

***Case No COMP/M.5399 -  
MUBADALA / ROLLS  
ROYCE / JV***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 16/02/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.2.2009

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties**

Dear Sir/Madam,

**Subject: Case No COMP/M.5399 – Mubadala / Rolls-Royce / JV  
Notification of 13 January 2009 pursuant to Article 4 of Council  
Regulation No 139/2004<sup>1</sup>**

1. On 13 January 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("ECMR") by which the undertakings Mubadala Development Corporation PJSC ("**Mubadala**", United Arab Emirates) and Rolls-Royce plc ("**Rolls-Royce**", UK) acquire within the meaning of Article 3(1)(b) of the ECMR joint control of the undertaking JVCO ("**JVCO**", United Arab Emirates) by way of purchase of shares in a newly created company constituting a joint venture.

**I. THE PARTIES AND THE OPERATION**

2. **Mubadala** is an investment fund controlled by the Emirate of Abu Dhabi in the United Arab Emirates.
3. **Rolls-Royce** is a UK-based company active in the development, production and sale of civil aircraft engines, power systems for military aerospace, marine and energy applications, as well as associated after-sales services.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

4. Mubadala and Rolls-Royce will together set up a newly-formed joint venture, **JVCO**. JVCO will supply maintenance, overhaul and repair services for large commercial aircraft engines, primarily in [...] the Middle East.
5. The terms for the establishment of JVCO are defined in a Joint Venture Agreement ("the JV agreement") between Mubadala and Rolls-Royce dated 15 July 2008. As set out in the JV agreement, the shares in JVCO will be as follows: 51% for Mubadala and 49% for Rolls-Royce.
6. Mubadala and Rolls-Royce (together, the notifying parties) will have joint control over JVCO. Indeed, each notifying party will appoint 2 directors. Decisions requiring the approval of the Board of Directors (affirmative vote of 75% of the directors present with at least one director from each notifying party) will include: the adoption of JVCO's budget and business plan, the appointment of senior management and the appointment of the Chief Executive Officer. Hence, each notifying party will have a veto right over these decisions. In particular, Rolls-Royce's veto rights go beyond the veto rights normally accorded to minority shareholders in order to protect their financial interests as investors in the joint venture.
7. Moreover, JVCO fulfils the full-functionality criteria laid out in the Commission Consolidated Jurisdictional Notice<sup>2</sup>. First, JVCO will have *sufficient resources to operate independently on a market* as it will be managed by a dedicated team to perform its activities, will have access to requisite staff (through secondments from the notifying parties or direct employment), will have its own business premises and will acquire its own equipment. Second, JVCO's activities will *go beyond one specific function of the parents* as it will have the ability to make sales of certain services directly to third parties and without relying on the parents' functional entities. Third, according to JVCO's business plan, it is expected that more than [...] % of JVCO's turnover will be made with third parties after the first year of operation. Last, JVCO will *operate on a lasting basis*, the JV agreement being concluded for an indefinite duration subject to limited rights of termination and with a clause precluding the parents from selling their shares in JVCO before three years.
8. In the light of the foregoing, JVCO will be a full-function joint venture and therefore the operation constitutes a concentration in accordance with Articles 3(4) and 3(1) of the ECMR.

## II. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> (Mubadala: [...]; Rolls-Royce: EUR 10 864 million). Each of them have a Community-wide turnover in excess of EUR 250 million (Mubadala: [...]; Rolls-Royce: EUR [...]), 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.

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<sup>2</sup> Consolidated jurisdictional notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008, p. 1.

<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the ECMR.

### III. COMPETITIVE ASSESSMENT

10. JVCO will be active in the supply of maintenance, repair and overhaul services for certain aircraft engines. Both Mubadala and Rolls-Royce provide such services.
11. There are no vertically affected markets in this case.

