

***Case No COMP/M.3418 -  
GENERAL DYNAMICS /  
ALVIS***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 26/05/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26/05/2004  
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party**

**Subject: Case No COMP/M.3418 - General Dynamics/Alvis  
Notification of 20 April 2004 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

Dear Sir/Madam,

1. On 20/04/2004 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as last amended by Regulation (EC) No 1310/97, by which the US-firm General Dynamics ("GD") acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of the UK company Alvis plc, by way of an agreed bid.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) 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 AND THE OPERATION**

3. General Dynamics is a defence company internationally active in four principal business divisions: (i) business aviation, (ii) mission-critical information systems and technologies, (iii) shipbuilding and marine systems (iv) land and amphibious combat

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<sup>1</sup> 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).

systems. Its land combat division has several subsidiaries in Europe, such as Santa Barbara Sistemas in Spain, Mowag in Switzerland and Steyr-Daimler-Puch Spezialfahrzeug in Austria.

4. Alvis is active in the design, development and production of armoured fighting vehicles and military land systems. Among its subsidiaries are Vickers Defence (UK) and Hägglunds (Sweden).

## **II. CONCENTRATION**

5. Pursuant to the Offer document of 08 April 2004, GD intends to acquire the shares and of the voting rights in Alvis through a recommended public offer, and thus to acquire sole control over that company. Upon completion of the acquisition, GD will own a minimum of 50% plus one share of Alvis' share capital and an equivalent proportion of the total voting rights in Alvis<sup>2</sup>. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

6. The combined aggregate world wide turnover of the undertakings concerned exceeds € 5000 million<sup>3</sup> (GD: € 14,645 million, Alvis € 504 million in 2003). The aggregate Community-wide turnover of the parties exceeds € 250 million (GD € [...] million, Alvis € [...] million in 2003). The parties do not achieve more than two-thirds of their aggregate Community-wide turnover in one and the same Member State. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation.

## **IV. COMPATIBILITY WITH THE COMMON MARKET**

### A. Relevant product markets

7. The acquisition concerns the defence sector, in particular armoured combat vehicles (ACV) and related sub-systems. If a suitable product is not available off-the-shelf, the respective Ministry of Defence will select a prime contractor to lead a project to develop a new combat vehicle. In general, manufacture under ACV programmes is carried out by the prime contractor or a member of the prime contracting consortium, but it may be different for off-the-shelf products and even in some cases for programme products in the future. MoD of Member States that have no ACV capabilities tend to buy off-the-shelf, although they may also engage in a project (often in cooperation with other countries) for the development of an ACV when none of the currently existing products meet their requirements .
8. The parties have submitted that the ACV market can be segmented according to the weight of the vehicles, resulting in 5 different sub-categories of armoured vehicles: (i)

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<sup>2</sup> BAe Systems, Alvis' largest shareholder with 28.95%, had not indicated at the time of the decision whether it would accept GDs offer. However, even if BAe would not accept the offer, such would not affect GDs sole control over Alvis.

<sup>3</sup> 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).

main battle tank (MBT), (ii) medium weight wheeled (MWAV) and tracked (MTAV) armoured vehicles, (iii) light weight armoured vehicles (LWAV), (iv) all terrain vehicles (ATV) and (v) paramilitary and internal security vehicles.

