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*Case No IV/M.237 -
DASA / FOKKER*

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

Article 6(1)(b) NON-OPPOSITION
Date: 10.05.1993

*Also available in the CELEX database
Document No 393M0237*



Brussels 10.5.1993

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

By registered mail with advice
of delivery

To the notifying party

Dear Sirs,

Subject: Case No. IV/M.237 - DASA/Fokker
Notification of 2.4.1993 pursuant to Article 4 of
Council Regulation No. 4064/89

1. The above operation concerns the acquisition of a majority interest in NV Koninklijke Nederlandse Vliegtuigenfabriek Fokker (Fokker) by Daimler-Benz AG. After examination of the notified operation, the Commission has concluded that it falls within the scope of application of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

2. Daimler-Benz is a German holding company active in a variety of sectors such as the manufacture and sale of passenger cars and commercial vehicles (through its subsidiary Mercedes-Benz) and the manufacture and sale of automation equipment and systems, rail transport systems, electronic equipment and components (through its subsidiary AEG).

Daimler-Benz is also active in the development, manufacture and sale of aerospace-related products through its subsidiary Deutsche Aerospace AG (DASA). DASA is the second largest European aircraft manufacturer in terms of turnover. It is active in all three segments of the aircraft industry, ie aircraft, propulsion and equipment. 44% of the turnover was achieved through the production and sale of aircraft. DASA is involved in the manufacture of large commercial aircraft as a member of the Airbus consortium. The company also produces regional transport aircraft (D0328).

3. Fokker manufactures and sells mainly civil aircraft and related products and services. Fokker is a major

manufacturer of regional aircraft with its two models F50 and F100. Fokker's aircraft activity makes up more than 80% of its total turnover of 1,794 million ECU (1992), with the F100 business contributing 68% and the F50 business 14%. Other activities of Fokker are the development, production and assembly of space systems and other machinery, parts and systems in the civil and military area.

II. THE OPERATION

4. The parties have concluded a set of agreements which will bring about the operation. The agreements provide for the acquisition of 51% of the shares of Fokker through Fokker Holding BV (Holding) which is a subsidiary of ZPG Beteiligungs- und Verwaltungs GmbH (ZPG), which in turn is a subsidiary of DASA. Furthermore, the agreements regulate the complex future relationship between DASA, Fokker, Holding and the Netherlands State (the State). In addition, the possible entry of other "industrial partners" into Holding has been taken into account.
5. DASA, the State and Fokker have concluded a Master Agreement on the control of Fokker as a result of which the management board and the supervisory boards of Fokker will be restructured.

The management board of Fokker is appointed by the general shareholders meeting in which DASA, through Holding, has a majority of the votes.

The management board's decisions will be adopted by a simple majority of the votes. However, the board will need the prior approval of the supervisory board of Fokker for fundamental resolutions and major business decisions.

A qualified majority of seven votes is required of the supervisory board on the following business matters of Fokker:

- changes in the role of Fokker as the lead company for all present and future business in the field of medium range jet aircraft for transportation of between 65 and 130 passengers other than the Airbus programme, with the A319 at the lower end,
- the termination of existing programmes for jet aircraft,
- the acquisition or disposal of assets or businesses or the entering into joint ventures,
- the buy-in, cancellation or new issue of Fokker shares,
- the reservation of the annual profits, and
- the changes in the worksharing stipulated by the Industrial Partners Agreement.

The composition of the supervisory board allows DASA to control the simple majority of the board but not the qualified majority. For the latter, DASA will always need the votes of two independent directors or one independent director and the State director.

6. With this operation, DASA pursues the objective of becoming a prime contractor for a major aircraft programme. The company regards this capability as essential for its

viability and long term profitability as an aircraft manufacturer. As Fokker is an established and highly regarded manufacturer of regional aircraft, DASA regards the acquisition of a controlling interest in Fokker as a step which will fulfil its objective. It brings DASA closer to becoming the European centre of production for "narrow bodies" for aircraft. DASA already does the final assembly for the A321. In addition Fokker could provide appropriate product support and marketing for DASA's turboprop aircraft DO328 for which the first deliveries are expected this year.

III. COMMUNITY DIMENSION

7. The aggregate worldwide turnover of the Daimler-Benz group and the Fokker group in 1992 amounted to more than 5 billion ECU (Daimler-Benz: 48,779 million ECU; Fokker: 1,794 million ECU). Both had a Community-wide turnover of more than 250 million ECU (32,134 billion ECU for Daimler-Benz and 447 million ECU for Fokker) and they did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State.

IV. CONCENTRATION

8. As a result of the operation, Daimler-Benz will acquire control of Fokker. Through Holding, the company will control a majority of voting rights in Fokker's shareholders meeting. Furthermore, Daimler-Benz will exercise control over most of Fokker's business decisions. It needs the support of independent directors for only a few resolutions of the supervisory board. The qualified majority rule for these decisions does diminish DASA's degree of influence on Fokker. However, it does not deprive Daimler-Benz of decisive influence.

