

***Case No COMP/M.1797 -
SAAB / CELSIUS***

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/02/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4/2/2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No COMP/M.1797 – Saab/Celsius

Notification of 3 January 2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 03.01.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ (“the Merger Regulation”) by which the undertaking Saab AB (“Saab”) (Sweden), controlled by BAe Systems plc (“BAe”) (UK) and Investor AB (Sweden), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Celsius AB (“Celsius”) (Sweden) by way of a public cash offer.
2. As a result of instructions, referring to Article 296(1)(b) of the EC Treaty, given by the Swedish Government to the notifying party, this notification provided only information relating to civil and dual use products. In this connection, the Swedish government informed the Commission that it regarded the proposed concentration as very important to Sweden’s ability to protect its vital security interests and stated its view that the aspects of the concentration relating to defence products should not be investigated under the Merger Regulation. Following a request by the Commission, the notifying party provided additional information to enable the Commission to assess the impact of the proposed concentration on competition with respect to defence products. The Commission’s assessments in relation to all aspects of the proposed concentration are set out below.
3. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

I. THE PARTIES

4. **Saab** is a Swedish public company and active in military aerospace, training systems, commercial aircraft and high technology niche products. Saab is jointly controlled² by BAe and Investor AB.
5. **BAe** is a public company incorporated in England and Wales. It is a major player in the European defence and aerospace sectors with primary activities in military aircraft, guided weapons and guided weapons systems/sub-systems, systems support, marine engineering and naval architecture, ordnance, military training systems and aerostructures. The company is the result of the acquisition by British Aerospace plc of Marconi Electronic Systems³.
6. **Investor AB** is a Swedish industrial holding company, listed on the Stockholm stock exchange. It holds 50% of the share capital in Saab Automobile AB and minority shareholdings in various other companies, none of which is active in the military sector.
7. **Celsius**, a Swedish public company controlled by the Swedish state⁴, is active in three core areas : defence, with a focus on electronics, IT and smart weapon systems; aerotech services, which comprises advanced services, consultancy and maintenance, primarily for defence-sector customers; and aviation services which is focused on engine and component maintenance and asset management services for the commercial market. Celsius recently merged its activities in shipbuilding (naval vessels and conventional submarines) with Preussag AG⁵.

II. CONCENTRATION

8. Saab has issued on November 16, 1999 a public cash offer (“the Offer”) to acquire all shares in Celsius. The Offer is open for acceptance from 6 December 1999 to 23 February 2000 and has the support of the Board of Directors in Celsius. A sale of the Swedish State’s shares in Celsius requires an approval by the Swedish Parliament. By means of the Offer, Saab intends to acquire sole control of Celsius so that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The combined aggregate world-wide turnover of the undertakings concerned exceeds EUR 5 000 million and the aggregate Community wide turnover of each party exceeds

² Case IV/M.1198 – BAe / Saab

³ Case IV/M.1438 – British Aerospace / GEC Marconi

⁴ The Swedish State holds all the A-shares in Celsius, which represent 24.9% of the capital and 61.7% of the votes. The B-shares, representing 75.1% of the capital and 38.3% of the votes, are quoted on the Stockholm Exchange.

⁵ Case COMP/M.1709 – Preussag/Babcock/Celsius, Commission decision of 19 January 2000.

EUR 250 million. They do not achieve more than two-thirds of their turnover in one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation. It does not constitute a co-operation case under the EEA agreement.

V. MARKET DEFINITION

A. Relevant product markets

Civil and dual use activities

10. The operation will create some limited links on a number of sectors (e.g. civil control and information systems, propellants, commercial aviation maintenance, etc.). However, in view of the moderate activities of the parties in these sectors, it can be concluded, on the basis of the information provided by the parties, that, for none of these products, the overlaps, the activities in neighbouring markets and the relevant connections between civil and military products are of a substantial nature. It is, therefore, not necessary to define relevant markets as no competition issue arises.

Military activities

11. The military activities of Celsius overlap with those of Saab and/or BAe with regard to ammunition (conventional and intelligent); guided weapons and guided weapons systems (“GW /GWS”); underwater systems (torpedo weapons systems; sea mines and mine counter measures; and remotely operated underwater vehicles); anti-armour systems (portable disposable anti-armour weapons; portable multi-purpose weapons; and anti-tank mines); small arms; command, control and information systems (“C2I”); defence electronics (systems and products for radar warning and signal tracking/analysis; systems and products for countermeasure dispensers and decoys; core technology sub-systems); naval vessels (corvettes, frigates and submarines); and military maintenance and consultancy services.
12. The Commission has assessed the information supplied by the parties on the overlaps. Other than torpedo weapons systems, there is no product market where each of Celsius and Saab or BAe have strong positions. With regard to the possible markets where one of either Celsius or Saab and/or BAe have a stronger position (GW/GWS; C2I; conventional submarines), the operation will only create moderate overlaps. These products will be described further below.
13. However, it is not necessary, for the purpose of the present decision, to define product markets for military products other than those identified in the previous paragraph (“the other products”) as the concentration does not lead to a competition problem. It can be added that for each of these other products, there remains at least one other European producer (in addition to non-European producers).

