

***Case No IV/M.1198 -
BAE / SAAB***

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/07/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.07.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1198 - BRITISH AEROSPACE PLC/SAAB AB

Notification of 2.06.98 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 2 June 1998, the Commission received a notification from a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings British Aerospace plc("BAe") and Investor AB("Investor") acquire within the meaning of Article 3(1)(b) joint control over Saab AB("Saab") by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA Agreement.

THE PARTIES

3. Both BAe and Saab carry on business activities in the defence and aerospace sectors, in particular in the military aerospace, guided weapons and guided weapons systems (hereinafter GW/GW systems) through MBD, LFK and Saab Dynamics AB, and in GW sub-systems and components sectors.
4. Investor is a financial company, with holdings in other companies operating in various sectors, including Saab, Ericsson, ABB, Scania, Astra, Stora, Electrolux and others.

THE OPERATION

5. The concentration concerns the acquisition by BAe of a 35 per cent of Saab's capital from Investor. This acquisition is being supplemented by a shareholders' agreement between the two companies dated 29th April, 1998.

CONCENTRATION

6. The proposed operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Joint control

7. BAe and Investor will exert joint control over Saab. The acquisition by BAe of a 35 per cent of Saab's capital from Investor is sufficient to confer joint control because Investor and BAe will have the possibility to exercise decisive influence over Saab. According to the Shareholder's Agreement between Investor and BAe, each of Investor and BAe will, in effect, have the right to appoint three board members. Three board members will be appointed by Saab shareholders and a further three members will be labour union appointees, making a total of 12 board members. The managing director will be appointed after agreement between Investor and BAe. The chairman and vice-chairman will be drawn from the board members nominated by Investor and BAe and each party must agree to that appointment. The chairman will have a casting vote. Moreover, under the Shareholder's Agreement each of Investor and BAe is accorded veto rights going beyond those normally accorded to minority shareholders as a means of investment protection. Therefore, each of Investor or BAe has rights of veto in relation to Saab's objectives and strategic goals, its business plan, material changes to its management or organisation, decisions on commercially significant agreements to which Saab is a party and decisions relating to merger of Saab with another company. On this basis, the notified operation will lead to both Investor and BAe having the power to determine Saab's strategic commercial behaviour so as to have jointly the possibility of exercising decisive influence over Saab.

Autonomous economic entity

8. Saab has been active in the defence industry since 1937. It has all the assets, including personnel, manufacturing facilities and commercial and service network to perform the range of functions of an autonomous entity on a lasting basis.

COMMUNITY DIMENSION

9. The parties to the notified concentration have a combined aggregate world-wide turnover in excess of ECU 5 000 million (BAe: ECU 10,496.7 million, Investor: ECU 2,347 million). The aggregate Community-wide turnover of each of BAe and Investor exceeds ECU 250 million (BAe: ECU 3,342.9 million, Investor: ECU 1,868 million). The parties do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Thus the concentration has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

COMPATIBILITY WITH THE COMMON MARKET

A. The relevant product markets

10. The parties are both active in the defence industry and operate in general in the following sectors: military aerospace, GW/GW systems, GW sub-systems and components. They are also active in and certain other areas such as avionics, training systems, aerostructures, traffic management systems, marine electronics and regional aircraft.
11. There are two areas of significant overlap, namely light combat fast jets such as Saab's Gripen (which is being exported world-wide under the terms of a joint venture agreement with BAe) and BAe's Hawk and Harrier, on the one hand, and GW/GW systems, in particular the segment for anti-ship heavy missiles, on the other hand. In addition to that, both BAe and Saab have significant activities in the regional aircraft sector, but, as the parties indicate, this overlap is not considered to give rise to competition issues, since both parties have publicly announced their withdrawal from [.....]¹.
12. The defence industry markets, in general, operate at two levels, that is, the prime-contracting and the sub-contracting levels. A 'prime contractor' takes responsibility for delivery of an entire system to specified performance and reliability standards. This requires the "prime contractor" to ensure that the whole procurement process is properly planned and that the design and systems integration work is carried out to meet the prime contract performance specifications. A large proportion of the work to be carried out under a prime contract is usually performed by "sub-contractors". These "sub-contractors" may include another business unit within the prime contractor's group, depending upon the degree of vertical integration within that group.