9. The market investigation has not fully supported this segmentation, stating that the above weight segmentation does not sufficiently reflect the differences in functionality between the different ACV. The customers of ACV have confirmed the absence of demand-side substitutability for a given ACV functionality profile. Also, different underlying technology and price levels within the submitted weight classes indicate that the parties' market definition is not sufficiently representative. This is specifically<sup>4</sup> relevant for an ACV category known in the industry as Infantry Fighting Vehicles ("IFV"), which are designed not only to transport troops into battle, like the other medium weight ACV, but also to engage in combat, operating at high speed in conjunction with MBT's, providing troops with rather heavy armour protection and firepower. Whilst supply-side substitutability is relevant, the distinct functionality of IFV, and the associated requirements for protection and combat capabilities support the existence of a distinct market.
10. IFVs can be either wheeled or tracked. The purchasing MoD's will early in the procurement process determine whether to opt for wheeled or tracked IFVs. The fact that different countries are choosing different IFV solutions for comparable functional requirements, shows a certain degree of demand-side substitutability. Whilst there are significant design, technological and operational differences between wheeled and tracked IFV, the main IFV suppliers have comparable capabilities to develop a new IFV that can be either wheeled or tracked.<sup>5</sup>
11. In any case, for the purpose of this case, it is not necessary to make a final decision with regard to the precise definition of ACV, as the concentration would not result in the creation or the strengthening of a dominant position in the EEA or any substantial part of it on any alternative market definition considered.
12. GD and Alvis have overlapping activities in the supply of turrets as a sub-system for armoured vehicles. A turret consists of a protected shell that houses the gun barrel, other weapon systems, a fire control system, communication systems and possibly a navigation system. The turret enables the weapon to be rotated and elevated and is mounted onto the vehicle chassis. The market investigation has indicated that turrets form a market. [...], turrets are actively offered by other manufacturers for inclusion in vehicles.
13. Other markets that can be considered as vertically related to ACV are communication systems, fire control systems, weapon systems, ammunition loading systems and

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<sup>4</sup> The alternative market definition primarily based on military mission profile would also identify markets such as (i) main battle tanks, (ii) medium weight ACV, (iii) light-weight ACV and (v) all terrain vehicles. However, such a segmentation is in line with those of the parties and does not affect the competitive analysis.

<sup>5</sup> General Dynamics offers the Pizzaro / Ulan IFV, Alvis offers the Warrior and CV90 as tracked IFV. The main competing products are the new Puma by Krauss-Maffei and Rheinmetall, the Dardo by an Italian consortium and the Bradley by United Defence (USA). GD offers the Piranha / Pandur as a wheeled IFV. The main competing products are the AMV and 8x8 by Patria, the French VBCI (GIAT), the Italian Centauro and a new project Boxer by a German/Dutch consortium.

ammunition, which can all be considered as distinct markets. As the transaction does not give rise to horizontal overlaps (Alvis does not manufacture these systems or ammunition, other than the advanced mortar system (AMOS), which is considered in more detail below) or foreclosure concerns there is no need to further define these markets.

14. The parties are also active in supplying military bridging systems but submit that there is no overlap between the parties as they produce different types of military bridging systems for different applications. Such differences relate to the assembly time needed to install the bridges (permanent versus temporary bridges), their functionality (assault versus logistics), the nature of the gaps they can bridge (dry versus amphibious) and the size. Whilst there may be a certain degree of supply-side substitutability (either actual or potential), the market investigation has underlined that the parties' offering is not substitutable from a demand-side perspective. Bridging systems will therefore not be considered further.

#### B. The relevant geographic markets

15. For defence markets, a distinction is traditionally made between those countries where the Ministries of Defence ("MoDs"), being the ultimate customers, award contracts to a domestic supplier on the one hand, and those countries without a national supplier on the other hand. In the latter case, existing products rather than tailor made programmes are procured, and prime contractors are usually selected on the basis of open international competitions. The relevant geographic market is considered national in scope where there is a national supplier, and otherwise international. The parties endorse this definition for the present case, which is in line with previous Commission decisions in the defence sector<sup>6</sup>.
16. Respondents to the market investigation agree in general that national suppliers enjoy a certain advantage over the competitors in those military markets where a national producer is active. However, GD's competitors also point to a progressive internationalisation, even in Member States with national suppliers. The respondents consider that the cost rationalisation which is sought by procurement agencies and shrinking budgets for defence equipment relative to its increasing sophistication will result over time in a wider geographic market. The evidence available does not support that the market has evolved to such extent. On the basis of procurement data of the past six years, it can be concluded that Member States with indigenous production aim to preserve their defence capabilities through national preferences. Also, for historical reasons, national players tend to be better placed to meet the national MoD's bid requirements in terms of technical features and qualification evidence.
17. On this basis, the relevant geographic market in this case is national for the following Member States which have domestic manufacturing capabilities for armoured combat vehicles: Austria, Finland, France, Germany, Great Britain, Italy, Spain and Sweden. Whilst the UK, Alvis' home market, has the general policy of inviting tenders from international prime contractors, the outcome of past procurements of ACVs suggest that