Torpedo weapons systems

14. The parties submit that torpedoes are categorised as heavyweight or lightweight depending on technical characteristics such as size and endurance and that, due to these differences, these two categories are not exchangeable from a demand side. However, the parties argue that the development and manufacture of torpedoes is primarily a question of knowledge regarding target seeking techniques, hydro-acoustics and hydro-

dynamics, knowledge common for both heavyweight and lightweight torpedoes. This implies, according to the parties, that a manufacturer of one type of torpedoes can develop also the other type.

15. The parties also submit that producers of guided torpedoes typically offer a fire control system for the guidance of the torpedo and that such systems are only compatible with the torpedo for which they have been designed and are not offered separately from the torpedoes. However, third parties have indicated that fire systems and torpedoes might be offered separately.
16. However, for the purpose of this case, it is not necessary to further delineate the product markets for torpedoes and fire systems, as no competition issue arises.

GW/GWS

17. 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 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.
18. 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. Within each of these classifications, further segmentations are made depending on range, performance, etc.
19. 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.
20. GW prime contractors may sub-contract the supply of sub-systems and components to third parties, depending on the degree of vertical integration within the prime contractor. The level of sub-contracting for sub-systems and components has generally increased in recent years due to the increasing development costs. The prime 'core-business' will vary from one contractor to another, but will always include systems integration and overall project management. Furthermore, certain sub-systems will generally be produced by the prime contractor itself because of their importance for the design and integration of the GW system.
21. The parties consider that an approach to define markets focusing on particular segments or types of GW/GWS as well as on sub-systems and components would be to ignore the true dynamics of competition within the sector. They also refer to factors such as supply side substitutability and the procurement policies of national governments.
22. However, for the purpose of this case, it is not necessary to operate a precise definition of the relevant product market in this case, as, even on the narrowest market definition, no competition issues arise.

Command, Control and Information systems (C2I)

23. The parties indicate that military command and control systems are highly sophisticated systems consisting of hardware and software products. Today most of the hardware is COTS products (Commercial Off The Shelf) while the software is built on customer

demands and are tailored for each customer. The undertakings active in this market offer a common system architecture to which customer specific applications are added. Military C2I systems are used for command and control of air, ground and naval forces and belong to the most sensitive areas from a national security point of view. The three distinct areas constitute, according to the parties, separate relevant product markets.

24. The Commission understands that there are three levels of functionality in C2I systems:
 - Level 1 : in upstream applications, the tasks of information management and databases, information exchange between operators, and teleconferencing may be identified; these tasks are based on computerised systems of civil origin;
 - Level 3 : in downstream applications, besides armament systems, there are information systems that carry out the tasks of controlling real time functions; these tasks are based on purely military technology; and
 - Level 2 : between these two categories of task exist intermediate functions more closely related to one or other of the categories; this is especially the case where an operator intervenes in the chain of command.
25. It is not necessary to operate a precise definition of the relevant product market in this case, as, even on the narrowest market definition, no competition issues arise.

Conventionally powered submarines

26. In *Preussag/Celsius*, the Commission has concluded that conventionally powered submarines with a surface displacement in addition to 300 or so tons constitute a distinct product market. Because the key element for the competitive assessment on this market is whether producers are able to offer up-to-date designs in the future, it was not necessary to decide whether the supply of new and used submarines as well as mid-life conversion can be combined into a single product market, or whether a further distinction should be made. The competition assessment would, furthermore, not be fundamentally different whether or not separate markets would exist for patrol sized submarines (less than 2000 tons) and ocean going submarines (up to 3000 tons).
27. The same conclusion is also valid for the assessment of this operation.

