

***Case No IV/M.437 -
MATRA MARCONI
SPACE / BRITISH
AEROSPACE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/08/1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.08.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the Notifying Party

Dear Sirs,

Subject: Case No. IV/M437 - Matra Marconi Space/British Aerospace Space Systems
Your notification of 20.7.94 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 20.7.94 Matra Marconi Space N.V. (MMS) notified to the Commission its intended acquisition of British Aerospace Space Systems Ltd. (BAeSS) and National Remote Sensing Centre Ltd (NRSCL). MMS is a joint venture between Matra Hachette S.A. (Matra) and The General Electric Company, p.l.c.(GEC).
2. 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 any serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. MMS is engaged in the manufacture and supply of space systems, including satellites and their payloads, sub-systems for launchers and manned space flight vehicles, ground stations, and various other sub-systems and technologies.
4. BAeSS manufactures and supplies space systems, and is engaged in the design, development and production of communications satellites for civil and military purposes, as well as satellite platforms and sub-systems for Earth observation satellites.

NRSCL is engaged in the supply and processing of remotely-sensed data acquired from satellites, airborne and ground observation sources.

5. Matra has activities in the following fields: aerospace and defence, telecommunications and information technology, automobile and transit systems, publishing, and broadcasting.
6. GEC has activities in the following fields: electronic systems, power systems, telecommunications, consumer goods, electronic metrology, office equipment and printing, medical equipment, electronic components, and industrial apparatus.

II. THE OPERATION

7. MMS, through its subsidiary, Matra Marconi Space U.K. Ltd. (MMS UK), will acquire all the issued share capital of BAeSS and a majority and controlling shareholding in NRSCL, also owned by British Aerospace. The latter part of the operation is however subject to the appropriate waiver of rights of pre-emption held by British Aerospace's co-shareholders in NRSCL.

III. CONCENTRATION OF COMMUNITY DIMENSION

8. The notified operation constitutes a concentration within the meaning of Articles 3(1)b and 1(2) of the Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

a) Relevant product market

The space systems market comprises into two main segments: space and ground.

A. The Space Segment

9. The space segment comprises : (i) communications, remote sensing, and scientific satellites; (ii) launchers for satellites and manned space flight vehicles including rockets, spaceplanes, orbiting laboratories, and related infrastructure.

(i) Satellites

10. Satellites are highly complex spacecraft involving many different technologies and subsystems. A standard satellite consists of two basic parts: the platform and the payload. The platform (or bus) is the physical structure of the satellite that ensures its stability, maintains the the satellite's orbit, supplies electrical energy, and ensures the satellite's thermal control. The payload is the heart of a satellite: it governs the main parameters of the platform and is designed to perform the particular tasks for which the satellite was put in orbit. There are three main categories of satellite:
11. Communications satellites provide different types of telecommunications services, eg mobile communications, business telecommunications and broadcasting services, and direct television broadcasting to subscribers.
12. Remote sensing satellites examine the surface of the Earth or its cloud coverage using a payload including a variety of sensors. The resulting data are stored and transmitted back to Earth. Possible uses depend almost entirely upon the battery of sensors carried in the satellite. Sensor development can be considered in its infancy, with many potential applications eg, military intelligence, meteorology, oceanography, hydrography in coastal regions etc.
13. Scientific satellites carry payloads containing instrumentation for the scientific study of the upper atmosphere and deep space eg, X-ray astronomy and cosmic ray bombardment of the Earth.

(ii) Launchers and manned flight vehicles

14. The majority of space based systems are launched from pads using multiple-stage rockets, liquid or solid propellant fuelled, derived from ballistic missile technology. These rockets are expended during the launch process and are known as expendable launch vehicles (ELVs). In recent years considerable effort has been devoted to reusable launchers or spaceplanes, epitomized by the U.S. space shuttle, in which at least part of the launch system returns to Earth and is re-used.
15. This segment of the space sector also comprises orbiting laboratories, which allow for long duration experimentation in space and the study of man's adaptation to weightlessness in space. They can also provide the base for the construction of space-based infrastructure and provide staging posts in the exploration of the solar system.