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<sup>6</sup> See inter alia Decision COMP/M.1745: EADS of 11 May 2000 and Case No COMP/M.2938: SNPE / MBDA / JV of 30 October 2002

there remains a substantial national preference in practice. For those Member States without national capabilities, the market is the EEA or worldwide market.

18. According to the Parties, the markets for turrets, communication systems, weapon systems and ammunition markets which are vertically related to ACVs, are EEA or worldwide in scope. In any case, for the purpose of the present decision it is not necessary to define the geographic markets, since the transaction will not raise competitive concerns based on any alternative market.

## V. ASSESSMENT

### *Horizontal overlaps*

19. Military markets are characterised by the fact that the ultimate customers are the Ministries of Defence (“MoDs”), who exercise strict control over the production of military products including ACV and its sub-systems. The bidding nature of the market and the preference for national suppliers are a general feature in the selection of defence-related products. ACV are high value military products, the procurement of which is very lumpy, as the useful life of these vehicles mostly spans a period of 20 to 30 years, with midlife modernization and/or upgrading programmes being usual.
20. On the basis of markets defined by weight characteristics there is no addition of market shares of GD and Alvis in the EEA. An overlap only occurs on the basis of a hypothetical overall market of ACVs. In those Member States that have production capability, and which therefore constitute national markets, overlaps in the overall market for armoured combat vehicles are limited to Spain and Sweden. In Sweden, GD adds [0% - 5%] to Alvis (through Hägglunds) market share of [40% - 50%]. In Spain the combined market share would be [90% - 100%], with Alvis adding [0% - 5%] to GDs (through Santa Barbara Systemas) market share of [90% - 100%].<sup>7</sup>
21. At the EEA- level, referring to a market including only those EEA Member States that have no domestic production capability (and have therefore not been considered above as national markets), the combined market share of the parties in the overall market for ACVs in the period 1998-2003 is [10% - 20%] (General Dynamics [5% - 10%], Alvis [5% - 10%]). On the basis of a world market for all armoured combat vehicles the combined market share of the parties would be [20% - 30%] by value (General Dynamics [20% - 30%], Alvis [0% - 5%]). Other competitors include Chinese State Arsenal ([10% - 20%] by value), followed by several competitors from Europe, Russia and Israel with shares of less than 10%. The position on the world market reflects the strong position General Dynamics enjoys in the USA, the largest defence market in the world. Alvis adds little to General Dynamics’ position on a world scale.
22. In the defence industry, market shares are an imperfect proxy for market power. Given that Ministries of Defence are monopsonist buyers, and that each competition is largely distinct, it is important to assess whether sufficient viable alternatives will remain post-merger. The market investigation has indicated that this is the case. At the level of off-

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<sup>7</sup> All market shares are for the period 1998-2003, based on the value of vehicles supplied, as submitted by the parties under form CO.

the-shelf ACV supply, nine European companies<sup>8</sup> other than the parties will remain, with an even higher number of European prime contractors. In addition, the US-producer United Defense is active in the European market as well with its Bradley ACV and has made recent sales of this vehicle to Denmark.