The voting rights of the State do not confer decisive influence. The State does not have the power to veto any decision on its own. In addition, it should be noted that the State has undertaken, by way of contract, not to oppose decisions related to the termination of any existing aircraft programme where such aircraft programmes are uneconomical for reasons of "market demand", competition or costs".

It follows that the notified operation will give rise to a concentration within the meaning of Article 3 of the Merger Regulation.

V. COMPATIBILITY WITH THE COMMON MARKET

Relevant markets

9. The main economic sector concerned by the transaction is the regional aircraft business for both jets and turboprops. In addition, both DASA and Fokker are active in space systems as well as defence systems.

i) Regional aircraft business

Relevant product markets

10. In its de Havilland decision of 02.10.1991, the Commission found a distinct market existed for regional turboprop aircraft and stated that neither regional jet aircraft nor jet aircraft developed for short and medium haul flights should be included in this market.

In fact, with regard to regional jet aircraft, there are significantly higher acquisition and operating costs. In addition, the time-saving is not significant on routes of less than 400 nautical miles while the average distance operated by turboprops is less than half of this distance.

In addition, these jet aircraft are approximately twice the price of the largest turboprop aircraft. It applies even more to the bigger jets.

a) Regional turboprop aircraft

11. In the same decision, turboprop aircraft with fewer than 20 seats were excluded from the market for reasons of certification security requirements, level of comfort, use, etc. With regard to aircraft with more than 20 seats, on the basis of information supplied by the industry concerned, the Commission made a distinction between commuter aircraft with 20 to 39 seats, 40 to 59 seats and 60 seats and over. In particular, it was found that the airline companies define the basic approximate capacity required for a specific use and then choose aircraft that provide the required capacity range.

Specifically, the airline companies appeared to take into account the route characteristics (in particular the expected passenger traffic and the frequency of flights), the level of business travel and the number of slots. The principal factor dictating the airline's fleet requirement was thus found to be the number of seats. As a result, the airline companies usually make their choice from aircraft grouped together in the relevant markets defined above.

b) Regional jet aircraft

12. In the notification, the parties assume that the relevant product market as regards jet aircraft is the market for jet aircraft of a seating capacity ranging from 70 to 130 seats. In addition, they stressed that, in its second Communication on "the European aircraft industry", the Commission drew a distinction between regional jet aircraft (between 70 and 130 seats) and large commercial aircraft (over 130 seats). It should be noted that the Commission, in the same Communication, pointed out that such a distinction is "relatively arbitrary".

Currently, Boeing, McDonnell Douglas (MDD) and Airbus sell or intend to sell aircraft with a capacity of around 130 seats which belong to the lower end of the large commercial aircraft range. Specifically, the Boeing B737 has a variety of configurations in order to provide various seating

capacities (some of them being more than 130 and some fewer) and thus there appears to be a link between regional and large commercial aircraft. The same conclusion can be drawn for MDD which manufactures the MD87, a 130-seat jet aircraft. Equally, Airbus plans to launch the Airbus A319, a 125 to 135-seat jet aircraft stemming from the bigger A320.

At present, a comparison of cost and performance data of those large commercial aircraft and the biggest existing regional jet aircraft (manufactured by Fokker and British Aerospace) only partly supports the parties' conclusion that both belong to the same product market.

In addition, a smaller jet aircraft, the Canadair 50-seat regional jet has been brought to the market recently (the first delivery took place in late 1992).

However, it is not necessary to decide in the present case whether all the above jet aircraft belong to the same market as the exact definition of the relevant product market for regional jet aircraft will not affect the subsequent competition analysis.

Relevant geographical market

13. The aircraft markets are considered to be world markets. There are no tangible barriers to the importation of aircraft in the Community, the costs of transportation are negligible and there is a significant mutual penetration between North America and Europe^(*).

ii) Defence activities

14. Fokker and DASA's defence activities only overlap to a very limited extent in this field (see below). Therefore, the exact definition of the relevant product and geographical markets in the defence field can be left open since even on the narrowest possible definition no dominant position is created or strengthened.

iii) Space systems

15. The satellite business includes both the institutional programmes which accounts for two-thirds of the global satellite business and the commercial business. In both cases, satellite consortia compete with each other offering the customers complete satellite systems. These consortia use the in-house production of their members as well as purchasing sub-systems and components from specialised producers. In addition, institutional programmes are governed by specific rules (eg the geographical return per state rule) which to a certain extent limit free competition. However, the precise definition of the relevant product and geographical markets for satellite systems may be left open as even on the narrowest possible definition no dominant position is created or strengthened.

(*) See the de Havilland decision of 2.10.1991.