B. The Ground Segment

16. Ground stations fall into two categories: (i) stations for the command and control of spacecraft; and (ii) stations that provide an interface (i.e. transmission of voice and data signals) between e.g. communications satellites and users etc.
17. The parties have submitted that the relevant product market is the space systems market, which comprises all the above space systems. The Commission considers that market shares calculated on this basis would probably give a good indication of the relative competitive strength of prime contractors. A prime contractor will hold overall responsibility for a space system project and will obtain outside

supplies of sub-systems and components where necessary. Given the size and complexity of space systems projects it is common practice, except for the largest undertakings, to cooperate in executing a particular project, each contributing according to its particular manufacturing and research skills.

18. Although 'turnkey' projects will include all three main elements of space systems i.e. satellite, launcher and ground station, each element is composed of a number of defined sub-systems and equipment that may be purchased and supplied separately. Many companies manufacture only sub-systems, equipment or components. In this light and given the different characteristics, prices and intended uses of the various space systems segments, the Commission considers that a relevant product market definition based on the overall space market would be too large. However, in the specific circumstances of this case, the relevant product market definition can be left open since even on the narrower space system segment basis, the proposed concentration does not give rise to serious doubts.

b) Geographical reference market

19. The parties submit that the geographical reference market is global. From the supply side this would certainly appear to be true and even Russian and Chinese undertakings are increasingly making their presence felt in the overall space market. From the demand side, some customers continue to buy regionally or locally, but this is for self-imposed reasons relating to national defence or institutional reasons. A distinction must be made between the civil and military sectors. Given the general secrecy attached to defence expenditure, it is not possible to determine precisely military expenditure on space systems. However, even today military expenditure constitutes a very substantial proportion of the overall total, which may be estimated at around 34 billion ECU in 1992 (after inclusion of an approximate estimate of 8.5 billion ECU for Russian and Chinese expenditure).

A. Civil sector

20. In the civil sector, the main categories of customers are the national space agencies and international satellite organizations (ISOs) e.g. ESA (European Space Agency) and INTELSAT (International Telecommunications Satellite Organization), as well as private operators.
21. Some national space agencies buy only from national suppliers, at least at the level of prime contractors. By way of example, in the United States where the level of space expenditure is very much higher than in Europe, NASA buys only from U.S. suppliers. Within the European Union, the Public Procurement Directive has led to more open procurement practices.
22. Other than national space agency projects, competition for civil and ISO projects is conducted on a worldwide basis, mainly on commercial criteria. Moreover, deregulation and privatization, particularly in telecommunications, is increasing the pressure for open procurement on a world-wide basis. Consequently, conditions of competition are sufficiently homogeneous that the geographical reference market may be considered to be worldwide.

B. Military sector

24. For reasons of national security or otherwise, governments often seek to restrict military expenditure to national suppliers. However, within such narrowly-drawn markets the Ministry of Defence or corresponding national purchasing body are monopsonistic customers and will enjoy considerable countervailing purchasing power. In addition, declining defence budgets and the need for greater equipment operability are also leading to more open purchasing policies, whilst the ready availability of non-national suppliers, means that a monopolistic national supplier is not immune from outside competitive pressure.
25. In conclusion, having regard to the trend towards greater openness in purchasing and, in particular, the availability and strength of outside suppliers as demonstrated below, the precise definition of the geographical reference market can be left open since, even on a narrow national basis for military applications, the proposed operation does not give rise to serious doubts.

c) Competitive assessment

26. In terms of the overall space systems market, MMS/BAeSS will have a combined turnover of approximately {...}¹ ECU which corresponds to a market share of approximately {...}¹ at the world level (based on 1992 sales). The overall market is dominated by large U.S. corporations having sales at least two to three times larger. These are: Lockheed, McDonnell Douglas, TRW, Martin Marietta, Rockwell International and Hughes Aircraft. Although this comparison is based on substantial captive sales in the U.S. market it remains, nevertheless, a valid indicator of the competitive strength of and pressure from these undertakings.
27. Within the EEA there are a number of competitors of comparable size to MMS/BAeSS. They are Deutsche Aerospace (DASA) and Aérospatiale. Given the fragmented supply side of the European space industry and the consequent need to compete for space projects on a combined basis, many undertakings cooperate on a systematic basis. Examples are the Space Systems/Alliance grouping formed by Aérospatiale, Alcatel, DASA, Alenia and the U.S. company Loral; the cooperation between Aérospatiale and Alcatel Espace; whilst BAeSS and MMS themselves have already cooperated for some years on a number of satellite programs.
28. Adopting a narrower approach to relevant product market definition, estimated maximum market shares calculated for the same year on a worldwide basis, for the combined entity are as follows:

-Communications satellites	{...} ²
-Remote-sensing satellites	{...} ²
-Scientific satellites	{...} ²
-Launchers and manned	{...} ²

¹ Deleted; business secret

² Deleted; business secret - between 1 and 10%

flight vehicles
-Ground stations

{...}²

Although it must be recognised that market shares can fluctuate considerably depending upon the incidence of demand and sales, the size of these fluctuations in market share are not such that they would lead to a change of appraisal.

29. At prime contractor level, where the combined entity has a market share of approximately {...}³, MMS/BAeSS will continue to face strong competition from Space Systems/Alliance as well as from the six major U.S. producers. At the level of the supply of sub-systems and equipment, even within Europe, there will remain effective competition from the subsidiaries of large conglomerates such as: DASA/AEG, Alcatel Espace, Aérospatiale, Alenia, Saab/Ericsson Space, ANT Nachrichtentechnik, Thomson-CSF, Gilardi and Sextant Avionique/CIR.
30. For the reasons already set out above, this assessment would not change if a narrow national approach is taken to the definition of the geographical reference market for military applications.
31. As regards the acquisition of NRSCl, this does not lead to any overlap in activity, since NRSCl has no manufacturing operations and is only engaged in a service activity related to satellite communication.
32. The proposed concentration will therefore not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

V. ANCILLARY RESTRICTIONS

33. The parties have submitted that the provisions contained in Articles 7 and 9 of the Sale and Purchase Agreement for BAeSS, Articles 2 and 3 of the Licence Back Agreement and Article 2 of the Intellectual Property Licence Agreement should be considered as ancillary to the concentration.
34. The appropriate restrictions in Article 7 can be summarised as follows:
 - that the British Aerospace Group does not make use of the word 'Space' except as part of 'British Aerospace' in the name of its subsidiaries during a {...}⁴ period (Article 7(1)c);
 - that the purchaser does not make use or carry on business using the words 'British Aerospace' or 'BAe' or words substantially similar, nor make use of corresponding logos except as specified (Article 7(3));
 - that the purchaser ceases to use the words 'British Aerospace' or 'BAe' or any corresponding logo on business stationery and invoices and removes such

³ Deleted; business secret - between 1 and 10%

⁴ Deleted; business secret - not exceeding 5 years

words and logos from vehicles, buildings and other property within specified periods (Article 7(4)).

35. The restrictions in Article 9 all bear on British Aerospace (Bristol House) Ltd as vendor. Essentially they require that the vendor:
- does not engage in the activity of the business purchased (BAeSS) during a {...}⁵ period (Article 9.1);
 - does not seek to procure orders from previous customers with competing products during a {...}⁵ period (Article 9.2);
 - does not except in the ordinary course of general advertisements solicit the employment of any person in BAeSS during a {...}⁵ period (Article 9.3);
 - does not disclose confidential information relating to BAeSS (Article 9.4) except in certain specific circumstances (Article 9.4 (a) to (d)).

Paragraphs 9.5 to 9.11 go on to specify circumstances in which some or all of the restrictions contained in paragraphs 9.1 to 9.4 have their scope moderated (eg in relation to certain retained activities, on-going research and development or military business) or potentially moderated.

36. The field of use restrictions on the licences granted to BAe pursuant to Articles 2 and 3 of the Licence Back Agreement and on the licences granted to BAeSS pursuant to Article 2 of the Intellectual Property Agreement are intended to transfer the full value of the BAeSS business without negatively affecting the independent operation of the current business activities retained by BAe.
37. The Commission considers that the nature and duration of these restrictions are not disproportionate and are directly related and necessary to the successful implementation of the concentration. Therefore all of the above restrictions are covered by this decision to the extent described in the Agreements.

VI. CONCLUSION

37. For the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)b of Council Regulation No. 4064/89.

For the Commission

⁵ Deleted; business secret - not exceeding 5 years