

***Case No COMP/M.1501 -  
GKN WESTLAND /  
AGUSTA / JV***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 22/11/2000

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22. 11. 2000

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sirs,

**Subject: Case No COMP/M.1501 - GKN WESTLAND / AGUSTA / JV**

Notification of 17.10.2000 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 17.10.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which the Italian company Finmeccanica S.p.A. ("Finmeccanica") and the UK company GKN plc ("GKN") are proposing to form a joint venture ("JVCo") to merge their respective helicopter and related business, i.e. the Agusta companies ("Agusta") and the Westland companies ("Westland").

### **I THE PARTIES**

2. Finmeccanica is a company incorporated under the laws of Italy. It was previously controlled by I.R.I. (Istituto per la Ricostruzione Industriale), one of the major Italian State owned companies. Following a recent privatisation through a Public Offer for sale which took place during the period 29th May to 2nd June 2000, (with payment of the offer price and transfer of shares on 8<sup>th</sup> June 2000) no undertaking owns more than 50% of the voting rights of Finmeccanica, either directly or indirectly, the main shareholders being the Treasury (Ministero del Tesoro) (32.45%) and I.R.I. (4.95%). Finmeccanica is active in the aerospace, helicopters, energy, transportation, defence and automation sectors.
3. GKN is a publicly owned company incorporated in England and Wales and having its primary listing on the London Stock Exchange. It has a broad range of individual, corporate and institutional shareholders but none of them has a stake higher than 5%. Its operations are focused on the automotive, aerospace and industrial services sectors.

## **II THE OPERATION**

4. Finmeccanica and GKN enter into an agreement to form a joint venture to merge their respective helicopter and related business. More specifically Finmeccanica contributes to JVCo, (i) the entire issued share capital of Agusta S.p.A as recently incorporated by Finmeccanica to acquire the business and assets of its former Agusta Division, including its interests in EH Industries Limited ("EHI"), the Nato Helicopters Industries (NH) and Bell Agusta and Bell Agusta Aerospace Corporation but excluding certain properties, (ii) the interest of Agusta in a joint venture with Bell Helicopters Textron Inc.
5. GKN contributes, (i) the entire issued "B" ordinary share capital of GKN Westland Helicopters Limited together with the 50% interest of GKN Westland Helicopters Limited in Aviation Training International Limited and in EHI. (Westland Group plc is retaining the entire issued "A" ordinary share capital of GKN Westland Helicopters Limited. These "A" shares have no voting rights but enjoy a limited right to dividends), (ii) the entire issued share capital of Westland Transmissions Limited, following its acquisition of the business and assets of the Transmission Division of GKN Westland Aerospace Limited.

## **III CONCENTRATION**

6. The proposed transaction involves the creation of a joint venture (JVCo) which will own the helicopter businesses of Agusta and Westland. After completion of the proposed transaction, JVCo will be held as to 50% by Finmeccanica and as to 50% by GKN and will be subject to joint control by Finmeccanica and GKN. The JVCo will perform on a lasting basis all the functions of an autonomous economic entity within the meaning of Article 3(2) of the Merger Regulation.

## **IV COMMUNITY DIMENSION**

7. The undertakings concerned have had a combined aggregate world-wide turnover of more than EUR 5 billion<sup>1</sup> in 1999 (Finmeccanica EUR 9,336 million, GKN 7,046 million). Each of the undertakings concerned had a Community-wide turnover in excess of EUR 250 million ([...]). Only Finmeccanica achieved more than two-thirds of its aggregate Community-wide turnover within one Member-State (Italy). The notified operation therefore has a Community dimension.

## **V COMPATIBILITY WITH THE COMMON MARKET**

8. Both Agusta and Westland are active in the development, production and product support of military helicopters. Agusta is active in the development, production and supply of civil turbine helicopters. Westland's activities in the civil helicopter sector are already combined with those of Agusta in the EHI. Westland's involvement in the civil helicopter sector is limited to its 50% interest in EHI and has achieved only one civil helicopter sale to date.

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<sup>1</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

### *Relevant product markets*

9. Within the business of helicopters the parties identify two distinct product markets namely, the market for military helicopters and the market for civil helicopters. This distinction is due to the essential differences between civil and military helicopter programmes with regard to the product characteristics, the structure of demand and the conditions of competition. This position of the parties is in accordance with the Commission's view as expressed in previous decisions<sup>2</sup> and has been confirmed by the results of the market investigation carried out by the Commission for the assessment of the proposed operation.
10. Both military and civil helicopter markets include the activities of development, production, sales and product support. As regards product support in particular, the parties submit that this segment cannot be considered as a separate relevant market, as product support activities depend on the manufacturers' fleet being in service and thus on the sales of helicopters. It appears that such activities which include spare parts supply, heavy maintenance repair and modification as far as military helicopters are concerned, and parts supply, servicing and after-sales support for civil helicopters, are still heavily dependant upon the original manufacturer. Thus, according to the parties, product support activities form part of the military helicopter market or of the civil helicopter market. The parties' position is in accordance with the Commission's view on helicopter product support as expressed in previous merger decisions<sup>3</sup> and has been supported by the market investigation carried out by the Commission for the assessment of this case.
11. Various segmentations of the military or civil helicopters markets could be suggested, for instance based on the type of military mission or the on the civil helicopter's weight.
12. However, for the purposes of this decision, it is not necessary to further delineate the relevant product markets for helicopters, as in all alternative market definitions considered, effective competition will not be significantly impeded in the EEA or in any substantial part of it.