B. Relevant geographic markets

Military markets

28. The Commission has taken the approach in a number of defence cases to identify (a) national markets where domestic producers exist as governments wish to support national suppliers and thereby the country's military independence and (b) a world market albeit that competitors from certain countries such as China and Russia may be excluded from supplying to some of the candidate buyers, especially NATO countries.
29. The parties argue that a number of developments have resulted in the opening of formerly protected markets and that it is likely that the combined effect of these developments will lead to a world market within the foreseeable future even in those countries where traditionally the market has been supplied by domestic players. According to the parties, major developments include the development of multinational programmes, the statement by certain Member States to facilitate the restructuring and

operation of the European defence industry interdependence, the creation of joint R&D programmes, and the internationalisation of the supply-side⁶.

30. On the basis of the above considerations, the parties conclude that the prime contracting market is in transition from a national market to an international market. The parties also argue that the prime contracting market for defence systems, being determined in the medium term by competition in terms of capability, is international because national markets are no longer sufficiently large to support the capability so that competition is determined by success on the export markets. The internationalisation of the prime contracting market brings with it the internationalisation of the sub-contracting markets which is even further advanced as national security interests have a lesser impact on sub-contracting. Finally, the parties argue that the cost structure of prime contracting markets coupled with shrinking defence budgets makes the internationalisation of European defence markets inevitable.
31. However, with regard to the product markets discussed above, the parties consider that there are still national markets for torpedo weapons systems, C2I and conventionally powered submarines.
32. With regard to GW/GWS, the parties argue that the market is world-wide. However, in view of the fact that Celsius and BAe/Saab still account for [60-80]% of GW/GWS sales in Sweden over the last 5 years, the Commission has also examined the competitive impact of the transaction in this country.
33. It can also be argued that, in view of the elements of internationalisation as described above by the parties, national competition is being widened to allow greater international involvement. This tendency is further confirmed by the establishment of multilateral co-operation programmes between several Member States, by the setting-up of a multilateral procurement body (the OCCAR), or by the procurement of national programmes through open competition at the European level. In view of these developments, the competitive impact of the operation therefore has to be examined at a wider level including, in the first place, European producers. It is, however, not necessary to decide this issue as the concentration does not create a competition problem on such European markets in view of the presence of other European producers.

VI. ASSESSMENT

Swedish markets for GW/GWS, torpedo weapons systems, C2I and conventionally powered submarines

34. BAe Systems is active in GW/GWS through two joint-ventures : Matra BAe Dynamics (jointly controlled together with Aérospatiale-Matra) and Alenia Marconi Systems (jointly controlled together with Finmeccanica). [Saab's sales of GW/GWS are limited to an anti-ship missile system]. Through Bofors Missiles, Celsius develops and manufactures air-to-surface (development work only for a stand-off weapon), surface-to-air/land (very short range, short range and medium range missiles) and anti-armour (medium range and shore defence) missile systems.

⁶ See also Case IV/M.1309 – Matra/Aérospatiale.

35. In GW/GWS systems as a whole, Celsius accounts for [40-60]% of sales for the 1994-1999 period, its main competitors being BAe Systems and Saab ([20-30]%) and Raytheon ([20-30]%).
36. However, it appears that, in defence markets, national producers are subject to customers (i.e. the Ministries of Defence) with a considerable countervailing buying power : MODs define the specifications, finance the programmes, and often play a key role in the granting of export licences for military products. Furthermore, it appears that already in the past Swedish GW/GWS purchases have been open to international competition and that Sweden has purchased missiles and GW sub-systems from US producers who were in competition with Swedish companies and BAe. It can also be mentioned that Celsius only sold a very limited number of sub-systems and components to third parties so that the operation does not lead to a competition problem with regard to these products.
37. On the other markets (torpedo weapons systems, C2I and conventionally powered submarines), only Celsius is active on the Swedish markets. It appears that, in view of the national strategic interests for these products, BAe Systems has in the past never competed for Swedish programmes. The operation does, therefore, not change the parties' existing positions on these markets.
38. In the light of the above, the operation will not create or strengthen a dominant position on the above markets as a consequence of which effective competition would be seriously impeded in the EEA or any substantial part of it.

The open world and possible European markets for torpedo weapons systems

39. The US producer Raytheon is by far the most important competitor on the open world market. Celsius and BAe Systems are the largest European producers. However, BAe Systems is not active on the open world market, and Celsius' share of sales does not exceed 25%. Furthermore, in Europe, there remain other alternatives to the parties such as DCN and Thomson-CSF (France) as well as Whitehead (Italy). It can be noted that Raytheon accounts for more than 25% of the sales in European manufacturing countries.
40. In view of the fact that only Celsius is active on the open world market; that there are other European producers and that the US producer Raytheon is a successful competitor, selling also to European manufacturing countries, it can be concluded that the notified operation does not lead to the creation or strengthening of a dominant position on the above markets as a consequence of which effective competition would be seriously impeded in the EEA or any substantial part of it.