23. Moreover, GD and Alvis are not each other's closest competitors. This is illustrated by the fact that during the period 1998 to 2003 there have been at least [...] competitions in the EEA, but GD and Alvis have competed against each other in only [...] instances. A first competition was that for the Greek main battle tank, which was won by the German Krauss-Maffei's Leopard II. [...] relate to IFV [...] are short-listed for the [...] IFV vehicle, alongside [...]. In [...], the competition for an MTAV is in its final stage [...] have been short-listed, together with the [...].
24. As indicated above, there may be a distinct market for IFVs. Third parties have submitted that the merger would give rise to an entity that controls more than [60% - 70%] of the market for IFVs and even a monopoly if only existing products were to be taken into account. The market investigation has not supported this claim. In the subsegment of tracked IFVs there are currently four products on the market: the Warrior and the CV 90 by Alvis, the Ulan/Pizzaro by GD, and the Italian Dardo. In addition, there is the new Puma programme by Rheinmetall and Krauss-Maffei Wegmann. The Puma will be a state of the art vehicle ready for production by 2006. According to third parties the Dardo and the Puma cannot be considered as competitors since the Dardo has so far never been sold outside Italy and the German IFV might never go into production. However, the Puma puts already now competitive pressure on the merging parties. In the [...] competition the MoD has short-listed the Puma as an alternative to [...]. The fact that the PUMA is not yet in production was not considered as a handicap. Rather, the PUMA is the latest IFV generation that meets the [...] requirements and the long procurement procedures ensure that the PUMA could enter production when deliveries to the [...] MoD would take place.
25. Moreover, for off-the-shelf IFV products, the Italian Dardo (Consorzio Iveco Fiat – Oto Melara) - purchased by the Italian MoD, the Greek Kentaurus LV (ELBO) – [...], and the US M113/ Bradley M2A3 (United Defense) which has been purchased by the Danish MoD are credible alternatives.. The market investigation has clearly indicated that the Dardo and the Bradley are competitive offerings in terms of functionality, quality and price. For these two existing off-the-shelve platforms, the customer can request modifications in line with its specific requirements.
26. In the segment for wheeled IFVs, there is limited overlap between the parties since Alvis does not have a wheeled IFV of its own but a licence for GD's Piranha. In this market segment there are even more alternatives to the two products by GD, the Pandur and the Piranha. These alternatives include the French VBCI (GIAT), the Italian Centauro 8x8 (Consorzio Iveco Fiat – Oto Melara), the Finnish AMV 8x8 (Patria) and the MRAV/GTK Boxer (which is a Dutch/German project under development).
27. It can be concluded that regardless of what the market definition for IFVs is chosen sufficient alternatives to the existing products of GD and Alvis remain. For new

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<sup>8</sup> Including the Italian companies Iveco-Fiat / Oto-Melara, the Greek ELBO, the French GIAT / /Renault/Panhard, the Finnish Patria and the German companies Krauss-Maffei Wegmann and Rheinmetall.

projects, any of the above companies would be able to take on the prime-contracting and/or manufacturing responsibility. Every international ACV competition is a new opportunity for the parties' competitors to win the bid. Even if a particular MoD had chosen a GD or Alvis IFV (or other ACV) in the past, future competitions will be open for all ACV suppliers in as far as the MoD does not restrict itself to its national supplier. Given the long lifetime of ACV, the MoD is able to select the latest ACV generation that meets its requirements rather than to select the incumbent supplier. The proposed operation will therefore not create or strengthen a dominant position for IFV as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

28. Competitors to GD have also pointed to the sheer scale and R&D funding that puts GD ahead of all its European competitors. The same competitors also state that the new entity would be able to offer better prices in the European ACV markets on the basis of its uncontested positions in the national markets where the enlarged GD would have a presence. Firstly, and as noted above, Alvis does not add much to GD's current position in the worldwide market and GD's access to US funding programmes does not result from the merger. Secondly, in as far as the ability of the new GD to offer better prices to customers would be part of a strategic foreclosure strategy, the fact remains that its competitors will continue to rely on orders and programme funding in their national markets. The market investigation has not provided evidence of Member States with national capabilities evolving to international procurement. It cannot be concluded that such a shift would result from or be facilitated by the present transaction. Finally, whilst it is clear that GD's turnover is significantly higher than that of any of its European competitors, the latter have successfully demonstrated (see the above PUMA and BOXER projects) that they are capable of teaming-up.