Light combat fast jets

13. The light combat fast jets segment is composed of sub-sonic and super-sonic aircraft. It is generally a prime-contracting market and forms part of the fast military jets sector, also including medium/heavy combat fast jets, advanced jets trainers and long range penetrators. In turn, the fast military jets sector is also part of the total military aircraft sector, which includes training and transport aircraft, and helicopters. However, the question whether these markets need to be further broken down into separate sub-markets can be left open, since no competition issues arise even on the narrowest market definition.

Guided weapons, guided weapons systems and sub-systems

14. GW/GW systems and GW sub-systems and components constitute two different product markets, since the supplier of GW/GW systems operates at the prime-contracting level, whereas the supplier of GW sub-systems and components operates at the sub-contracting level, where the conditions of competition are not the same.
15. GW are missiles reliant upon a guidance mechanism to direct them to their target. A GW system consists of a missile with its launchers and fire control system. It may

¹ Business secret – concerns the manufacturing of a specific category of aircraft.

also include its own radar for surveillance and tracking. GW/GW systems may be incorporated into a wider weapon system, such as an aircraft, helicopter or a ship.

16. GW/GW systems are generally classified according to functionality and product characteristics into the following categories: air-to-air, surface-to-air/land, surface-to-air/naval, air-to-surface, anti-armour and anti-ships. A segment of the latter category is that for anti-ship heavy missiles, where the parties' activities overlap.
17. A GW/GW system is made up of a number of sub-systems and components, such as missile electronics (seekers, proximity fuses, data processing), inertial guidance, rocket motor/propulsion and warheads. Sub-systems and components of the GW system generally include radar and optical sub-systems.
18. The parties state that there is a single market for GW/GW systems, and that this must be defined as a whole, without thus further sub-dividing it into the above mentioned different categories. In previous cases it has been considered that, as to the exact product market definition, various considerations of supply-side substitutability and procurement policies of customers, namely the Ministries of Defence (MoDs), should be taken into account. However, in the present case it is not necessary to operate a precise definition of the relevant product market, since no competition issues arise even on the narrowest market definition.

Regional aircraft

19. According to the parties, within the regional aircraft sector, turboprops and jets aircraft form separate markets, due to differences in cost and operation. Besides, three clusters can be identified within each of these markets, according to production and purchasing patterns, namely aircraft for 20 to 39 seats, for 40 to 59 seats and for 60 seats and over.
20. With regard to used regional aircraft, an assessment as to whether it is an affected market is not necessary to be carried out, since no competition issues arise thereof.

Other product markets

21. In respect to all the other above mentioned markets, namely avionics, training systems, aerostructures, traffic management systems and marine electronics, the question whether any of these sectors comprise a relevant market, can be left open, since no competition issues arise.

B. The relevant geographic market

Light combat fast jets and GW/GW systems and sub-systems

22. As regards defence activities, the parties have argued that the above described markets are world-wide. However, this is in contrast with the traditional approach followed by the Commission in previous cases, that the markets are national, when a national supplier exists, due to national preferences of the monopsonistic buyers, namely the MoDs and other administrative barriers. On the other hand, where there is no domestic supplier, then, subject to other barriers such as export restrictions or barriers connected with national security, competition takes place world-wide amongst suppliers of different countries.

23. In this context, for the present case, the impact of the operation has to be measured in particular in Sweden, UK and Germany.

Regional aircraft

24. As regards the regional aircraft market, the geographical market is world-wide, since the costs of transportation are negligible and there are no other tangible barriers to the import of these aircraft.

C. Assessment

25. When assessing the market power of firms in the defence industry, account must be taken inter alia of the bargaining power of its main clients: the MoDs of the states concerned. MoDs generally formulate the operational requirements and technical specifications of armament and therefore, their opinions must be taken into account.

