

***Case No COMP/M.1786 -
GENERAL ELECTRIC /
THOMSON CSF / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/02/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2/2/2000
SG(2000)D/101158

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 and Madam,

Subject: Case No Comp/M.1786 – General Electric Company/Thomson -CSF

Notification of 21.12.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 21.12.1999 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89 by which the undertakings General Electric Company (“GE”) and Thomson-CSF (“Thomson”) within the meaning of Article 3(2) intend to set up a joint venture company in the field of civil flight simulator training.

I. THE PARTIES AND THE OPERATION

2. GE is a US-based company and is active in fields including aircraft engines, appliances, financial services, information services, power generation equipment, lighting, industrial systems, medical systems, plastics, broadcasting and transportation equipment. GECL is a subsidiary of GE and is a US diversified financial services organisation. GECL provides a range of financing services, including aircraft leasing, through its subsidiary GE Capital Aviation Services Inc. (“GECAS”). GEGAS is the parent company of GECAT, which operates a civil flight simulator training centre at London Gatwick Airport.
3. Thomson is a French company active in professional electronics and defence systems. Thomson owns Thomson UK Holdings which is the parent company of Thomson Training & Simulation Ltd (“TT&SL”). Orbit Flight Training Limited (“ORBIT”) is a subsidiary of TT&SL, and operates civil flight simulator training centres at East Midlands, London Gatwick Airport and at London Heathrow airport.

4. The notifying parties intend to establish a joint venture for the purpose of carrying on the civil flight simulator training activities currently provided by GECAT and ORBIT. GECAT will serve as the joint venture vehicle for the purpose of the transaction. Thomson, through ORBIT, will receive shares in the joint venture as consideration for the ORBIT business. The joint venture will be set up in the beginning of 2000.

II. THE CONCENTRATION

Joint control

5. GECL will own 66% of the joint venture and Thomson 34%. The joint venture will be managed by a board of directors consisting of six members, four of whom including the chairman will be appointed by GECL and two by Thomson. Even though decisions of the Board will be taken by a simple majority vote, ORBIT and GECAT have a veto right in case of important decisions related to major investment projects and in board approval matters including the budget, strategic business plans, and any decisions, contracts or transactions that are outside the ordinary course of business.
6. Despite the fact that there is no equality between the two parent companies in the votes or in representation in the board, the existence of the veto right enables both parent companies to exercise decisive influence on strategic business behaviour of the joint venture.

Full functionality

7. The joint venture will have access to sufficient resources including finance, staff manufacturing assets and technology in order to conduct on a lasting basis its business activities on the market. In particular, the joint venture will acquire from ORBIT [...] flight simulators and GECAT will transfer [...] flight simulators to the joint venture. ORBIT will transfer its property and assets, which are used in connection with the civil flight simulator training business, and 14 employees. The management of the joint venture will consist of six or seven senior managers which will be mainly former GECAT personnel and in one case ORBIT personnel. The management will be entirely dedicated to the joint venture's day to day operations. All the intellectual property rights and know-how necessary for the joint venture to carry out its business will be licensed to it for exclusive use. The joint venture will have its own independent marketing and sales organisation.
8. From the start-up of the joint venture until 2003, Thomson will supply to the joint venture [...] Full Flight Simulators in order to establish the joint venture on the market for flight simulator training. [...]
9. The joint venture will operate on a lasting basis and will perform all the functions of an autonomous economic entity, and is therefore a concentration within the meaning of Article 3(1) (b) of Council Regulation N° 4064/89.

III. COMMUNITY DIMENSION

10. The combined aggregate world-wide turnover of the undertakings concerned exceeds EURO 5,000 million ([...]¹). Each of the undertakings has a Community –wide turnover in excess of EURO 250 million ([...]²) and they do not achieve more than two thirds of their aggregate Community–wide turnover within one and the same Member State. The notified operation has therefore a Community dimension in accordance with Article 1(2) of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