#### *Vertical relationship*

29. Both GD and Alvis offer turrets that could, [...], also be included in armoured vehicles manufactured by third parties. [...].
30. Communication systems, weapon systems (fire control systems) and ammunition loading systems are also not vertically affected markets. On a worldwide basis, the parties' combined market share is submitted to be below 25%. Only in the market for ammunition has GD a market share of [30% - 40%], due primarily to its supplies to [...]. This market position gives rise to a vertically affected market. However, ammunition is a commodity product and purchased separately from ACVs.
31. It is normal business for ACV producers to integrate a range of weapon systems, which often come from third parties, in their vehicle. Third parties have pointed to the strong position of GD with regard to certain weapon systems, such as the elevated TOW launcher, which would give GD the ability to restrict supply of such weapon systems to other ACV producers in cases where they would compete against an ACV offered by GD. However, refusal to supply a weapon system to a competing ACV producer would prevent competing ACV producers from participating in tenders only if customers (i.e. MoDs) expressed a strong preference for a specific weapons system. In fact, the market investigation showed that, for off-the-shelf products, MoDs tend to leave the choice of sub-systems to the prime contractor. Moreover, the fact that GD's market share for weapon systems is below 25% shows that the position of GD is not such as to be able to foreclose competition.



32. Competitors to the parties claimed furthermore that post-merger, they will be foreclosed to supply sub-systems where the new entity will be able to source these internally. However, the market investigation has not pointed to sub-systems markets where the parties would hold particularly strong combined positions and there exist alternative independent suppliers of sub-systems that are not vertically integrated into ACVs. Secondly, even when the new entity would be in a position to replace third party sub-system suppliers with a GD product, it is unlikely that the MoD would allow GD to change the ACV configuration for existing programmes or ordered vehicles. On the other hand, for new programmes, GD may well be able to offer an ACV with an increased quantity of GD sub-systems. In this case, apart from the absence of leading positions, MoDs would still retain the ability, whether or not in the context of off-set arrangements, to include other sub-systems suppliers in future programmes or as part of an off-the-shelf product adapted to the requirements or preferences of the MoD. Also, even without specifying a particular sub-system, governments may require transparent sub-contract competition. It is therefore expected that the transaction does not raise concerns of foreclosure in markets for subsystems.
33. Lastly, it was submitted to the Commission that the proposed transaction would be a merger to monopoly for turreted mortar systems. A turreted mortar system is a mortar integrated into a turret and mounted on an ACV, which gives the crew mobility and full protection while firing, as opposed to conventional systems of towed or floor mounted mortars. Third parties claimed there are currently two systems on the market. The first is the Armoured Mortar System (AMS) produced by GD with Royal Ordnance (RO), a subsidiary of BAe Systems, as subcontractor for the turret. The other is the Advanced Mortar System (AMOS) produced by a consortium of Alvis Hägglunds and Patria. Through the merger GD would acquire co-control of both systems and eliminate competition between them. However, the market investigation revealed that the cooperation between GD and RO for the AMS mounted on an ACV by GD ended in [...], at the termination of [...]. RO has sole ownership of the AMS mortar turret and is, therefore, free to offer it for integration on a range of other ACV chassis for which it is a suitable weapon system. As a consequence, there is no overlap resulting from the merger, and after the merger there would be at least one alternative supplier to the Alvis Hägglunds and Patria consortium (GD and Patria post-merger) of a turreted mortar to be mounted on an ACV.
34. In view of the foregoing, it can be concluded that the proposed operation would not, in any of the markets considered, create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

## **VI. CONCLUSION**

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

For the Commission

Mario MONTI  
Member of the Commission