#### A. PRODUCT MARKET DEFINITION

##### *Market for MRO services destined to aircrafts*

12. The Commission previously<sup>4</sup> found that maintenance, repair and overhaul ("MRO") services destined to aircrafts comprise four types of services: (i) heavy maintenance, including major structural inspection of airframes (ii) line maintenance, including routine maintenance checks (iii) engine maintenance and (iv) component maintenance. The Commission noted that these segments can be further differentiated based on the type of aircraft and/or equipment. In this case, JVCO will only be active in the supply of MRO services for aircraft engines.

##### *Provision of LRU services as a distinct market*

13. The parties mention that JVCO will also provide, possibly together with MRO services, a service of line rotatable unit pooling ("LRU"), which comprise the acquisition, leaseback as well as associated storage and management of spare parts for use in MRO services. LRU services in essence allow airlines to shift these parts from their balance sheet to the one of the LRU services provider.
14. The notifying parties submit that LRU services form part of the broader market for the supply of MRO services as these two activities would be intrinsically linked.
15. The market investigation in the present case did not fully confirm this view. Indeed, while some respondents shared the notifying party's view that MRO suppliers are in general best placed to offer LRU services, others<sup>5</sup> noted that a number of companies provide LRU services without being active on the MRO market and that this activity, mainly of a financial nature, calls for know-how and expertise not directly related to the technical skills of a MRO services supplier.
16. However, this issue has no material impact on the competitive assessment of the concentration as neither Mubadala nor Rolls-Royce provide LRU services. The rest of this decision therefore focuses on the sales of MRO services only.

##### *Distinction by aircraft type*

17. In past cases<sup>6</sup>, the Commission identified a market for the supply of MRO services for large commercial aircraft ("LCA") engines.

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<sup>4</sup> For example: Case COMP/M.4241 BOEING / AVIALL.

<sup>5</sup> Questionnaire to competitors, question 17; questionnaire to customers, question 17.

<sup>6</sup> Case IV/M.1449 SABENA/SNECMA paras 9 to 14, case IV/M.1506 Singapore Airlines/Rolls-Royce paras 9 to 11, case IV/M.2220 General Electric/Honeywell para 35.

18. Indeed, it is first necessary to draw a distinction between MRO services for commercial aircraft engines and MRO services for military aircraft engines in view of the very specific requirements for the latter activity. Second, due to significant differences in associated maintenance operations, the market for MRO services for commercial aircraft engines must be further subdivided based on the engine type: small aero engines (aero engines used in commercial passenger carrying aircraft of less than 100 seats) or large aero engines (aero engines used in commercial passenger carrying aircraft of 100 seats or more, also called LCA engines).
19. JVCO's activities will be limited to MRO services for LCA engines.

*Distinction by engine type*

20. Last, the Commission envisaged in past decisions a further subdivision based on the engine family.<sup>7</sup> In this case, JVCO will be offering MRO services principally for Rolls-Royce's Trent engines. A vast majority of the respondents to the market investigation took the view<sup>8</sup> that the supply of MRO services for Trent engines constitutes a separate, distinct market from the supply of MRO services for other engines. Indeed, Trent engines being still relatively new, the associated MRO market is not yet fully mature and most MRO operations for Trent engines are performed by Rolls-Royce or joint ventures in which Rolls-Royce-participates. This is in contrast with older generations of engines for which many independent repairers can provide the full range of MRO services. Therefore, and as pointed out by several respondents, the conditions of competition for the supply of MRO services for Trent engines appear to significantly differ from those prevailing for most other engines.
21. Nevertheless, in this case, this question can be left open because the concentration is not likely to raise any competition concerns under any alternative market definition.

**B. GEOGRAPHIC MARKET DEFINITION**

22. The parties submit that the market for MRO services would be worldwide in scope as aircraft can change location easily for MRO operations and as airlines commonly source MRO services from distant suppliers. Moreover, JVCO will only be active<sup>9</sup> in [...] the Middle East and will not have any activities in Europe. Accordingly, the parties are of the view that the transaction would not have any effects on the market for LCA engine MRO in Europe.
23. In past decisions<sup>10</sup>, the Commission found that this market is at least EEA-wide but left the exact definition open. The market investigation clearly confirmed an at least EEA-wide dimension<sup>11</sup>. The question whether the geographic market is worldwide in scope

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<sup>7</sup> Case IV/M.1449 SABENA/SNECMA para 13, case IV/M.1506 Singapore Airlines/Rolls-Royce para 10.

