

***Case No COMP/M.4288 -
SAAB / EMW***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 31/08/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31/08/2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case COMP/M.4288 – Saab / EMW
Notification of 26/07/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 26/07/2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Saab AB (“Saab”, Sweden), a company jointly controlled by BAE Systems Plc. (“BAE Systems”, UK) and Investor AB (“Investor”, Sweden), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Ericsson Microwave Systems AB (“EMW”, Sweden) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EC) No 139/2004 (“the Merger Regulation”), 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

3. **Saab** is a publicly listed Swedish high-technology company with its main operation in the fields of defence technology, aviation, space industry and civil security. Saab is *inter alia* operating as a system house which integrates various defence sub-systems to

¹ OJ L 24, 29.1.2004 p. 1.

system solutions specifically designed for its customers. Saab is jointly controlled by BAE Systems and Investor².

4. **BAE Systems**, a company listed at the London Stock Exchange, is an international manufacturer of advanced systems for the defence and commercial aerospace sectors. The company (directly or through joint ventures) designs, manufactures and sells military aircrafts, surface ships, submarines, fighting vehicles, radar systems and avionics and other communication electronics.
5. In January 2005, BAE Systems decreased its shareholding to 20.5% of the shares, representing 20.3% of the votes in Saab. But since BAE Systems still has the possibility to veto strategic decisions in Saab in accordance with the shareholder's agreement³, BAE System has joint control over Saab. Besides Saab, BAE Systems in addition holds 37.5% of the shares in and jointly controls (together with EADS (37.5%) and Finmeccanica (25%)) the company MBDA, a pan-European joint venture which manufactures and sells *inter alia* the guided missile system Mistral.
6. **Investor** is a Swedish industrial holding company listed on the Stockholm Stock Exchange. It has shareholdings in a number of undertakings which – besides Saab – include ABB, Scania, Electrolux, Astra-Zeneca, and SEB. Investor currently holds 19.8% of the shares, representing 38% of the votes in Saab. Since Investor has the possibility to veto strategic decisions in Saab in accordance with the shareholder's agreement⁴, Investor has joint control over Saab. Investor also holds shares in Ericsson AB ("Ericsson"), the current parent company of the target company EMW. However, these shares (5.02% of the capital, 19.46% of the voting rights) do not provide Investor with sole or joint control over Ericsson.
7. **EMW**, currently a 100% subsidiary of Ericsson, is active in the market for defence electronics and avionics. The company in particular provides radar systems for different platforms (i.e. ground-based, naval and airborne radar systems) and related after-sales services. Furthermore, EMW is – to a limited extent – active in the manufacture and sale of electronic equipment for radar-guided missiles (radar-integrated missile data links), complex airborne computer systems, ground based electronic warfare systems and space equipment (e.g. digital microwave electronics and antennas for satellites)

II. THE OPERATION

8. The notified transaction concerns the acquisition of 100% of the shares of EMW by Saab. The operation also includes the acquisition of the shares currently held by EMW in the following joint ventures:

² Case No IV/M.1198 *British Aerospace / Saab*.

³ Case No IV/M.1198 *British Aerospace / Saab*, paragraph 7.

⁴ Case No IV/M.1198 *British Aerospace / Saab*, paragraph 7.

- (i) Saab Ericsson Space (“SES”): a full-function joint venture between Saab (60%) and EMW (40%)⁵ active in the manufacture and sale of space equipment (e.g. digital microwave electronics and antennas for satellites);
- (ii) Ericsson Saab Surveillance Systems AB (“ESSS”): a 50/50 project based joint venture between Saab and EMW established for a joint offer of an air surveillance system to Saudi Arabia. The company currently has no activity and all project-related expenses are borne by the partners directly.
- (iii) Ericsson Thales AEW Systems AB (“ETAS”): a 50/50 project based joint venture between EMW and Thales Airborne Systems to execute one contract of four airborne early warning systems to the Hellenic Air Force. Besides this contract, ETAS has no activity and the co-operation will end once the project is delivered;
- (iv) IG JAS Consortium (“IG JAS”): a contractual risk sharing arrangement between the Swedish companies engaged in the development and construction of the multi-role air fighter “GRIPEN” for the Swedish air force. The joint venture which purely operates as a commissioner for its owners and has no own employees and facilities is currently owned by Saab (60%), Ericsson/EMW (20%) and Volvo (20%).

