

***Case No COMP/M.1969 -
UTC / HONEYWELL / i2
/ MY AIRCRAFT.COM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/08/2000

*Also available in the CELEX database
Document No 300M1969*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **04/08/2000**
SG(2000)D/105930

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.1969 – UTC/Honeywell/i2/MyAircraft.com

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

1. On 3 July 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ as last amended by Regulation (EC) No 1310/97² by which United Technologies Corporation (“UTC”), Honeywell International and Inc (“Honeywell”) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of MyAircraft.com by way of purchase of shares in a newly created company constituting a joint venture.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. UTC is a US diversified industrial equipment company. The UTC group includes Otis (elevators, escalators, moving walkways and shuttle systems); Pratt & Whitney (commercial and military jet engines, rocket engines and space propulsion systems), UTC Flight Systems comprised of Hamilton Sundstrand and Sikorsky Aircraft (flight and fleet control components and systems, propellers for commercial aircraft and commercial and military helicopters), Carrier (Heating and Ventilating Air

¹ OJ L 395, 30.12.1989, p.1, corrigendum; OJ L 257, 21.9.1990, p.13.

² OJ L 189, 9.7.1990, p.1, corrigendum; OJ L 40, 13.2.1998, p.17.

Conditioning equipment for commercial, industrial and residential buildings, Heating and Ventilating Air Conditioning replacement parts and services, building controls and commercial, industrial and transport refrigeration equipment); and Turbo Power and Marine (industrial gas turbines).

4. Honeywell is a US diversified technology and manufacturing company, selling aerospace products and services world-wide including aircraft landing systems, aircraft engines and systems, aerospace electronic systems and aerospace services; control technologies for buildings, homes and industry; automotive products; power generation systems, speciality chemicals, fibres, plastics; and electronic and advanced materials.

II. THE OPERATION AND THE CONCENTRATION

5. The proposed transaction involves the creation of a joint venture, MyAircraft.com. The purpose of MyAircraft.com is to create and operate an electronic market place, a so-called B2B (business to business) marketplace. MyAircraft.com will be a “one-stop shopping” for aerospace parts and services and in addition MyAircraft.com will offer supply chain management functions available for all aerospace participants. MyAircraft.com will be a web-enabled supply chain that is open to all participants in the aerospace and aviation industry and the site will offer means to rationalise the procurement of parts, repairs and overhaul services and allow auction capabilities. MyAircraft.com will not sell or take title to any parts or services transacted across its web-site. MyAircraft.com will only provide Internet-based software tools.
6. The services offered by MyAircraft.com are intended to enable participants to improve service levels, reduce cycle times, improve transaction flows, manage parts inventories, reduce excess parts inventories and diminish equipment downtime. In addition, customers (e.g. airlines) will by using MyAircraft.com to find more information faster and suppliers (including the notifying parties) will be able to make the production of spare parts more efficient. The services offered by MyAircraft.com are i) tool for the supply chain management which includes services, parts planner, service budget optimiser and demand planning, and ii) e-procurement including catalogue listing, order placement, auction tools and electronic billing tool. These services will help ensure that airlines, OEMs or parts and service suppliers have the right spare parts or services at the right place at the right time to avoid incurring costs due to non-functioning equipment.
7. The shareholding will be allocated as follows: 40% UTC, 40% Honeywell and 20% to i2 Technologies, Inc (“i2”) that will supply the joint venture with its TradeMatrix platform³. Each share will correspond to one vote. The Board of Directors will consist of seven directors of which two will be appointed by each of UTC and Honeywell, one by i2, one independent director by shareholders holding at least [...] of the shares and one will be the chief executive officer of the company. The Board of Directors will designate the latter.

³ The TradeMatrix platform includes a broad spectrum of solutions and hosted services, enabling customers, suppliers and service providers to conduct business in real-time and to make decisions.

8. The Board of Directors will take decisions by simple majority vote except for specific matters related to the approval of the annual business plan, acquisitions, hiring or terminating the CEO etc. in the joint venture formation agreement⁴ which require affirmative approval of shareholders holding at least [...] of the shares. Consequently, the notifying parties hold joint control of MyAircraft.com.
9. MyAircraft.com will receive initial cash contributions from UTC and Honeywell of US \$ [...] and i2 will provide the necessary software under a license agreement to MyAircraft.com. The joint venture will have its own premises and its own staff and will have its own sales and marketing force. During an initial start-up period of 6 months from the formation date, UTC and Honeywell can provide services to MyAircraft.com on an arm's length basis. The joint venture has been created for an unlimited time-period. In the light of the above, the joint venture can be considered as performing on a lasting basis all the functions of an autonomous economic entity.

III. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion⁵ (UTC € 24,1 billion, Honeywell € 20,6 billion and i2 € 571.1 million). Each of the notifying companies (UTC € [...], Honeywell € [...]) have a Community-wide turnover in excess of € 250 million, but they do not each achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. THE RELEVANT MARKETS

A. Relevant product market

11. The notifying parties submit that the relevant market for this transaction is the market for aerospace parts and services and that e-commerce should be considered as one segment among the many modalities by which companies transact business. The reason is that customers (e.g. including airlines and service providers) remain free to decide how they want to conduct business with UTC, Honeywell or other suppliers e.g. by using MyAircraft.com, e-mail, fax, telephone etc. The notifying parties explain that MyAircraft.com will increase the efficiency of communications between aerospace industry participants without changing the way transactions are conducted in the aerospace industry and without having an impact on the definition of underlying markets of aerospace parts and services.
12. The services offered by MyAircraft.com to its customers include supply chain management tools and e-procurement. To a large extent these services form an integrated part of the services offered by MyAircraft.com in order to enable customers of the site to use MyAircraft.com as a purchasing or selling tool. However, some

⁴ The agreements constituting MyAircraft.com are i) the Joint Venture Formation Agreement, ii) Limited Liability Company Agreement called the LLC Agreement and the iii) i2 License Agreement.

⁵ Turnover calculated in accordance with Article 5(1) of the Council Regulation (EC) N°4064/89 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.

elements of the supply chain management service may seem to go beyond what is normally required by a user of MyAircraft.com in order to use this site to make business. This is in particular the case for the inventory planning tools and forecasting tools. The market investigation reveals, however, that a majority of third parties consider that these services are distinct components that may be offered separately or in combination but third parties do not at present consider that they form a distinct product market.

13. In the present case, the precise relevant product market definition can be left open since irrespective of the market definition chosen, the proposed concentration does not give rise to the creation or strengthening of a dominant position.

B. Relevant geographic market

14. The notifying parties submit that the relevant geographic market in view of the characteristics of e-commerce in general, and e-commerce marketplaces for aerospace products and services in particular, is world-wide.
15. The market investigation reveals that the relevant geographic market might be world-wide due to the characteristics of e-commerce in general and to the fact that the geographic market for aerospace products and services is world-wide.
16. The precise definition of the geographic market can, however, be left open since it for the purposes of this case it is not necessary to define the geographic market because the assessment of the concentration would be the same regardless of whether the geographic market is world-wide or not.

V. COMPETITIVE ASSESSMENT

17. The notifying parties have submitted that this transaction will not lead to any affected markets.
18. In general, third parties welcome the transaction and emphasise that MyAircraft.com is introducing a new medium in which competition is continued and that MyAircraft.com will make the operations more efficient, faster and less costly. The transaction is seen by third parties as pro-competitive.
19. At present, there are other e-commerce service providers in the market for aerospace part and services and apparently there are no barriers to entry if other enterprises in the sector for aerospace parts and services want to set up a similar B2B e-commerce. A number of new entrants are expected and have already been publicly announced (aerospan.com, avaiationX.com, Airparts.com, PartsBase.com). In addition, a number of airlines and manufacturers of aerospace parts and services have already launched their own web-site.
20. Regarding the possible impact on the upstream market where both parents are active namely, aerospace parts and services, the notifying parties submit that there is nearly no overlap between the parties. The market shares of the notifying parties in the upstream market are not significant as the combined market share amounts to less than [15-25] % of the world-wide market for aerospace parts and services. Supposing that 50% of UTC's and Honeywell's sales of the relevant parts and services were to be made

through MyAircraft.com this would correspond to less than [5-15]% of the world-wide sale of aerospace parts and services.

21. As MyAircraft.com will in all likelihood face strong competition on the above market from other websites, the concentration does not raise serious doubts as to its compatibility with the common market.

VI. Ancillary Restraints

22. Clauses [...] of the Limited Liability Company Agreement impose restrictions on the parties to engage in activities relating to competing internet platforms in the aerospace sector.
 - Clause [...] requires UTC and Honeywell not to use the services of any competitor of MyAircraft.com for the purchase and sale of aftermarket parts and the performance of aftermarket services for a period of [...] from the formation date,
 - Clause [...] prevents the parties for a period of [...] from the formation of the joint venture from making any of their consulting resources or services available to competing aerospace internet platforms.
 - Clause [...] prevents the parties from promoting any competitor of MyAircraft.com for a period of [...] from the formation date,
 - Clause [...] prohibits the parties from acquiring an equity interest in any competitor of MyAircraft.com for a period of [...] after they have reduced their shareholding below [...]. For UTC and Honeywell these obligations will also expire [...] after the initial public offering by MyAircraft.com.
23. Under clause [...] i2 is prohibited for a period of [...] from the formation date, from selling or licensing to a company competitor or certain identified aerospace businesses, any of the software to be made available to MyAircraft under the Licensing Agreement.
24. These clauses are necessary to ensure that the joint venture is established on a solid base. With the exception of the [...] period set out in clause [...] the duration of the restrictions are reasonable. In line with the Commission's Notice on Restrictions Ancillary to Concentrations (OJ C 203, 14.8.1990, p.5) the restriction in clause [...] of the Draft LLC Agreement can only be regarded as ancillary to the operation for a period of [...]. Subject to this provision the Commission considers that these restrictions are directly related and necessary to the implementation of the concentration.

VII. 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,
Pedro SOLBES MIRA
Member of the Commission