

*Case No IV/M.775 -
Hong Kong Aircraft
Engineering Services
Limited*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/07/1996

*Also available in the CELEX database
Document No 396M0775*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.07.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the Notifying Parties

Dear Sirs,

Subject: Case No. IV/M.775 - Hong Kong Aircraft Engineering Services Limited ("HAESL")

Notification of 28 May 1996 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 28 May 1996 Rolls-Royce plc ("Rolls-Royce") and Hong Kong Aircraft Engineering Company Limited ("HAECO"), a subsidiary of John Swire & Sons Limited ("Swire"), notified their creation of a joint venture company Hong Kong Aircraft Engineering Services Limited ("HAESL").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) N° 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 AND THE OPERATION

3. Rolls-Royce is a United Kingdom public limited company. It is an engineering group manufacturing aero, marine and industrial gas turbines, and power generation equipment, as well as having nuclear engineering and materials handling activities. HAECO forms part of Swire, a United Kingdom private limited company with business interests throughout the world, but principally in the Far East, in aviation, property, shipping, insurance and other industrial and trading businesses. HAECO currently carries out the aero-engine maintenance business of Swire and this, together with the aero-engine overhaul interests of Rolls-Royce in the Far East and Australasia, will be transferred to HAESL.

4. The operation consists of the establishment of a joint venture company, HAESL, in Hong Kong. This company is not permitted to compete for business from customers whose principal place of business is outside the Far East or Australasia without the agreement of both parent companies. [...] ⁽¹⁾. The shares of HAESL will be owned in equal proportions by the Rolls-Royce group and HAECO.

II. JOINT VENTURE

5. According to the terms of a shareholders' agreement entered into by the Rolls-Royce group and HAECO, HAESL will have a board of seven directors, three of whom will be appointed by the Rolls-Royce group and three by HAECO. The seventh director will be appointed, as General Manager, by unanimous agreement of the two shareholders. The removal of the General Manager and the appointment of any subsequent candidate requires the agreement of the two shareholders.
6. Certain matters, appertaining to the conduct of the business, require that two directors from each of both the Rolls-Royce group and HAECO, vote in favour of the relevant resolution. Such "reserved board matters" include:
 - capital expenditure in excess of that approved by the shareholders at the outset of the joint venture project or that approved in the annual budget;
 - the adoption of any budget or forecast; and,
 - the appointment or removal of any senior executives (excluding the General Manager).
7. On the basis of these elements it can be concluded that HAESL will be jointly controlled by HAECO and the Rolls-Royce group.

III. CONCENTRATION

8. The joint venture agreement foresees that neither of the shareholders may transfer their shares (outside their respective groups and assuming that neither parent company is subject to a takeover) for a period of ten years. Moreover, HAESL has been created for an indefinite period of time. Consequently, it is considered that the joint venture is intended to operate on a lasting basis. Moreover HAESL will acquire all the relevant assets and personnel in order for it to perform all the functions of an autonomous economic entity.
10. As regards the possible coordination of competitive behaviour between the undertakings concerned it should be noted that HAECO will withdraw entirely from the aero-engine overhaul business. [...] ⁽²⁾.
11. The operation therefore constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

⁽¹⁾ Deleted; business secret.

⁽²⁾ Deleted; business secret.

IV. COMMUNITY DIMENSION

11. The combined aggregate turnover of the undertakings concerned, in their latest financial year exceeded ECU 5,000 million (Rolls-Royce ECU 4,339 million and Swire ECU 5,639 million). The individual Community-wide turnover of both groups exceeds ECU 250 million (Rolls-Royce ECU 1,648 million and Swire ECU 362 million). Neither of the undertakings concerned achieved 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 but does not constitute a cooperation case under the EEA Agreement.

V. COMPATIBILITY WITH THE COMMON MARKET

12. HAESL is not active in the same geographic market as Rolls-Royce nor is it active in the EEA. Therefore it can be concluded that the concentration is compatible with the common market and the functioning of the EEA Agreement.

VI. CONCLUSION

13. For the above reasons, the Commission has decided not to oppose to the notified transaction and to declare it compatible with the common market and the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) N° 4064/89.

For the Commission