III. CONCENTRATION

- 9. The proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation. The operation constitutes the acquisition of sole control by Saab of EMW. As regards the full-function joint venture SES⁶, the operation constitutes a change in the structure of control (from joint to sole control)⁷.
- 10. ESSS, ETAS and IG JAS are project-related joint ventures which operate only as a forum for appropriate co-operation for its owners (without having significant own personal / financial resources or facilities) and therefore cannot be considered to be full-function joint ventures performing on a lasting basis all the functions of an autonomous economic entity. Accordingly, as regards these three joint ventures, the operation does not constitute a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

- 11. Due to the fact that EMW does not have a Community-wide turnover of more than EUR 250 million [...], the proposed transaction does not have a Community dimension pursuant to Article 1 (2) of the EC Merger Regulation. However, the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion (EMW: [...]; Saab (including its parent companies Investor and BAE Systems): [...]) (Saab: [...]; Investor (excluding Saab): [...]; BAE Systems (excluding

⁵ See Case IV/M.178 *Saab Ericsson Space*.

⁶ See Case IV/M.178 *Saab Ericsson Space*.

⁷ Recital 40 of the Notice on the concept of concentration under the Merger Regulation, OJ C 66, 2.3.1998, p. 5.

Saab): [...]). In each of at least three Member States⁸ the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million, and in three of these Member States (France, Greece, and Sweden) the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million. In addition, the aggregate Community-wide turnover of each of at least two of the undertakings concerned (EMW: [...]; Saab (including its parent companies Investor and BAE Systems): [...]) is more than EUR 100 million. Furthermore, contrary to EMW, Saab (including its parent companies Investor and BAE Systems) does not achieve more than two thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension pursuant to Article 1 (3) of the EC Merger Regulation.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

12. EMW is currently active in the manufacture and sale of the following products: military radar systems, ground based electronic warfare systems, airborne computer systems and – to a limited extent – space equipment (e.g. digital microwave electronics and antennas for satellites). The concentration will not lead to any horizontal overlap or vertically affected markets in the fields of the manufacture and sale of ground based electronic warfare systems, airborne computer systems and space equipment. Therefore, only the economic sector for military radar will be analysed below.

1. Military Radar

13. Radars are systems based on electromagnetic beams used to provide external data relating to potential targets or threats. The characteristics of a radar system differ depending on *inter alia* the level of wavelength and the frequency band⁹ on which the radar operates.
14. Various types of radars can be distinguished depending on the platforms on which they are installed (ground-based, airborne, naval) and according to the specific function they serve (e.g. fire-control, early warning, weapon locating). In a previous decision¹⁰ the Commission considered (but finally had not to conclude on) a market segmentation according to the platform and the specific function of the different radar systems¹¹.

⁸ Austria, Belgium, Denmark, France, Greece, Germany, Hungary, Italy, Netherlands, Spain, Sweden, United Kingdom.

⁹ Wavelength and frequency are related parameters. The longer (shorter) the wavelength (in cm) is the lower (higher) the frequency (in GHz).

¹⁰ Case No COMP/M. 3649 – *Finmeccanica / BAES Avionics*; see also Case No COMP/M. 2079 *Raytheon / Thales / JV*, for the specific type of weapon locating radar.

¹¹ Case No COMP/M. 3649 – *Finmeccanica / BAES Avionics*, paragraph 15; in this case, the Commission also indicated that third parties emphasised the need for even narrower market segmentation.

a) *Segmentation submitted by the parties*

15. As regards the relevant product markets for military radar, the parties first make a differentiation between the *platforms* on which the radar is installed. According to the parties, ground-based, airborne and naval radars require different characteristics since the environment within which they operate differ significantly. The parties furthermore submit that the supply-side substitutability between radars for different platforms is very limited.
16. As regards the *functionalities* of radars, the parties submit that a radar system used for a specific purpose (e.g. fire control, early warning or weapon locating) is not substitutable by another type of radar. According to the parties, different frequency bands and wavelengths constitute the most important factors which limit demand-side substitutability. These parameters determine the resolution and the distance coverage which can be achieved. The higher the frequency level the more detailed data can be achieved (higher resolution) but the detection length decreases (lower distance coverage) and vice versa. Different wavelength / frequency bands in the parties' view also require the supplier to have different technological abilities and the different types of radars also include different components (transmitters, sensors, receivers, antennas etc) so that also the supply-side substitutability between the different types of radars is very limited.
17. The parties take the view that – for the purpose of the present case and considering the product portfolio of the parties – the broader market for military radar should be sub-segmented into the following relevant product markets:

Ground based military radar	Airborne military radar	Naval military radar
Weapon locating radar	Military fighter radar	“High end” naval search and acquisition radar
Early warning air defence search and acquisition radar	Airborne early warning and control radar	“Low end” naval search and acquisition radar
Local air defence search and acquisition radar	Airborne ground surveillance radar	Naval fire control radar
Fire control radar		

18. The Commission's market investigation¹² broadly confirmed this segmentation of the different types of military radar. In any event, since Saab and BAE Systems are only active in the field of military radar to a very limited extent, the precise market definition for most of the types of military radar mentioned above can be left open for the present case. The only distinction made by the parties that needs to be considered in order to exclude horizontal overlaps is between (i) ground based and naval (fire control) radars and (ii) “high end” and “low end” naval search and acquisition radars.

¹² Answers to question 5 of the questionnaire to customers sent on 16.08.2006; answers to question 6 of the questionnaire to competitors sent on 11.08.2006.

b) Ground-based and naval fire control radar

19. Fire control radars detect and measure airborne targets very accurately with the prime objective to simultaneously guide a weapon (e.g. a missile) with which it is co-located. Therefore, fire control radars are generally part of a larger system, i.e. complementing the radar search performed e.g. by an early warning air defence radar. The fire control radar is often connected to a combat management system (CMS) which communicates the relevant data to the weapon system.
20. EMW is currently active in the manufacture and sale of ground based *fire control radar* (“EAGLE”)¹³ but currently does not produce naval fire control radars. Conversely, Saab currently does not manufacture and sell any ground based fire control radar but is active in the production of a naval fire control radar system (“CEROS”). Accordingly, a horizontal overlap would only occur if ground based and naval fire control radars belong to the same product market which could be described as the market for “surface based” (contrary to “airborne”) fire control radar.
21. In line with the results of the market investigation in previous cases¹⁴, the Commission’s market investigation in the present case confirmed that it is appropriate to differentiate radar systems according to the different platforms on which they are to be mounted (ground-based, naval, airborne). For all types of radar (e.g. fire control, weapon locating, search and acquisition etc.), ground-based and naval radars in general have to be considered as separate relevant product markets.
22. According to the respondents to the Commission’s market investigation¹⁵ the need for the separation of different relevant product markets mainly stems from the fact that different platforms – e.g. due to environmental specific conditions (water, land) or differences in the application (moving platform as regards naval radars, stationary platform as regards ground-based radar) – are not interchangeable from the demand-side perspective. As regards supply-side substitutability, the competitors involved in the Commission’s market investigation indicated that different platforms also require significant adaptations of the basic technology.
23. Based on these elements, the Commission concludes that ground-based fire control radar and naval fire control radar constitute separate relevant product markets.

c) “Low-end” and “high-end” naval search and acquisition radar

24. The parties submit that low-end naval search and acquisition radars are intended for smaller ships (corvettes or frigates) and their main purpose is the air defence of the ship on which they are mounted. High-end radars, on the other hand, are intended for larger ships (destroyers) and for area defence of a fleet of ships. Accordingly, they provide a different range of coverage and use a different technology. Moreover,

¹³ According to the parties, EMW is only selling the EAGLE-radar in relation to the Swedish medium-range surface-to-air missile system RBS23 (“BAMSE”); for more details see below.

¹⁴ Case No COMP/M. 3649 – *Finmeccanica / BAES Avionics*; see also Case No COMP/M. 2079 *Raytheon / Thales / JV*, for the specific type of weapon locating radar.

¹⁵ Answers to question 4 of the questionnaire to customers sent on 16.08.2006; answers to question 5 of the questionnaire to competitors sent on 11.08.2006.

according to the parties, high-end naval search and acquisition radars are significantly (5 to 10 times) more expensive than low-end radars.

