

*Case No IV/M.528 -
British Aerospace /
VSEL*

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/11/1994

*Also available in the CELEX database
Document No 394M0528*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.11.1994

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the notifying parties

**Subject: Case N° IV/M.528 - British Aerospace/VSEL
Notification of 26.10.1994 pursuant to Article 4 of Council Regulation N°
4064/89**

1. On 26.10.1994, British Aerospace public limited company (BAe) notified to the Commission a public offer for the entire issued ordinary share capital of VSEL plc (VSEL). The notification relates only to the non-military activities of VSEL; the United Kingdom, relying upon Article 223(1)(b) of the EC Treaty, has instructed British Aerospace not to notify the acquisition of the military activities of VSEL.
2. After examination of the notification, the Commission has concluded that the operation as notified falls within the scope of application of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. BAe is principally engaged in the design, development and manufacture of defence equipment and civil aircraft. It is also involved in property development and engineering services to the oil and gas industries.
4. VSEL is principally engaged in the design, development and production of submarines, surface warships and armaments. It also has very limited activities which relate to the oil and gas industry and general metal fabrication.

II. THE OPERATION

5. BAe has launched a public offer for the entire issued ordinary share capital of VSEL.

III. CONCENTRATION

6. If the public offer succeeds, BAe will acquire sole control of VSEL. The operation is therefore a concentration within the meaning of Article 3(1)(b) of the Regulation.

IV. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of BAe and VSEL is more than ECU 5000 million (BAe: ECU 7291 million; VSEL: ECU 606 million). Each of BAe and VSEL has an aggregate Community-wide turnover of more than ECU 250 million (BAe: ECU 2999 million; VSEL: 596 million). BAe does not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.
8. The concentration therefore has a Community dimension.

V. APPLICATION OF ARTICLE 223(1)(b) EC

9. As already stated in paragraph 1 of this decision, the notification received relates only to the non-military activities of VSEL as the United Kingdom, relying upon Article 223(1)(b) EC, has instructed British Aerospace not to notify the acquisition of the military activities of VSEL.
10. The Commission has considered the applicability of Article 223(1)(b) EC in the present case. In this context it has noted, on the basis of the information provided by the United Kingdom, that:
 - the part of the concentration which has not been notified only relates to the production of or trade in arms, munitions and war material which are mentioned in the list referred to in Article 223(2) EC;
 - the measures taken by the United Kingdom are necessary for the protection of the essential interests of its security;
 - there are no spill-over effects from military activities on non-military activities of BAe;
 - the merger will have no significant impact on suppliers and sub-contractors of the undertakings concerned and on Ministries of Defence of other Member States as neither BAe nor VSEL has made any significant sales of relevant products in other Member States. Furthermore, there are no intermediate consumers in the sector involved.

11. Therefore, the Commission is satisfied with the measure taken by the United Kingdom and sees no need to invoke Article 225(1). The present decision is restricted to the non-military activities of VSEL.

VI. COMPATIBILITY WITH THE COMMON MARKET

12. VSEL supplies a very limited amount of non-military products which account for 2.5% of its turnover (i.e. about ECU 15 million). They comprise equipment for the oil and gas industry and general metal fabrication.
13. BAe's non-defence businesses relate essentially to commercial aircraft and property development for which there are no horizontal overlaps or vertical links with VSEL's non-defence related activities. BAe also has a very limited consultancy and engineering activity in the oil and gas sector, which accounts for []¹.
14. Therefore, even in the oil and gas sector, there is no material horizontal overlap between the parties' activities. In any case, their market shares are negligible in this area and they face major competitors. Furthermore, VSEL's activities are residual to its military activities and BAe acts as a subcontractor to main contractors.

VII. CONCLUSION

15. 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 and article 57 of the EEA Agreement.

For the Commission

¹ Deleted - business secret.