Light combat fast jets

26. As regards the market for light combat fast jets, at world level the parties would achieve a combined market share of [5-10%], whereas at EU level they will reach [15-25%]. At national level there is no overlap. Three European suppliers (i.e., Dassault, AerMacchi and Daimler Benz Aerospace) and three US suppliers (i.e., Lockheed Martin, Boeing/McDonnell Douglas and Northrop Grumman) compete directly with the parties. In addition, CIS suppliers and in particular Mikoyan of Russia are considered as significant potential competitors.

GW/GW systems

27. In relation to GW/GW systems, at world level the parties would achieve a combined market share of [10-20%] with Saab adding only [<5%]. In this market there is a number of powerful actual competitors in Europe, such as Aerospatiale, Alenia, GEC-Marconi, Thomson-Shorts, Bofors, BGT and a number of US competitors such as Lockheed Martin/Loral, Raytheon/Huges and Boeing/McDonnell Douglas.
28. In this sector, market shares are not necessarily a good indicator of actual market power, since competition between suppliers of GW/GW systems takes place at specific times within the procurement phases, namely at the beginning of the development phase and the production phase. This gives competition in the GW sector an auction type character. It is therefore necessary to take also into account the potential of the companies in terms of technology and R&D.
29. At the level of GW/GW systems the parties overlap only in the anti-ship heavy missile segment, where at national level, they would not combine any market shares, since their products are being sold in different Member States, namely Germany and the UK for BAe and Sweden and Finland for Saab. Only BAe has sold anti-ship heavy missiles outside these countries, accounting, in the period 1992-1997, for an EEA market share of around [5-10%].
30. The anti-ship heavy missile segment is dominated by Boeing's Harpoon and Aerospatiale's Exocet products and the parties will also face actual competition from the Italian supplier Alenia as well as from the Norwegian supplier Kongsberg, whose Penguin anti-ship heavy missile has already been ordered.

31. The same applies in the market for GW sub-systems and components, where however, the parties overlap to a very limited extent with combined market shares of below [2-7%] at EU level. The market appears to be fractioned with a large number of alternative suppliers (including SAT, Thomson-CSF, Thomson Thorn Missile Electronics, SAT/SAGEM, Aerospatiale/SERA, Hughes and Lockheed Martin, Bofors/Dynamit Nobel, Raufoss and others).
32. In light of the above mentioned, the investigation has shown that the operation will raise no serious concerns for competition.

Regional aircraft

33. In the regional aircraft sector, the parties publicly announced their withdrawal from [.....]². In the past, the parties overlapped in the 20 to 39 seat turboprop segment. On the basis of aircraft delivered between 1984 and 1998, the parties have stated that their world-wide combined market share was of [35-45%] with BAe adding only [5-10%].
34. On the basis of the above factual conditions, the operation does not appear to have an impact on that market.
35. In relation to used regional aircraft, that is aircraft sold after a leasing arrangement has expired, the notified operation does not raise any competition concerns, due to low market shares of the parties. It is estimated that [%]³ of these aircraft are offered by the parties in the market each year.

Other markets

36. In all the other markets namely, avionics, training systems, aerostructures, traffic management systems and marine electronics, the activities of the parties are relatively minor and they overlap to a very limited extent. As a result no dominant position is being created or strengthened.

Vertical aspects

37. Neither are any vertical implications to be expected by the presence of BAe and Saab in the defence sector's markets. For example, the parties will be vertically integrated in the markets for avionics, which is upstream of military aircraft, GW sub-systems and components, which are upstream of GW/GW systems and military training systems which are upstream of GW/GW systems.
38. However, the strong buyers, namely the MoDs, have a strong influence over the choice of sub-contractors or component suppliers and additionally, in all these markets there is a large number of powerful competitors, which can guarantee alternative sources of supply.

CONCLUSION

² Business secret – concerns the manufacturing of a specific category of aircraft.

³ Business secret

39. For the above reasons, the Commission decides not to oppose the notified operation as regards the markets for light fast combat jets and GW/GW systems, sub-systems and components. Moreover, on the basis of [...] ⁴ that follows the public declaration of both SAAB and BAe, the Commission decides not to oppose the notified operation as regards the market for regional aircraft 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,

⁴ Business secret – concerns the manufacturing of a specific category of aircraft.