25. EMW is currently active in the manufacture and sale of ground based early warning search and acquisition radars (“GIRAFFE”) and *naval search and acquisition radars* (“SEA-GIRAFFE”). According to the parties’ submission, neither Saab nor BAE Systems currently produce or sell search and acquisition radars which compete with EMW’s low-end naval search and acquisition radar (SEA-)GIRAFFE. BAE Systems currently manufactures and sells two types of naval search and acquisition radars, the SAMPSON radar and the S1850 long range radar. However, according to the parties, both are “high end” radars.
26. The Commission’s market investigation broadly confirmed the arguments submitted by the parties¹⁶. Despite the fact that the market investigation provided no clear indication where the exact line between low-end and high-end should be drawn, all the customers and competitors explicitly confirmed that the naval search and acquisition radars currently offered by BAE Systems provide very different functionalities and serve different purposes (area defence of a total fleet contrary to local air defence of only one ship) and therefore cannot be considered to be interchangeable with EMW’s naval search and acquisition radar SEA-GIRAFFE.
27. Based on these elements, the Commission concludes that – while leaving open the precise product market definition – the naval search and acquisition radars currently offered by BAE System and EMW belong to separate relevant product markets.

2. Defence products with integrated radars

28. Due to the activities of Saab and BAE Systems in other defence products, the Commission investigated whether the proposed transaction may lead to vertically affected markets. Vertical issues potentially arise from the following activities of BAE Systems/Saab:
 - a) Saab’s and BAE Systems’ activities in the GRIPEN *combat aircraft* project (for military fighter radar);
 - b) BAE System’s and Saab’s activities in the manufacture and sale of *short- and medium-range surface-to-air missile systems* (for (i) ground based early warning air defence search and acquisition radars, (ii) ground based local air defence search and acquisition radar, and (iii) ground based fire control radar). These activities could in addition give rise to another vertically affected market, the market for radar-integrated missile data links.
 - c) Saab’s activities in the manufacture and sale of airplanes with *integrated airborne early warning systems* (for airborne early warning and control radar).

a) Combat aircraft

29. EMW produces the military fighter radar (“PS05”) for the “GRIPEN” combat aircraft. This aircraft has been developed by an industrial consortium consisting of Saab,

¹⁶ Answers to question 8 of the questionnaire to customers sent on 16.08.2006; answers to question 9 of the questionnaire to competitors sent on 11.08.2006.

EMW, Volvo Aero Corporation, Saab Avionics and FFV Aerotech. BAE Systems is producing the main landing gear unit and wing attachment unit of the fighter.

30. In previous decisions¹⁷, the Commission defined a relevant product market for combat aircraft, i.e. military fighters which – in terms of their capabilities – are designed for different types of missions (“multi-role configuration”) and include *inter alia* the following platforms / projects: F-15, F-18 Mirage, Eurofighter, Gripen and MiG. Therefore, the Commission concludes that the market for combat aircraft also constitutes a relevant product market in the present case.

b) Surface-to-air missile systems

31. As regards ground-based early warning air defence and ground based local air defence search and acquisition radars and ground-based fire control radars, vertical issues may arise from the activities of Saab / BAE Systems in the supply of integrated surface-to-air missile systems. A missile system usually comprises one surveillance co-ordination centre (SCC) and several missile control centres (MCC). Whereas the main tasks of the SCC are automatic tracking of the target, continuous threat evaluation and engagement planning, the function of the MCC is to track the targets and missiles and to transmit guidance to the missile. Accordingly, the SCC usually comprises ground-based early warning air defence and / or ground-based local air defence search and acquisition radars whereas the MCC comprises ground-based fire control radars.
32. Saab is the prime-contractor for the Swedish medium range surface-to-air missile system RBS23 (“BAMSE”). BAE Systems is also active in the market for medium-range surface to-air missile systems to a limited extent, namely through the company Eurosam, a joint venture between MBDA (a company jointly controlled by BAE Systems (37.5%), EADS (37.5%) and Finmeccanica (25%)) and the Thales group. Saab furthermore manufactures and sells a short-range surface-to-air missile system (“RBS70”). BAE Systems is active in the manufacture and sale of short-range surface-to-air missile systems through MBDA, a company jointly controlled by BAE Systems (37.5%), EADS (37.5%) and Finmeccanica (25%). MBDA *inter alia* manufactures and sells the competing short-range surface-to-air missile system “MISTRAL”.
33. As regards the different types of missile systems, the Commission in previous decisions¹⁸ defined a market for guided weapons and guided weapon systems (GW / GWS). The Commission further concluded that two levels of competition, the prime-contractor level and the sub-contractor or equipment level have to be distinguished. In addition, in previous decisions¹⁹ the Commission also indicated (but finally left open) that separate relevant product markets may be distinguished (i) according to the functionality of the missile system (i.e. air-to-air, air-to-surface and surface-to-air GWS), and (ii) according to the range of the missile (i.e. short-range, medium-range and long-range missile systems).

