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***Case No IV/M.0017 -
AEROSPATIALE /
MBB***

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

Article 6(1)(b) NON-OPPOSITION
Date: 25.02.1991

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Brussels, 25.02.1991

MERGER PROCEDURE
ARTICLE 6(1) (b) DECISION

PUBLIC VERSION

Registered letter with
advice of delivery

1. Notifying party
2. Notifying party

Dear Sirs,

Subject: Case No. IV/M017 - Aérospatiale/MBB

1. The French state-owned company Aérospatiale (AS) and the German Messerschmitt-Bölkow-Blohm GmbH (MBB), a subsidiary of the Daimler-Benz group, have decided to merge their helicopter activities. The proposed concentration was notified on 24 January 1991 and will be executed as follows:

- AS and MBB will transform their helicopter divisions into legally independent entities ("National Companies"),
- All of the shares in these National Companies will be held by Eurocopter S.A., a newly created Holding Company located in France.
- For as long as the shareholding ratio in Eurocopter S.A. remains at 60% AS and 40% MBB, all strategic decisions will require the unanimity of both partners in the supervisory board and the executive functions will be exercised by two managing directors (one from AS and one from MBB) who will act on a consensus basis.

2. After examination of the notification, the Commission has come to the conclusion 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.

I. CONCENTRATION

3. The project constitutes a concentration in the form of a concentrative joint venture within the meaning of Article 3(2) of the Merger Regulation in particular because:

- Eurocopter will be jointly controlled by AS and MBB, and
- AS and MBB will transfer the whole of their helicopter activities to Eurocopter and withdraw permanently from the helicopter market.

II. COMMUNITY DIMENSION

4. The aggregate worldwide turnover of the Daimler-Benz Group (DB) and AS in the last financial year was 46.7 billion ECUs. Both undertakings meet the requirements of Art. 1(2)(b), DB and AS each having an aggregate Community-wide turnover of more than 250 million ECUs, of which not more than two thirds were achieved in one and the same Member State. Consequently, the proposed concentration has a Community dimension.

III. COMPATIBILITY WITH THE COMMON MARKET

5. The proposed concentration affects the product markets of military and civil helicopters (including development, production and product support, ie sale of spare parts, repair, maintenance and training). In the helicopter business, more than one third of the total turnover is normally derived from product support due to the fact that the useful life of a helicopter is between 20 and 30 years. This market segment cannot be considered, however, as a separate relevant market, as product support activities depend on the manufacturers fleet being in service and thus on the sales of helicopters.

6. The main characteristic of the helicopter business is the strong link between the activities in the military and civil sectors. The development of new products in the helicopter market is to a very large extent supported by military budgets and civil helicopters are mostly derived from state funded military models. Performance in the civil sector is therefore fundamentally based on business contracted in the military sector.

7. Based on the turnover achieved in the period 1987-89, the market shares in the total helicopter market (military orders, contracted military development, civil deliveries, product support) within the EC were nearly the same for AS and the Italian company Agusta, each having a share of about one-third of the total value of the EC market. This does not, however, reflect the actual competitive potential of the competitors since AS is by far the biggest and most competitive helicopter manufacturer within the EC. This can be demonstrated by comparing the worldwide helicopter inventory and the worldwide turnover from helicopters of the most important manufacturers in 1989:

See footnote ⁽¹⁾

	Fleet in service (units)	Turnover in \$ million
European manufacturers		
AS		
Agusta		
Westland		
MBB		
US manufacturers		
Sikorski		
Bell		
Macdonnell Douglas		
Boeing		

8. Furthermore, the series production programme of AS covers a relatively broad range of military and civil helicopters (light helicopters: Gazelle, Ecureuil, Ecureuil 2; medium helicopters: Panther; large helicopters: Super Puma). In contrast, of the helicopters that Agusta currently manufactures, only one was developed by the company itself (A 109, a light helicopter in a military and civil version), all other types offered being manufactured under licence from US manufacturers. The series production programme of Westland includes only three military helicopters (Lynx, Sea King, Black Hawk). The series production programme of MBB consists in the light helicopter BO 105 (civil and military versions) and the medium helicopter BK 117, a civil helicopter which has been jointly developed by MBB and Kawasaki and is mainly sold in the US market.

9. In spite of the interdependency of the military and civil helicopter business different relevant markets for civil and military helicopters are, however, to be distinguished, given the essential differences between civil and military helicopter programmes with regard to the products characteristics, the structure of demand and the conditions of competition.