The open world and possible European markets for GW/GWS

41. Through its joint control of Matra BAe Dynamics and Alenia Marconi Systems, BAe is a major European prime contractor of GW/GWS. However, firstly, it remains subject to the competition from other large manufacturers, whether in Europe (Thomson-CSF, Aérospatiale-Matra, etc.) or from the United States (Raytheon, Lockheed-Martin and Boeing, with sales in European manufacturing countries). And secondly, the operation will only result in minor overlaps, as, in all market definitions examined by the Commission, Celsius' market shares are estimated to be [below 5]%. The operation does, therefore, not lead to the creation or strengthening of a dominant position on any

of the markets involved as a consequence of which effective competition would be seriously impeded in the EEA or any substantial part of it.

The open world and possible European markets for C2I

42. Both Celsius and BAe Systems are active in air defence, land and joint, as well as naval combat C2I systems. According to the parties, the combined overall market share of both companies would be around [10-20]% at world-wide level, and [15-25]% within European manufacturing countries. With regard to the sub-systems and different levels, the market shares would be higher only with regard to naval systems in a possible European market. On this possible market, BAe Systems is estimated to account for [30-40]% market share and Celsius [below 10]%. BAe Systems' market share results from the fact that the UK, where BAe Systems has a strong position, accounts for approximately 1/3 of C2I sales in European manufacturing countries. In Europe, Thomson-CSF is estimated to have a similar market share than BAe Systems. The main competitors (world-wide) are US companies such as Lockheed Martin, Raytheon, Boeing and TRW, and within naval combat systems also Thomson-CSF and DCN. With regard to air defence and land and joint C2I systems, other European producers are DASA (Germany) and Kongsberg (Norway). The operation does, therefore, not lead to the creation or strengthening of a dominant position on any of the markets involved.

The open world market for conventional submarines

43. In *Preussag/Celsius*, the Commission authorised the operation whereby Celsius acquired joint control together with the German privately owned consortium Preussag Aktiengesellschaft ("Preussag") over Howaldtswerke-Deutsche Werft AG ("HDW"), a subsidiary of Preussag active in the fields of conventionally powered submarines and large defence naval vessels. As part of the same operation, HDW acquired 100% of Kockums AB ("Kockums"), hereto Celsius' subsidiary active in the fields of conventionally powered submarines and small defence naval vessels.
44. BAe is active in the market for conventional submarines by means of Marconi Marine (UK) as it still offers a sea-proven design (Upholder) for export sales. The UK has phased out its conventional submarines and the four last Upholder class submarines have been sold (as refurbished used submarines) by the UK government to Canada in 1997. This company remains the builder of the UK's nuclear submarines and is expected to participate only at some bidding procedures for future orders of conventional submarines. It has, contrary to other competitors, no new conventional submarine design.
45. In *Preussag/Celsius*, the Commission concluded that HDW is the major player on the market and that the merger with Kockums will reinforce this position further. However, the Commission considered in this case that the merged entity will remain for the foreseeable future subject to competition from especially the French producer DCN, but also the Dutch and Italian producers, RDM and Fincantieri, will have the capacity to effectively compete with the parties' products.
46. The current operation does not materially change the above conclusion so that the notified operation does not lead to the creation or strengthening of a dominant position in the open world market for conventional submarines.

Vertical aspects

47. According to the data provided by the parties, it appears that, except for the Swedish markets, i) for those equipment products which the parties manufacture, there will remain credible alternative sources of supply; and ii) the parties will not be both suppliers and customers of equipment products to such an extent as to make previous 'open market suppliers' lose their competitiveness.
48. With regard to Swedish markets where vertical issues are identified and which relate to some of the most sensitive areas from a national security perspective (eg. missile electronics; radar warning and signal tracking/analysis for military aircraft), it is the Swedish MOD that has selected the producer of both the upstream and downstream products thereby substantially limiting the scope of influence for the parties to the operation. For the less strategically important products, it is the stated policy of the Swedish MOD to co-operate to an increasing extent with defence material procurement authorities in other countries and [it is expected that orders of material from companies abroad will increase in the future]. In any event, account must be taken of the bargaining power of the Swedish MOD, which formulates the operational requirements and technical specifications of the products concerned. In this respect, it should be noted that the Government of Sweden has shown a positive attitude towards the proposed concentration.
49. It can, therefore, be concluded that there is no creation or strengthening of a dominant position on the above markets as a consequence of which effective competition would be seriously impeded in the EEA or any substantial part of it.

VII. CONCLUSION

50. 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,

Mario MONTI
Member of the Commission