly (through a prime contractor) by the Italian MoD from a horizontal perspective, regardless of the market definition adopted.

b) Vertical relations

16. As regards vertical relationships, the avionics offered by MMH can be considered to be vertically related to airborne platforms produced by Finmeccanica, which comprise helicopters, combat and transport/special mission aircraft. Finmeccanica is active in helicopters through Agusta Westland, a JV with GKN (UK). It has also a programme alliance with Bell as regards helicopters. As regards fixed wing aircraft, Finmeccanica operates through its wholly owned subsidiary Alenia Aeronautica. It is active in combat aircraft, where it participates in international programs such as AM-X, Tornado and most importantly the Eurofighter, where it has the responsibility to develop and produce the left wing. It also produces transport and special mission aircraft in joint development programs together with Lockheed Martin and EADS.
17. However, there is no risk of foreclosure resulting from the transaction. On a world-wide market, Finmeccanica's position is below 25% (according to its best estimates) as regards both helicopters and fixed wing aircraft, and as mentioned above there are a number of competitors to MMH which can supply Finmeccanica's competitors with the relevant avionics. As regards the Italian market, the transaction will not alter the competitive situation despite the parties' strong position as regards the respective products. As regards helicopters, the Italian MoD for all its requirements either bought directly from Agusta Westland or from an international consortium in which Agusta Westland necessarily played an active and important part. The sales were carried out either through private negotiations directly between the MoD and Agusta Westland or through tenders where apart from Agusta Westland no other suppliers bid. The same applies to fixed wing aircraft, where the MoD bought all its requirements exclusively from consortia where Finmeccanica was a partner.
18. Finmeccanica sourced all its needs for avionics that MMH produces exclusively from MMH. All of MMH's mission avionics production went either to Finmeccanica or directly to the MoD as the end user. Against this background, there is no risk of a foreclosure scenario under which post-merger Finmeccanica would stop MMH to supply

Finmeccanica's competitors, and there are no competitors of MMH on the Italian market that would need Finmeccanica as an outlet for their avionics and that could be threatened by a shift in Finmeccanica's purchases to MMH. No risk of foreclosure has been identified by the market investigation. In particular, none of Finmeccanica's or MMH's competitors raised any concerns related to this vertical relation in the course of the investigation.

VI. CONCLUSION

19. 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

Signed,
Franz FISCHLER
Member of the Commission