

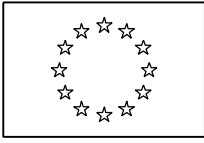
***Case No IV/M.1258 -
GEC MARCONI /
ALENIA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/08/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.08.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1258 – GEC Marconi/Alenia

Notification of 27.07.1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 27.07.1998 the Commission received a notification relating to the proposed creation by GEC-Marconi Limited ("GML") (an indirectly wholly-owned subsidiary of the General Electric Company p.l.c. ("GEC")) and Finmeccanica S.p.A. ("Finmeccanica") of a joint venture ("the JV") in the areas of ground and naval radars, missile systems, air traffic control systems, command and control systems, and simulation systems.
2. The activities that the GEC group and Finmeccanica will each contribute to the JV are used almost entirely in military applications. Certain of the activities currently manufactured by GML and Finmeccanica also have non-military applications. The United Kingdom and Italy, relying upon Article 223(1)(b) of the EC Treaty, have instructed the parties not to notify the military aspects of this operation. The notification therefore relates only to the non-military applications of the products of the JV.
3. After examination of the notification, 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.

I. THE PARTIES

4. GML is an indirectly wholly owned subsidiary of the General Electric Company p.l.c. It operates in six principal business areas: radar and defence systems; marine; armaments;

electro-optics; communications and avionics. In addition to these, GEC is active in the following fields: telecommunications and information technology, consumer goods and medical equipment.

5. Finmeccanica is the holding company of a group active in the design and manufacture of aircraft, helicopters, satellites, missile systems, radar equipment, mission critical systems, energy plants, trains, process and service automation systems. The defence activities, including radar systems, command and control systems, missile systems and naval systems of Finmeccanica are undertaken by its wholly owned subsidiary, Alenia Systems S.p.A.

II. THE OPERATION

6. GML and Finmeccanica will establish an equally-owned joint venture named Alenia Marconi Systems N.V., to which the GEC group's and Finmeccanica's activities in the fields of ground and naval radars, missile systems, air traffic control systems, command and control systems, and simulation systems will be contributed. The transfer of the relevant activities from the parents to the JV will take place in form of contribution of assets and shares of some subsidiaries of the GEC and Finmeccanica groups that are active in these fields.

III. THE CONCENTRATION

Joint control

7. GML and Finmeccanica will jointly control the JV. Parity between the two parties will be ensured by an equal shareholding (50-50) and by representation on an equal basis in the management and decision-making bodies of the JV.
8. The General Meeting of Shareholders must unanimously approve major decisions concerning the JV, including the appointment, suspension or removal of the Members of the Management Board and the Chief Executive Office and the approval of business plans and annual budgets of the JV. Each parent company shall nominate three of the six members of the Management Board, and has the right to appoint the Chairman of the Management Board every three years, on a revolving basis. The Management Board shall be responsible for overall supervision of the policies and activities carried out by the Chief Executive Officer, and for the general course of the JV's business. The Chairman has no second or casting vote, in case of equality of votes. The Chief Executive Officer shall be appointed for terms of three years by the Management Board, subject to prior unanimous approval of the Shareholders' General Meeting. Nomination shall rotate between the parent companies.
9. It follows that each GML and Finmeccanica will have the possibility to exercise decisive influence over the JV.

Full function joint venture

9. The JV will be provided with all financial and other resources, including physical assets, staff (around 9,400 employees) and intellectual property, necessary for it to perform all the functions of an autonomous economic entity. The JV will be also responsible for its own marketing, manufacturing, and subsequent support for its products. It will be established on an indefinite basis.

10. It follows from the above that the JV will perform on a lasting basis all the functions of an autonomous economic entity. Therefore, the proposed operation will constitute a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

13. The combined aggregate worldwide turnover of GEC and Finmeccanica exceeds 5,000 million ECU. The aggregate Community-wide turnover of each of GEC and Finmeccanica exceeds 250 million ECU, but they do not achieve more than two thirds of their Community-wide turnover in one and the same Member State. The proposed operation has therefore a Community dimension. It does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

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

14. As already stated in paragraph 2 of this decision, the notification received relates only to the non-military activities of the two parent companies as the governments of United Kingdom and Italy, relying upon Article 223(1)(b) the EC Treaty, have instructed GEC and Finmeccanica respectively not to notify information which relates to the military activities of the two companies.

15. The Commission has considered the applicability of Article 223(1)(b) of the EC Treaty in the present case. In this context it has noted, on the basis of the information provided by the Governments of the United Kingdom and Italy, 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 and Italy are necessary for the protection of the essential interests of their security;
- there are no spillover effects from the military applications on the non-military applications of the dual use products of GEC and Finmeccanica;
- 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. Furthermore, intermediate consumers in the sector involved would be little affected.