Military helicopters

10. As regards the military helicopter business, the markets are split depending on whether or not a country or a region has its own helicopter industry. On the basis of the estimated value of military orders in the years 1985-89, excluding the Eastern European countries, the shares are

- 100% for the EC manufacturers within the EC (this being 9% of the total worldwide value),
- 100% for the US manufacturers within the USA (63% of the world),

⁽¹⁾ Precise figures deleted; the respective turnovers of the companies, as a proportion of the turnover of AS, are approximately as follows: MBB: one quarter of AS; Westland: one half; Agusta: two thirds; Boeing: two thirds; Bell: same as AS; Macdonnell Douglas: same as AS; Sikorski: one and a half times AS.

- 51% for the EC manufacturers and 49% for the US manufacturers in the rest of the world (27% of the world).

These figures show that competition between EC and US manufacturers exists only outside their respective home markets.

11. The same principle applies to the competitive situation within the EC. On the basis of the value of military orders and turnover from contracted military development in the years 1987-89, AS had a market share of 100% in France, MBB 100% in Germany, Agusta 100% in Italy and Westland 100% in the UK.

12. Given the market shares outlined above and the particular conditions of the defence industry, the markets for military helicopters within the EC have to be considered national markets as far as those Member States which have their own national helicopter industry are concerned.

13. Military helicopter projects in the EC are carried out today mostly in the framework of international co-operation given the high costs of developing a new helicopter. As in all areas of the defence industry however, this co-operation does not reflect international competition. It is based on Memoranda of Understanding between the States participating in a project. These MoUs always provide that:

- the value of orders placed with the various national industries must correspond to the financial quotas of the respective States (principle of "juste retour"), and
- the technological value of the work packages allocated to the various national industries are well balanced.

14. Since there is no international competition on their home markets, AS and MBB have a monopoly on the French and German markets respectively for military helicopters. These dominant positions however would not be strengthened by the proposed concentration because, given the particular conditions of the defence industry, AS and MBB are neither actual nor - at least for the foreseeable future - potential competitors in the markets concerned. Furthermore, the co-operation for the most important European helicopter projects of the next 10 to 15 years has already been established (combat helicopter PAH2.: AS, MBB; NATO-helicopter NH 90: AS, MBB, Agusta, Fokker). Thus, the concentration would not significantly affect the possible structure of co-operation at the European level.

15. In this context, it should be noted that the helicopters used essentially by armies, navies and air forces are the PAH2 and NH90 projects covering:

- tactical transport or logistic transport (NH90);
- liaison and observation (PAH2);
- combat support (PAH2);
- search and rescue (NH90);
- anti-submarine and anti-ship warfare (NH90).

Except for the small segment of very heavy transport helicopters, there is, therefore, no more room for outside competitors either in Germany or France.

16. As to the Member States which do not have a national helicopter industry (those other than France, Germany, Italy and the UK), the military helicopter markets are only of minor importance. The share of these markets was only 7.3% (94 million Ecu) of the value of military orders and military development in the years 1987-89 within the EC (1,281 million Ecu). MBB was not present in any of these markets. AS had a market share of 75% in Denmark and 100% in Spain; these market shares were achieved however only from orders for 12 helicopters to the value of 9 million Ecu from Denmark and orders for 2 helicopters to the value of 15 million Ecu from Spain. On the basis of these figures, the concentration does not raise serious doubts as to its compatibility with the common market with regard to these markets.

Civil helicopters

17. The market shares in the world market for civil helicopters, based on the estimated value of deliveries in the period 1985-89 indicate:

- that there is a great mutual penetration of the markets worldwide especially considering the presence of the EEC manufacturers in the US market (54%) and the presence of the US manufacturers in the EC market (31%);
- that the EC manufacturers have a stronger position worldwide than the US manufacturers and have achieved, in the period 1985-89, even in the US market, a higher market share than the US companies.