¹⁷ Case No COMP/M. 1745 EADS, paragraph 175.

¹⁸ Case No IV/M.1198 *British Aerospace / Saab*; Case No COMP/M. 1745 EADS.

¹⁹ Case IV/M.945 *Matra BAe Dynamics / DASA / LFK*; Case No IV/M.1198 *British Aerospace / Saab*.

34. In any event, since the proposed transaction does not give rise to competition concerns under any alternative product market definition, the precise definition of the relevant product market can be left open in the present case.
35. EMW in addition is active in the manufacture and sale of radar-integrated missile data links which constitute the “electronic link” between radar-guided missiles and the radar with which it operates. They are long range jamming resistant data links for all types of radar-guided missiles (air-to-air, air-to-ground and ground-to-air). The data links send target location updates and changes to the missile while it is in flight ensuring that the missile finds its targets regardless of its movements. Due to the close connection with the operating radar system, technological knowledge about the radar system is essential for the performance of the data transmission to the missile.
36. The parties consider integrated missile data links to constitute a separate relevant product market. However, since the proposed transaction does not give rise to competition concerns under any alternative product market definition, the question whether integrated missile data links constitute a separate product market can be left open in the present case.

c) Integrated airborne early warning systems

37. EMW is currently active in the manufacture and sale of airborne early warning and control radars (“ERIEYE”). This type of radar is mounted on and integrated into an aircraft, and is used to search, track and report airborne targets as well as sea targets, covering a large geographical area²⁰. Used at high altitude, the radar allows the operators to distinguish between friendly and hostile aircraft or ships hundreds of miles away. Saab is a prime-contractor for integrated airborne early warning systems, i.e. airborne early warning and control radars which are integrated into the suitable aircraft to serve the specific military purposes of the customer. EMW’s airborne early warning and control radar ERIEYE for example has been integrated into two different types of aircraft manufactured by Saab.
38. In previous decisions²¹, the Commission considered (but finally did not conclude) that integrated airborne early warning systems may constitute a separate relevant product market in the field of special mission aircraft, i.e. aircraft which serve a very limited and specific military purpose and which can not be substituted by other types of special mission aircraft of multi-role combat aircraft.
39. Since the proposed transaction does not give rise to competition concerns under any alternative product market definition, the precise definition of the relevant product market can be left open in the present case.

²⁰ The most famous product of such a type of radar is the “AWACS”-system.

²¹ Case No COMP/M. 1745 *EADS*, paragraph 178.

B. Relevant geographical market

40. As regards geographical market definition, in previous decisions²² the Commission has made a distinction between those countries where domestic suppliers exist (military customers wish to support those national suppliers and thereby the country's military independence), and those countries where there is no domestic supplier and where, subject to export restrictions and other barriers associated with national security, competition generally takes place at an international and even world-wide level. Insofar as a national supplier markets its products also outside the country of its location, it has to be considered to also be active in the international export market for the military products concerned.
41. The parties put forward several arguments to support the view that the relevant geographic markets for defence products are moving more and more towards international markets. They specifically point to (i) the signing of the Defence Industry Restructuring Treaty between the UK, France, Germany, Italy, Spain and Sweden in 2000, and (ii) the establishment of the European Defence Agency ("EDA") and the introduction of a voluntary, non-binding intergovernmental Code of Conduct between its Member States aimed at encouraging fair and equal treatment in the European defence procurement market.

1. Military Radar

42. As regards *military radar systems*, the parties – based on the argument that most of the different types of military radar have to be considered to be “off-the-shelf” products – submit that the relevant product markets are worldwide in scope.
43. The Commission's market investigation²³ did not bring a clear answer to the question whether – due to the fact that Saab and EMW, both located in Sweden, have to be considered to be the preferred national supplier - Sweden constitutes a separate geographic market for the different types of military radar or whether Sweden has to be considered to be part of a worldwide market for military radar. This is mainly due to the fact that no separate procurement process for military radar of the Swedish armed forces has taken place in the last five years. However, several competitors which were involved in the Commission's market investigation explicitly indicated that in the field of military radar Sweden still has to be considered to be a “closed market”, i.e. not accessible for suppliers located outside Sweden.
44. In any event, since the proposed transaction does not give rise to competition concerns under the narrowest possible geographic market definition, the precise definition of the relevant geographic market for military radar can be left open in the present case.