<sup>8</sup> Questionnaire to competitors, question 11; questionnaire to customers, question 12.

<sup>9</sup> Unless otherwise agreed by JVCO's board of directors.

<sup>10</sup> Case IV/M.1449 SABENA/SNECMA paras 15 to 17, case IV/M.1506 Singapore Airlines/Rolls-Royce paras 12 to 14, Case COMP/M.4241 BOEING / AVIALL paras 14 and 15.

<sup>11</sup> Questionnaire to competitors, question 18; questionnaire to customers, question 18.

can be left open because the concentration is not likely to raise any competition concerns under any alternative market definition.

### C. HORIZONTAL OVERLAPS

24. Mubadala controls two undertakings active in the supply of MRO services for LCA engines. Mubadala's wholly-owned subsidiary **ADAT** provides such services from its facilities in Abu Dhabi. **SR Technics**, which is jointly controlled by Mubadala<sup>12</sup>, supplies these services from its facilities in Zurich and Cork.
25. Rolls-Royce offers MRO services for its own engines or those which it produces through joint ventures worldwide either directly or through joint ventures with local partners.
26. JVCO's area of operation will be limited to [...] the Middle East. Apart from the referral of some Rolls-Royce customers (see below), Rolls-Royce and Mubadala will not transfer any business activities to JVCO. Therefore, the formation of JVCO will not lead to any reduction of competition between the notifying parties as regards their existing activities on the markets for MRO services. Besides, and as explained in more detail in the next sections, even considering all the overlapping activities between Rolls-Royce and JVCO, regardless whether they will or could be in the future transferred to JVCO, the creation of JVCO does not raise competition concerns.

#### *Worldwide market for MRO services for all types of LCA engines*

27. Considering a worldwide market for the supply of MRO services for all types of LCA engines, the market shares of the parent companies of JVCO and their affiliates would be as follows: Rolls-Royce [0-10]% (including sales made by Rolls-Royce's joint ventures with third parties), ADAT [0-5]% and SR Technics [0-5]%. This market is therefore not affected by the transaction.

#### *EEA-wide market for MRO services for all types of LCA engines*

28. On a hypothetical EEA-wide market for these services, the market shares of the parent companies of JVCO and their affiliates would be as follows: Roll-Royce [10-20]%; ADAT [0-5]%; SR Technics [10-20]%). However, the transaction will have no impact on this market as JVCO will not be active in the EEA. Besides, Rolls-Royce and SR Technics are currently not competing for the supply of MRO services as Rolls-Royce only services its own engines while SR Technics' service offering is limited to other manufacturers' engines (namely: CFMI and P&W).

#### *Worldwide market for MRO services for Trent engines*

29. Considering a narrower product market definition based on engine families, and as explained above, the activities of the parties overlap as regards Trent engines.
30. Rolls-Royce notes that the reasons for which the Commission<sup>13</sup> dismissed any hypothetical concerns arising from the positions of Singapore Airlines and Rolls-Royce

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<sup>12</sup> See Case COMP/M.4393 Istithmar/Mubadala/DAE/SR Technics.

