

*Case No IV/M.551 -
ATR/BAe*

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

Article 6(1)(a) INAPPLICABILITY
Date: 25/07/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.07.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(a) DECISION

To the notifying parties

Subject : Case No IV/M.551 - ATR/BAe
Notification of 21.06.1995 pursuant to Article 4 of Council Regulation
No 4064/89

1. On 21 June 1995, the Commission received a notification concerning the establishment of a new joint venture company combining the regional aircraft activities of Aérospatiale, British Aerospace and Finmeccanica. After examination of the notification the Commission has concluded that the notified operation falls outwith the scope of application of Council Regulation No. 4064/89.

I. THE PARTIES

2. British Aerospace plc (BAe) is a UK public limited company whose principal activities are in aerospace - both defence and non-defence related. It has regional aircraft activities in turboprops (Jetstream) and regional jets (Avro). BAe is not controlled by any other company. At 1 March 1995, the largest shareholder held approximately 10% of the shares.
3. Aérospatiale SNI is a French company active in a range of high technology products including aircraft, helicopters, satellite systems and missile systems. 99.9% of Aérospatiale's shares are held by the French state either directly or through other state controlled entities.

4. Finmeccanica is an Italian engineering company active in aerospace, defence systems, energy, transport and automation. Alenia is a division of Finmeccanica active in the aerospace and defence systems industries. Finmeccanica is controlled by IRI, a joint stock company wholly owned by the Italian State which has interests in a variety of sectors including steel, telecommunications, banking and the manufacture of telecommunications equipment.
5. Alenia and Aérospatiale have placed their regional aircraft activities into a Groupement d'Intérêt Economique (GIE) - Avions de Transport Regional (ATR) owned 50% each.

II. THE OPERATION

6. The transaction involves the creation of a new joint venture which will contain their regional aircraft businesses: for BAe - Jetstream and Avro; and for Aérospatiale and Alenia - ATR. The joint venture agreement envisages the merger of all new aircraft activities (which will initially be feasibility studies for a new large turboprop aircraft and new regional jet aircraft [...] ⁽¹⁾ and to integrate immediately the parties' marketing, sales and customer support activities for existing aircraft) and to consider further integration of existing aircraft activities.

Joint control

7. The joint venture company will be owned equally by each of Aérospatiale, BAe and Finmeccanica. According to the joint venture agreement each party shall have an equal number of shares bearing equal rights.
8. The joint venture will have a two tier governance structure. The Board of Directors forms the first tier and will consist of an equal number of representatives of each party. All decisions of the board will be unanimous, and will require the favourable vote of all directors present including one from each parent company. Directors from one company may not vote differently on any issue. Each parent company will appoint the President of the Board on a rotation basis for a one year term.
9. The Board of Directors has reserved to itself certain matters which include : the acquisition, transfer or disposal of fixed assets or businesses with a value of more than [...] ⁽¹⁾, the adoption of the capital expenditure budget and the annual operating budget and any amendment to the five year business plan and the commercial policy of the company (including the setting of prices and terms and conditions for the sale of aircraft).
10. The second tier of the governance of the joint venture is the Chief Executive Officer who is appointed by unanimous resolution of the Board of Directors. The CEO has the responsibility for the day-to-day management of the joint venture outside of the reserved matters including those set out above.
11. The parties intend to operate the joint venture on a consensus basis. The joint venture company has been set up as a Société par Actions Simplifiée which is a relatively new form of corporate vehicle under French law. [...] ⁽¹⁾

⁽¹⁾ Deleted; business secret.