²² Case No COMP/M. 3649 – *Finmeccanica / BAES Avionics*, paragraph 18; Case No COMP/M. 2079 *Raytheon / Thales / JV*, paragraph 33 et seq.; Case No COMP/M. 1745 *EADS*, paragraph 129 (as regards e.g. guided weapons).

²³ Answers to question 14, 15 and 16 of the questionnaire to customers sent on 16.08.2006; answers to question 13, 14, 15 and 16 of the questionnaire to competitors sent on 11.08.2006.

2. Defence products with integrated radars

a) Combat aircraft

45. For *combat aircraft* the notifying parties submit that Sweden cannot be included in the international accessible market since Sweden (like other countries such as the US, the UK, France or Germany) has a strong domestic supplier (the “GRIPEN”-consortium IG JAS) and an approach by the Ministry of Defence to purchase domestic combat aircraft.
46. In any event, since the proposed transaction does not give rise to competition concerns under any alternative geographic market definition, the precise definition of the relevant geographic market for combat aircrafts can be left open in the present case.

b) Surface-to-air missile systems

47. As regards (short- and medium-range) surface-to-air *missile systems*, the notifying parties also explicitly submit that Sweden cannot be included in the international accessible market since Sweden (like other countries such as the US, the UK, France or Germany) has a strong domestic supplier (Saab / BAE Systems) which gives the Ministry of Defence an incentive to purchase domestic produced missile systems. The parties furthermore submitted that Saab so far has not made any sales of its medium-range surface-to-air missile system (RBS23) to customers outside Sweden.
48. In any event, since the proposed transaction does not give rise to competition concerns under any alternative geographic market definition, the precise definition of the relevant geographic market for surface-to-air missile systems can be left open in the present case.

c) Integrated airborne early warning systems

49. As regards *integrated airborne early warning systems*, the notifying parties submit that Sweden has to be considered to be part of the global market for airborne early warning systems, despite the fact that Saab is the Swedish national supplier. In this regard the notifying parties refer to the bidding processes related to the procurement of this type of special mission aircraft and take the view that Saab’s system (using EMW’s airborne early warning and control radar ERIEYE) competes with alternatives from several competitors such as Boeing Integrated Defence Systems (“AWACS”) or Northrop Grumman Electronic Systems (“MESA”, “HAWKEYE”).
50. However, since the proposed transaction does not give rise to competition concerns under the narrowest possible geographic market definition, the precise definition of the relevant geographic market for integrated early warning systems can be left open in the present case.

C. Impact of the transaction

1. Horizontal issues

51. Due to the fact that (i) ground-based and naval fire control radars and (ii) low-end and high-end naval search and acquisition radars constitute separate relevant product markets, the proposed transaction does not lead to horizontal overlaps in any possible

relevant product market for military radar. Therefore, a significant impediment of effective competition due to any horizontal effect can be excluded in the present case.

2. Vertical issues

52. As indicated above, the proposed transaction could potentially give rise to vertical issues for the following defence products: (i) combat aircraft and military fighter radars, (ii) surface-to-air missile systems and several types of ground-based radar, and (iii) integrated early warning systems and airborne early warning and control radars.

a) Combat aircrafts and military fighter radars

53. Saab and BAE Systems as well as EMW are currently engaged in the production of the Swedish combat aircraft “GRIPEN”. Whereas Saab and BAE Systems are engaged in the production of (parts of) the aircraft itself, EMW delivers the military fighter radar system for the fighter (“PS05”). Even assuming a very strong market position of the “GRIPEN” fighter in the Swedish market for combat aircrafts the competitive impact of the proposed transaction nevertheless has to be considered to be minimal for the following reason.
54. Already prior to the proposed transaction, Saab and EMW took part in the industry consortium IG JAS which developed and currently manages the GRIPEN-project and both companies currently hold shares of 60% and 20% respectively in IG JAS. Accordingly, already prior to the merger it seems to be *de facto* excluded that any competing supplier of military fighter radars would be in a position to compete effectively for the delivery of the radar system for the GRIPEN fighter. This situation will not be changed by the proposed transaction, except for the legal aspect that in the future the link between Saab and EMW will be structural and not only based on the underlying consortium agreements.
55. The competitive impact of the proposed transaction on the global export market for combat aircraft and military fighter radar is very limited and any competition concern based on the vertical relationship between the merging parties can be excluded for the following reason. Besides its activities in the GRIPEN-fighter project, EMW is currently not active in the market for military fighter radars. In addition, according to the parties’ submission, the GRIPEN-fighter currently holds a market share of significantly less than 10% in the global market for combat aircrafts. Against the background of this “fringe” position it seems highly unlikely that any competitive concern would result from the proposed transaction.