18. Within the EC there are strong home markets for the national helicopter manufacturers especially in France and Italy. This is due to the public and para-public sectors (eg police, rescue helicopters, fire fighting helicopters) where the procurement agencies prefer the helicopter manufacturers of the country. Apart from the preference of public customers for their respective national manufacturers, there are no specific barriers to market entry. Of course, the competitor must satisfy the requirements of those agencies regulating activities in the aviation market and checking the compliance of products with national standards. Since all airworthiness authorities in the EC, except the UK, work along the lines of the rules and requirements set up by the US authority, FAA, helicopters manufactured by a foreign competitor can be easily certified in a Member State of the EC. In all Member States the costs for adapting helicopters are insignificant compared with the value of the helicopter. Given the absence of barriers to market entry and the mutual penetration of the markets between the EC, the USA and the rest of the world, the civil helicopter market is from an economic point of view a world market. The competitive pressure from outside the Community has, therefore, to be considered in the assessment of whether the proposed concentration could lead to the creation or strengthening of a dominant position which would significantly impede effective competition in the common market.

19. The proposed concentration leads to a combined market share of about 50% for AS/MBB in the EC market for civil helicopters. Furthermore, the product range of AS in the light and medium

helicopter segments will be broadened by the BO 105 and the BK 117 of MBB and the new entity AS/MBB will have the general competitive advantage of synergic effects and a broader sales basis.

20. In evaluating the high market shares and the competitive advantages created by the concentration, it has however to be taken into account

- that the civil helicopter markets are generally open for worldwide competition;
- that the civil helicopter business depends on support for the business which comes from the market in military helicopters.

In the period 1985-89 the share of the civil business was only 18% of the value of the total worldwide helicopter business. Apart from the deliveries of military helicopters, military R&D programmes contribute to a great extent to the turnover of the helicopter industry and civil helicopters are often derived from military types developed in state funded military programmes.

21. In this context, it must be noted that in the period 1985-89 the share of the US helicopter manufacturers was 77% of the worldwide value of military orders. This results in a market share of 69% of the total civil and military world market although the US competitors only achieved a 37% share in the civil helicopter market in this period. With regard to military development, the US helicopter industry in 1990 was supported by funds from the military budget amounting to \$960 million while, for example, the French helicopter industry, which is the leading helicopter industry in Europe, was supported by military development programmes amounting to \$215 million. The strong backing of US helicopter manufacturers by what is by far the largest military home market in the world is likely to be the reason for their comparatively small market share in the civil market. Given the fact that their capacities were relatively well taken up by the military business, they did not need to focus on the civil business. Accordingly, the US manufacturers did not develop civil helicopters but only offered civil versions derived from military helicopters. Furthermore, they seemed to be mainly interested by large volume orders and not in selling small units.

22. In contrast, the European manufacturers, especially AS and MBB, developed civil helicopters at their own expense given the fact that their relatively small military home markets and the volatile demand for military helicopters could not fully utilise their capacities. They were also interested in selling small units; up to now AS, for example, has sold about 8,000 helicopters to more than 1,000 different customers, of which 500 bought only one helicopter. In view of these circumstances, it appears, however, that the competitive potential of US manufacturers resulting from the military business and their considerable presence in the European civil helicopter market sufficiently guarantees that the new entity AS/MBB will not be able to behave to an appreciable extent independently of its competitors and customers. In this context, it must be noted that there is, in addition to their directly sold products, an indirect competitive influence from US competitors on the EC market since most of the civil helicopters sold by Agusta are manufactured under licence from Bell and Sikorski. Furthermore, the European helicopter manufacturers expect that the US manufacturers will increase their activities in the civil helicopter market due to a certain tightening of the military helicopter budget. In this context, it

has to be noted that there is only one major new military helicopter project in the US, the light helicopter LHX.

23. As to the other European helicopter manufacturers, Agusta and Westland, it does not appear that the proposed concentration would foreclose their access to technical cooperation and European development programmes which are essential for their competitiveness. AS and MBB have declared that they intend to remain as open to this kind of co-operation with the other European manufacturers as in the past.

24. Finally, it has to be noted that although there is an increase in market shares from 44% for AS to 52% for AS/MBB, the 8% market share of MBB in the EC market for civil helicopters represents only the marginal amount of about 10 million Ecu, or 5 helicopters a year. Furthermore, the concentration does not lead to a significant change in France (MBB 0%), Italy (MBB 4%) and the UK (MBB 1%). Only in Germany will there be a significant increase in market shares (AS 40%, MBB 22%). The German market is, however, very small (an average of 20 million Ecu per year) and has a relatively strong presence of US manufacturers (33%).

25. The proposed concentration will, therefore, not lead to the creation or strengthening of a dominant position which would significantly impede effective competition in the civil helicopter market within the EEC.

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For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6, paragraph 1(b) of Council Regulation No. 4064/89.

For the Commission