12. Accordingly the joint venture is jointly controlled by each of Aérospatiale, BAe and Finmeccanica.

Not a full function autonomous economic entity

13. The Joint Venture Agreement sets out three distinct stages in the development of the joint venture for the parties' activities associated with their existing aircraft. In the first stage [...] ⁽¹⁾, the joint venture will act as an agent for the sales of existing aircraft and will be paid for these services by the parent companies on the basis of its operating costs. Stage 2 envisages a limited financial integration of the parents' activities in the joint venture with target revenues, costs and working capital requirements being placed on it. The third stage of integration would be industrial integration and integration on core products. By contrast, in relation to new aircraft, the joint venture will immediately and on its own account undertake feasibility studies into the possibility of new aircraft and full financial integration on new aircraft activity (including profit and loss, working capital, sales financing and recourse).
14. The timing of the moves to stages 2 and 3 for existing aircraft is not specified in the joint venture agreement [...] ⁽²⁾. There is no timescale envisaged for full industrial integration.
15. According to the parties, the stages of integration are different for existing aircraft for four main reasons:
- the **cost structure** of the joint venture differs from the shareholding structure;
 - the parties have considerable **existing liabilities** in the regional aircraft sector, for example through leasing arrangements or the acceptance of liabilities for existing aircraft when selling new ones;
 - the need for transitional arrangements for **sales financing and take back arrangements** which will allocate the costs for existing aircraft returned to the manufacturer on an appropriate basis, establish common policies on financing arrangements and make arrangements for the remarketing of aircraft; and
 - **product liability** for existing aircraft will remain with the parent companies.
16. In stage 1, the activities in which the joint venture will be engaged in respect of existing aircraft are not sufficient to give it a full function nature, given the activities which the parent companies will retain. This is notwithstanding the parties' assertions that they will be reducing their combined workforce in sales and product support from [...] ⁽²⁾ and that they would lose all access to market information and that this in itself would be an irreversible shift.
17. However, these employees will not be employed by the joint venture but will, at least initially, be seconded by the parents to it. In addition to that, in both stages 1 and 2 the joint venture will act as the sales agent of the parties in respect of existing aircraft. In stage 1 the parents will assume all the market risk, in stage 2 some responsibility will be transferred to the joint venture in respect of working capital and deviations from the

⁽²⁾ Deleted: business secret.

budget. Neither the precise timing nor the extent of the limited financial integration envisaged for stage 2 have been agreed between the parties in the joint venture agreement.

18. Another significant point is the doubt about the future of the joint venture should the feasibility studies for the new large turboprop and new regional jet demonstrate that there is no demand for such aircraft. According to the parties, there is a strong incentive to develop new aircraft. This is because the value of the parties' existing product range depends in part on the market's perception of the company as an ongoing entity with new products coming onto the market. If the joint venture was to cease development of new aircraft, the parties argue, the economic consequences would be extremely serious.
19. The feasibility studies into new aircraft are a determining factor in the future of the joint venture. If no new aircraft is developed, then the joint venture is unlikely to progress beyond the stage of being a joint sales agency and after sales service provider for the existing products of the parents with the possible consequences outlined above. The regional aircraft market is characterised by many manufacturers - both existing and potential - considering the introduction of new products. Despite the parties' arguments that new aircraft are necessary for the future success of the joint venture and in view, in particular, of answers from competitors and clients of the parties to which questionnaires were sent by the Commission in that respect, it has not been demonstrated that the feasibility studies will indicate that there is sufficient market demand for either a new large turboprop or a new regional jet. For new aircraft, the joint venture will not be irreversible until the feasibility studies have indicated that there is a market for one or both of the aircraft.

III. CONCLUSION

20. In the light of the above information, the joint venture will not be full function as the parties commitment to the joint venture is not irreversible before the successful completion and implementation of the feasibility studies for new aircraft and the progression of the parties' existing aircraft activities at least to stage 2 (limited financial integration).
21. For the above reasons the Commission has concluded that the notified operation does not constitute a concentration within the meaning of Article 3(2) of the Merger Regulation and consequently does not fall within the scope of this Regulation. This decision is adopted in application of Article 6(1)(a) of Council Regulation No. 4064/89.
22. The Commission will treat the notification pursuant to Article 5 of Commission Regulation No. 2367/90 as an application within the meaning of Article 2 or a notification within the meaning of Article 4 of Council Regulation 17/62 as requested by the parties in their notification.

For the Commission,