<sup>13</sup> See case IV/M.1506 Singapore Airlines/Rolls-Royce.

if the market were to be segmented into MRO services for Trent engines are still valid. Notably, Trent engines are still relatively new on the market, and the Trent family's share of the total installed capacity is still below [0-5]%. Airlines can always decide not to purchase Trent engines if they are not satisfied with the conditions offered for the repair and overhaul of such engines. In addition, airlines often carry out worldwide their own repair and overhaul activities for large engines<sup>14</sup>. Independent companies [...] have also developed or are developing Trent engine repair and overhaul capacity. Including the sales of joint ventures with third parties<sup>15</sup>, Rolls-Royce's market share in the supply of MRO services for Trent engines amounts to [40-50]%

31. Several customers and competitors contacted in the course of the market investigation underlined that most MRO operations for Trent engines are performed either by Rolls-Royce or Rolls-Royce's joint ventures and that the connection of JVCO with the original equipment manufacturer would confer it a competitive advantage. Nevertheless, in spite of the pre-existing high market share of Rolls-Royce on this narrow market segment, the proposed transaction is unlikely to bring any changes in the competitive structure of this market.
32. First, ADAT's service capabilities for Trent engines are currently limited to specific operations and its market share is negligible ([0-5]%), while SR Technics does not offer MRO services for Trent engines. There is therefore very limited overlap between the parties' current activities as regards Trent engines. In this respect, and as confirmed by the market investigation, the creation of the proposed joint venture will neither remove nor alter the behaviour of an actual or potential competitor of Rolls-Royce on the MRO market for Trent engines. This is all the more so that JVCO will not take over existing business from ADAT or SR Technics.
33. Second, based on JVCO's business plan, JVCO's market share is expected to remain below [...] in the first five years of operation (considering only Trent engines).
34. Third, JVCO's MRO business will mostly derive from Rolls-Royce's global customers. Indeed, according to JVCO's business plan, [...] %<sup>16</sup> of JVCO's MRO-related turnover will come from customers referred by Rolls-Royce either under a TotalCare<sup>17</sup> agreement or on an ad-hoc basis. It can therefore be concluded that the bulk of JVCO's sales of MRO services will heavily depend on Rolls-Royce, and, absent the joint venture, would have been performed by Rolls-Royce or other Rolls-Royce's subsidiaries.

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<sup>14</sup> Following the market investigation, the parties confirmed that under relevant airworthiness regulations, all OEMs, including Rolls-Royce, are required to supply technical data to aircraft operators. The data supplied by Rolls-Royce to the aircraft operator is the so-called "Technical Manual" (together with periodic updates) which contains detailed information on the engine and all relevant maintenance procedures. [...]

<sup>15</sup> Attributing sales to the parents based on their shareholdings in the joint venture.

<sup>16</sup> It should be noted that more than half of JVCO revenues will derive from LRU inventory management, for which JVCO will be dependent neither on Rolls-Royce nor on Mubadala. Therefore, although more than [...] % of JVCO's MRO-related turnover will come from Rolls-Royce, more than [...] % of JVCO's overall turnover will be made with third parties, mostly from the sale of LRU inventory management, and, to a more limited extent, from the sale of MRO services to third parties.

<sup>17</sup> By entering into a TotalCare service agreement with Rolls-Royce, Rolls-Royce engine owners can have their engines serviced throughout the world.

35. It can therefore be concluded that the creation of JVCO will not affect competition on the market for MRO services for Trent engines.

#### *Conclusion*

36. For these reasons, the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement in the markets for MRO services.

#### **D. COOPERATIVE EFFECTS OF THE JOINT VENTURE**

37. Both Mubadala (through its subsidiaries ADAT and SR Technics) and Rolls-Royce are active in the supply of MRO services for LCA engines.

38. However, the notifying parties perform these activities mostly in the EEA while JVCO will not be active in this geographic area. Besides, considering a worldwide market for the supply of MRO services for LCA engines, as explained above, the position of Mubadala is limited and most of its sales ([90-100]%) come from SR Technics, over which Mubadala only exerts joint control.

39. For these reasons, the coordination between Mubadala and Rolls-Royce resulting from the operation of the joint venture is unlikely to allow them to affect competition on the market for MRO services for LCA engines.

#### **IV. CONCLUSION**

40. 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 (EC) No 139/2004.

For the Commission

*(signed)*

Neelie KROES  
Member of the Commission