Assessment

i) Regional aircraft

a) Regional turboprop aircraft

16. In view of the fact that DASA and Fokker produce different aircraft (with DASA's DO328 and Fokker's F50), an overlap would only result if the overall turboprop aircraft market is regarded as the relevant product market (which the Commission did in its de Havilland decision in an alternative assessment of the competition effects of the proposed merger). Assuming this is the case, the combined market share for DASA/Fokker is 13%.
17. In view of the fact that the market shares of DASA and Fokker on all markets are below 25% and that ATR (the joint venture of Aérospatiale and Alenia) holds stronger positions on each of the affected markets, there is no indication that the concentration will create a single dominant position of DASA/Fokker.
18. However, in 1991 Aérospatiale, Alenia and DASA entered into a Memorandum of Understanding with the objective of forming an alliance in the field of regional aircraft.

These plans for an alliance between the parent companies, ATR and DASA, led the Commission to question DASA's status as a significant competitor of ATR in its de Havilland decision on the basis of the above Memorandum of Understanding.

Co-operation between DASA and Aérospatiale/Alenia was abandoned in 1992 as the heavy investment needed for the development of the Regioliner was not supported sufficiently by market needs. The Memorandum of Understanding between DASA and Aérospatiale/Alenia thus expired at the end of 1991.

Thus the proposed alliance between DASA and Aérospatiale/Alenia has not materialised.

19. DASA has taken preparatory steps in its agreements with Fokker, the Holding and the State for the future entry of "other industrial partners". These preparatory steps could allow Aérospatiale/Alenia indirectly to become a shareholder in Fokker through a joint participation of 50% in Holding. However, Aérospatiale and Alenia are not the only possible industrial partners of DASA for the control of Fokker.

Finally, it is unlikely that other existing links between Aérospatiale/Alenia and DASA will create a competitive unity between them on turboprop aircraft markets.

20. Thus, DASA and Aérospatiale currently have to be regarded as independent competitors on the turboprop aircraft market.

b) Regional jet aircraft

21. In their notification, the parties assume that the air carriers require jet aircraft with a seating capacity of

between 70 and 130 to meet their specific requirements of point-to-point traffic between secondary airports serving routes with short and medium distances and a varying number of passengers. On the basis of this broad definition of the market, the market shares (total sales and firm order by seat including the B737-300 up to its 130-seat configuration) would be the following:

	<u>World</u>	<u>EEC</u>
BAe	11%	13%
Boeing	69%	62%
MDD	5%	14%
Fokker	15%	11%

22. No horizontal overlap will result from the proposed concentration since DASA has no activity in the regional jet aircraft field. In addition, Airbus (in which DASA is a partner) is not active at present in this market. The decision to launch the A319 should be taken by mid-1993 depending on the number of orders received by Airbus. At present, the actual number of orders received is far too low to take such a positive decision. Even if the A319 were launched, Boeing would remain the undisputed market leader through its B737 family of aircraft (B737-500: 120 seats; B737-300: 136 seats).
23. If the relevant product market was considered to be, on the one hand, jet aircraft with an approximate seating capacity of 100 and on the other hand jet aircraft with an approximate seating capacity of 130, no horizontal overlap would result from the proposed concentration. With regard to 100-seat aircraft, neither DASA nor Airbus are actual or potential competitors in this market. However, Airbus and Fokker (through its F130 project) are potential entrants into the market for jet aircraft with an approximate seating capacity of 130 where only Boeing and MDD are currently present and Boeing holds a market share of more than 90%.

ii) Defence activities

24. Both DASA and Fokker are involved in defence activities. Fokker is a contractor in the manufacture of the NH 90 helicopter project launched by the governments of France, Germany, Italy and the Netherlands. In addition, Fokker is active in mobile military command posts and components for weapons systems. DASA is mainly active in the production and sale of missiles, radar and military microelectronics. DASA is also a partner in the NH 90 project.
25. As a result, Fokker and DASA's defence activities only overlap to a limited extent in the field of helicopters where Fokker had never been active prior to its appointment by the State in the framework of the NH 90 international co-operation. In addition, it should be noted that given the particular conditions of competition in the defence industry, Fokker and DASA are neither actual nor potential competitors in the field of military helicopters. Furthermore, co-operation at European level for the next 10 to 15 years (such as the NH 90) has already been decided. Thus the concentration would not significantly affect the

structure of co-operation at European level.

iii) Space systems

26. Although both DASA and Fokker are active in both institutional and commercial satellite business, their activities only overlap, from a technical point of view, in the solar sub-systems for satellites range. However, DASA is active as a prime contractor offering complete satellite business meanwhile Fokker's activities only relate to the manufacture and sale of sub-systems and components for sub-systems. As a result, no horizontal overlap will result from the proposed concentration.

VI. CONCLUSION

27. It can, therefore, be concluded that the proposed concentration does not lead to the creation or strengthening of a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

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

For the Commission