### *Relevant geographic markets*

13. As regards the definition of geographic markets for military helicopters, the parties endorse the Commission's position which distinguishes between countries with an indigenous production and countries sourcing in the international export market. It appears that in the first case markets are national-wide whereas in the second case markets are world-wide.<sup>4</sup>
14. As far as the civil helicopter market is concerned, the parties share the Commission's view that such market is world-wide in scope given the absence of barriers to market

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<sup>2</sup> Case IV/M.017-Aérospatiale/MBB of 25.02.91 and Case COMP/M.1745-EADS of 11.05.00.

<sup>3</sup> Case IV/M.017-Aérospatiale/MBB of 25.02.91 and Case COMP/M.1745-EADS of 11.05.00.

<sup>4</sup> Case IV/M.017-Aérospatiale/MBB of 25.02.91 and Case COMP/M.1745-EADS of 11.05.00.

entry and the mutual penetration of the markets between the EC, the USA and the rest of the world.<sup>5</sup>

15. The position of the parties has been confirmed by the results of the market investigation carried out by the Commission for the assessment of the proposed transaction.
16. However, for the purposes of this decision, it is not necessary to further delineate the relevant geographic markets for helicopters, as in all alternative market definitions considered, effective competition will not be significantly impeded in the EEA or in any substantial part of it.

#### *Competition assessment*

##### Military helicopters

17. Agusta is Italy's indigenous helicopter manufacturer and has covered the [90 - 100 %] of orders placed in that national market in the period 1990-1999.
18. Westland is the UK's indigenous helicopter manufacturer. Its market share in the UK in terms of volume (helicopter orders) for the period 1990-1999 amounts to [30 - 50 %] ([60 - 80 %] of the UK market in the period 1995-1999). In that period the UK has also placed orders with Eurocopter, Boeing and Bell.
19. Neither Agusta nor Westland have made sales in each other's national markets. Agusta has had no sales in other EU Member States with indigenous industry. Westland has had minimal sales in Germany and France, on the basis of an agreement between Aérospatiale (now Eurocopter) and Westland, based on intergovernmental agreements.
20. It results from the above that there is no overlap between the parties' activities in any EU Member State with an indigenous helicopter industry.
21. In the period 1991-1999 Agusta's and Westland's share in the sum of the EU countries without an indigenous military helicopter supplier amounted to [0 - 10 %] and [0 - 10 %] respectively. This market share was achieved in the period before 1995. On military sales in non producing countries world-wide, the parties estimate their combined share to be [0-10 %] in the period 1991-1999.
22. It results from the above that the notified operation does not give rise to affected world-wide markets.

##### Civil Helicopters

23. Agusta's world-wide market share in the period 1995-1999 has reached [0 - 10 %] in terms of volume (orders) and [0 - 10 %] in terms of value. Since Westland has no activities in that market other than those under the EHI, the notified operation does not give rise to any market overlap.

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<sup>5</sup> Case IV/M.017-Aérospatiale/MBB of 25.02.91 and Case COMP/M.1745-EADS of 11.05.00.

## Vertical markets

24. The parties have submitted that the notified operation does not give rise to any vertically affected market. No objections were raised to this position as a result of the market investigation, (especially as a far as suppliers are concerned) carried out by the Commission, for the purposes of this case.
25. For the above reasons, it appears that the notified operation does not create or strengthen a dominant position in any of the relevant markets, as a result of which effective competition would be significantly impeded in the EEA or any substantial part thereof.

## **VI ANCILLARY RESTRAINTS**

26. The parties have agreed a limited number of covenants which are designed to preserve the value of the transferred business during the period between signing and closing:
  - (i) from the date of the Framework Agreement until closing, the parties shall not take certain significant actions which would be outside the normal course of business or inconsistent with past practices (i.e. major capital expenditure, acquisition or disposal of material assets, entering into contracts which would lead to the imposition of undue risks on the Agusta and Westland Businesses).
  - (ii) between signing and completion the parties shall abstain from certain actions which have an impact on employees (change of terms and conditions of key employees, increase of employee numbers, soliciting or enticing away any employee or key consultant engaged in managerial work.).
27. These covenants are directly related and necessary to the concentration as they serve to ensure that the Agusta and Westland businesses are not materially altered between signing and closing and thus ensure the transfer of the full value of the businesses into the JVCo.
28. [...]
29. These provisions are designed to protect the goodwill and full value of the business being transferred to the JVCo against exploitation by either of the parties or their subsidiaries.
30. Finally the parties have agreed that Westland Group plc is to transfer to GKN Westland Helicopters Limited (which will be contributed to the JVCo) the rights to the Westland trade mark. However, GKN requires to be able to continue to use this mark in connection with the activities of GKN Westland Aerospace Limited and its subsidiaries (such businesses will not be contributed to the JVCo). As a result, GKN Westland Helicopters Limited will grant Westland Group plc a non exclusive and indefinite licence to use the Westland mark world-wide. GKN Westland Helicopters will agree not to use the trade mark in relation to any business other than the JVCo business and not to grant any licence of the trade marks to any person who competes with the GKN Group. The result of these provisions is to produce exactly the same effect for the parties as if Westland Group plc had retained the rights to the trade mark and had granted GKN Westland Helicopters limited an exclusive and indefinite licence to use the marks in a designated field of use. The rights retained by Westland Group plc would also be limited to a designated field of use (i.e. to businesses other than the JV businesses).

31. This licence merely gives effect to the division of the Westland trade mark between GKN Westland Aerospace Limited and the JVCo. To the extent this mechanism should be viewed as restrictive to competition, it should be treated as directly related and necessary to the implementation of the concentration in order to maintain the value of the business being transferred to the joint venture whilst enabling GKN to continue to market the products and services offered by GKN Westland Aerospace Limited.

## **VII CONCLUSION**

32. In the light of the above, 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 (EEC) No. 4064/89.

For the Commission,  
*Mario MONTI*  
*Member of the Commission*