b) Surface-to-air missile systems

56. As indicated above, several types of ground-based radar offered by EMW can be considered to be vertically related to surface-to-air missile systems manufactured by Saab and BAE Systems. Saab is the prime-contractor for the Swedish medium range surface-to-air missile system RBS23 (“BAMSE”) and the Swedish short-range surface-to-air missile system (“RBS70”). In addition, also BAE Systems is active in the market for medium-range surface to-air missile systems to a limited extend, namely through the company Eurosam, a joint venture between MBDA (a company jointly controlled by BAE Systems (37.5%), EADS (37.5%) and Finmeccanica (25%)) and the Thales group. BAE Systems is active in short-range surface-to-air missile systems directly through MBDA which manufactures and sells the competing short-range surface-to-air missile system “MISTRAL”.

57. As regards the national Swedish market for surface-to-air missile systems, the transaction will not alter the competitive situation which is characterised by a very strong position of the parties as regards the respective products. In addition, the strong position of the Swedish Ministry of Defence as the sole Swedish buyer of the respective products provides a countervailing factor for any negative vertical impact of the proposed transaction. In particular, the Swedish Ministry of Defence has a strong influence over the choice of sub-contractors and may even launch separate tenders for the various elements of surface-to-air missile systems. In both relevant product areas (surface-to-air missiles and ground-based radar systems), several strong competitors are active in the market which guarantee alternative sources of supply²⁴.
58. As regards the international export market, according to the parties' submission, the surface-to-air missile systems currently offered by BAE System/MBDA (e.g. the MISTRAL) are in most cases combined with radar systems of the Swiss-based company Oerlikon Contraves. Therefore, the question arises whether the proposed transaction would increase the risk of the foreclosure of competitors like Oerlikon Contraves in the delivery of radar systems integrated into the missile systems of BAE Systems/MBDA. In this regard the option of the buyers (Ministries of Defence) to launch separate tenders for the various elements of a surface-to-air missile system limits such a potential vertical competitive concern resulting from the proposed transaction. The Commission's market investigation confirmed the parties' submission that in a significant number of past cases the supplier of the missiles was different from the provider of the radar systems concerned.
59. Furthermore, it has to be taken into account that BAE Systems currently does not have sole control over MBDA and that the other partners of MBDA (EADS, Finmeccanica) are – contrary to Investor AB – also active in the defence industry. Accordingly, it cannot be assumed that BAE Systems would be able to influence MBDA (and accordingly its joint venture partners) to exclusively use EMW's radar systems when selling MBDA's surface-to-air missile system MISTRAL.
60. Therefore, a significant impediment of effective competition due to any vertical effect can be excluded for the market for combat aircraft.

c) Integrated airborne early warning systems

61. Saab is a prime-contractor for integrated airborne early warning systems, i.e. airborne early warning and control radars which are integrated into the suitable aircraft to serve the specific military purposes of the customer. EMW's airborne early warning and control radar ERIEYE for example has been integrated into two different types of aircraft manufactured by Saab.
62. Competitive concerns resulting from the vertical relationship between the respective products can – for the Swedish market as well as for the international export market for integrated airborne early warning systems – however be excluded for the same reasons as set out above. The strong position of the Ministries of Defence as the only buyer of integrated airborne early warning systems and the option to launch separate

²⁴ Saab's and BAE Systems' main competitors for surface-to-air missile systems include companies like the Thales Group, Raytheon and EADS. These companies are currently also EMW's main competitor in the field of ground-based military radar.

tenders for the different components of the system (i.e. airplane and airborne early warning and control radar) exclude the risk of any foreclosure effect resulting from the proposed transaction. In both relevant product areas several strong competitors are active in the market which guarantee alternative sources of supply²⁵.

VI. CONCLUSION

63. 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 Articles 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
Signed
Stavros DIMAS
Member of the Commission

²⁵ Saab's and BAE Systems' main competitors for airborne early warning systems include companies like Boeing Integrated Defence Systems and Nothrop Grumman Electronic Systems. EMW's main competitors in the field of airborne early warning and control, radar are companies like Nothrop Grumman and Lockheed Martin.