16. Therefore, the Commission is satisfied with the measures taken by the United Kingdom and Italy and sees no need to invoke Article 225(1). The present decision is restricted to the civil use products and non-military applications of the dual use products of GML and Finmeccanica.

VI. COMPATIBILITY WITH THE COMMON MARKET AND THE EEA

17. As stated above, the assessment of this operation is limited to the non-military activities that will be contributed to the JV. The parties' activities in relation to these products are marginal.

18. The operation will involve the following civil sectors: (i) Air Traffic Control and Air Traffic Management systems ('ATC' and 'ATM'); (ii) Civil Command, Control and

Information systems ("C2I"); and (iii) Civil Simulation and Training systems ("CST").

19. There is an overlap between GML and Finmeccanica's activities only in the area of ATC and ATM. As regards this sector, the Commission has already considered (*Thomson/Siemens IV/M.953*) that the relevant market is at least EEA wide. Both Finmeccanica and GML are not major players in this area (market shares at EEA level are [...] ¹ and about [...] ² respectively). They are subject to competition from a range of companies with similar facilities, skills and expertise, including European market leader Airsys (the joint venture formed by Thomson and Siemens) and the large US producers Lockheed Martin and Raytheon, now including Hughes. Moreover the overlap of the parents' activities is very small. As a result, the concentration does not raise serious doubts as to its compatibility with the common market.
20. Finmeccanica is not active in C2I and CST. Its activities in these fields are limited to production of systems and equipment for military use, mainly for the Italian market. In the case of Command and Control systems, military products are generally much more sophisticated and customer specific than civil ones. As regards Simulation and Training, military and civil systems differ substantially in terms of material and software applications employed, which are specific to the different scenarios to be simulated. According to the parties, it is generally prohibitively expensive and time consuming or not realistically possible to downgrade military product designs for civil use in these fields.
21. GML is only active to a significant extent in the United Kingdom (market share of [...] ³ in C2I and [...] ⁴ in CST) and has marginal shares in Germany. According to the parties, the markets for C2I tend to remain national, since each nation is highly specific about its law procedures, language and preferences. As to CST, national barriers seem to be less important.
22. In view of the above and given that no objection have been raised by third parties in respect to the operation, it is concluded that the operation will not give rise any to significant overlap between the parties' activities in the fields of C2I and CST. Therefore any concern for competition can be excluded in these fields.

VII ANCILLARY RESTRICTIONS

23. The parties have agreed on:
 - (i) a Corporate Services Agreement between GML and the JV, of unlimited duration, whereby GML will provide the JV with advice and assistance in a number of fields including research, technical operation and engineering, procurement, finance, legal and tax matters, corporate information systems, commercial and other miscellaneous matters.

¹ between 5% and 15%

² less than 5%

³ between 20% and 30%

⁴ between 10% and 20%

- (ii) a Site Management Agreement between GML and the JV, of undefined duration, under which GML will provide the JV with various services relating to the activities of this company activities at the New Parks Leicester site.
 - (iii) two agreements (an *Accordo di prestazioni di assistenza e consulenza a carattere continuativo* of unlimited duration, and an *Accordo di Assistenza e Consulenza* expiring in year 2000) between the Finmeccanica group and the JV, by which Finmeccanica will provide the JV with advice and assistance on legal, administrative and human resource matters, and on marketing respectively.
 - (iv) a Manufacturing Services Agreement between GML and the JV, of unlimited duration, under which the JV will assemble certain products and provide certain related technical services for GML.
16. To the extent these agreements contain any appreciable restriction of competition, the Commission considers that they are necessary to the JV only for a start-up period, which given the nature of the services concerned does not exceed one year.
17. The parties will also agree on two Trade Mark License Agreements between the respective parents and the JV, under which the JV is licensed on a royalty free and non-exclusive basis, to use the trademarks “Alenia” and “Marconi” in combination. As to the restrictions connected with the granting of such licenses, they are necessary to the implementation of the concentration since they serve only as a substitute for the transfer of property rights.
18. Finally, the parties will conclude a Property Agreement, of unlimited duration, to ensure that the JV is permitted to continue to occupy the business properties currently used by GML and Finmeccanica. To the extent it contains any appreciable restriction of competition, this agreement is necessary to the implementation of the concentration since it serves only as a substitute for the transfer of property rights.

VIII. CONCLUSION

19. 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.

For the Commission,