11. The joint venture will offer civil flight simulator training to third parties. No real flight training will be provided by the joint venture. The flight simulator training will be regular checks for airline crew and conversion training which are necessary to enable pilots to fly a different type of aircraft. The joint venture will not offer ab-initio training in order to obtain a pilot's licence, which is mainly offered by specialised flight training schools. Flight training is in principle specific to certain aircraft types, and today it is becoming possible to simulate more than one aircraft type in one single simulator.
12. Most airlines have flight simulators themselves and provide their crew with the necessary flight training. Airlines routinely sell their training services with simulators to other airlines. However, the merchant flight simulator training offered by airlines to third parties seems to be a minor part of the total flight simulator training market. Airlines account for approximately [...] simulators world-wide. Airlines, aircraft manufacturers and independent training centres together accounted in 1998 for [...] aircraft simulators world-wide and [...] in Europe.
13. The outcome of the market investigation clearly shows that the civil flight simulator training is a distinct product market from real flight training carried out in aircraft during flight. Third parties have during the market investigation indicated that the product market for civil flight simulator training should be further delineated according to aircraft types. For the purpose of the present case, it is not necessary to further delineate the relevant product market since the operation would not lead to the creation or strengthening of a dominant position under any possible product market definition.

B. Relevant geographic market

14. The parties submit that the product market is world-wide or at least EEA-wide on the basis that competition takes place on a global level since the parties and their competitors serve clients who are mobile all over the world.
15. A majority of third parties confirmed that the relevant market seems to be world-wide on the basis that airlines fly their crew where flight simulator training is available and readily switch supplier of flight simulator training in case of price increase. In addition, the rules governing the requirements of flight simulator training are mainly international.

¹ [...]

² [...]

16. Airlines based in Europe tend to prefer European located centres or airlines offering flight simulator training due to the lower costs and time constraints. Moreover, it seems that the majority of the parties' customers are European. However, it is not necessary to define the relevant geographic market since the present operation does not lead to the creation or strengthening of a dominant position.

C. Competitive assessment

17. GE via GECAT and Thomson via ORBIT operate within the market for civil flight simulator training, and consequently the transaction gives rise to an overlap in this market.

18. According to the parties' estimates, their market shares based on the flight simulator population are insignificant; [0-5%] world-wide and [from 5-10%] EEA-wide in 1998. If the market shares were based on revenue derived from flight simulator training, the parties' combined market shares would be [0-5%] world-wide and [5-10%] EEA-wide in 1998. If the parties' market shares were calculated upon aircraft model, the combined market shares would in any event be below [10-20%]. The parties' market shares have during the last 3 years been stable both on the world-wide and EEA-wide market.

19. It has not been possible during the market investigation to evaluate the precise scope of third parties use of airlines' flight simulators, and thus to know exactly the scope of the free flight simulator training market. The notifying parties have submitted calculations of market shares under different assumption regarding the level of airlines' revenues from flight simulator training offered to third parties, and these market shares are in any event kept below [10-15%] at EEA-level and below [0-5%] at world-wide level. This tendency has also been confirmed by airlines' answer to the market investigation.

20. Thomson-CSF is manufacturer of flight simulators. The vertical relationship between Thomson-CSF and the joint venture does not give rise to foreclosure effect on the market for flight simulator training. Thomson's market share on the flight simulator market which is a world-wide market does not exceed [20%-25%] in 1998. Moreover, the market share has decreased during the last 5 years.

21. Therefore, the transaction does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market.

V. ANCILLARY RESTRAINTS

22. The parties have agreed not to compete with the business that is operated by the joint venture. The non-compete provision is valid during the term of the Shareholders Deed and for a period of [...] following the date on which a shareholder ceased to be beneficially interested in any share. The non-compete provision ensures that the joint venture will be attributed the full value of the business being acquired, and the clause will protect the assets and investments being transferred to the joint venture while the parties are participating in the joint venture and for a [...] following termination. [...]

23. On the one hand, the Commission considers that this non-compete clause, insofar as it applies for the duration of the joint venture, is directly related and necessary to the establishment of the joint venture and therefore is covered by the present decision. On the other hand, the Commission considers that the extended [...] period of non competition following the withdrawal of one of the parents is neither an integral part of

the notified transaction nor necessary for the implementation of the concentration. The justification of this clause would have to be assessed in relation to future transactions upon termination of the present joint venture. Therefore, the [...] extended clause is not covered by the present decision.

24. In this context, and to the extent that the clause is limited to the lifetime of the joint venture the Commission considers that such a non-competition clause can be seen as necessary for the implementation of the concentration³.

VI. CONCLUSION

25. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

³ See case No IV/M.1569- Gränges/ Norsk Hydro.