

***Case No COMP/M.2438 -  
SES / STORK / FOKKER  
SPACE***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 24/07/2001

*Also available in the CELEX database  
Document No 301M2438*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.07.2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M. 2438 – SES/Stork/Fokker Space  
Notification of 22/06/2001 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 22/06/2001 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (the “Merger Regulation”) by which the undertakings Saab Ericsson Space AB (“SES”) and Stork N.V. (“Stork”) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Fokker Space B.V.
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. Saab Ericsson Space (“SES”) is a Swedish company active in spacecraft equipment such as digital and microwave technologies and mechanics. It is jointly controlled by Ericsson, active in the telecommunications and data communications industry, and Saab, a high technology company mainly active in defence, aviation and space industry. Saab is jointly controlled by BAE Systems, which also jointly controls Astrium, the leading prime contractor in the European space industry, especially for institutional satellites.

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<sup>1</sup> 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).

4. The Netherlands-based company Stork is active in textile printing and food processing, but also present in components, systems and services for the aviation and space industry, inter alia through the supply of launcher structures for the Ariane launcher.
5. Fokker Space is a Dutch company active in satellite equipment such as solar arrays, robotics for space infrastructure and structural components for the space industry. It was established as an independent company in 1995 and is 100% owned by Dutch Space Holding B.V., which in turn is controlled by the Dutch foundation Stichting Aandelen Dutch Space Holding.

## **II. THE OPERATION**

6. The proposed concentration consists of the acquisition of Fokker Space by SES and Stork. Via its fully owned subsidiary SES Netherlands B.V., SES will acquire 65% of the shares of Fokker Space, and Stork will acquire the remaining 35%.

## **III. CONCENTRATION**

7. SES will be the majority owner of Fokker Space. However, the Shareholder's agreement gives each party a veto right over business and investment plans and annual accounts. Therefore, Fokker Space will be jointly controlled by SES and Stork. It follows that the notified transaction is a concentration pursuant to Article 3 (1) (b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup>. Each of SES and Stork have a Community-wide turnover in excess of EUR 250 million, but they do not 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.

## **V. COMPETITIVE ASSESSMENT**

### **1. Relevant Product Markets**

9. In earlier decisions, in particular in the Astrium case (M.1636 – MMS/DASA/Astrium), the Commission found that the space industry could be subdivided into the following main sectors: Satellites, space infrastructure (mainly space stations), launch services, launchers and ground systems. In all these sectors, a further distinction has to be made between the prime contracting level and the equipment level. As regards satellite equipment, the Commission further distinguished between the platform and the payload of the satellite, and indicated that there might be separate product markets for the different subsystems and components assembled on the satellite.

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation 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.

10. The parties submit that the relevant product markets for equipment should be defined as solar arrays for satellites, mechanical products, thermal products, control products and instruments. They suggest that solar arrays should be further subdivided into separate markets for body mounted solar panels, rigid wing type solar arrays and rigid flat pack solar arrays, as these products differ significantly in sophistication, customisation and required production expertise and know-how.
11. As regards the other markets (mechanical, thermal and control products and instruments), the parties submit that these comprise products for use in satellites, launchers and space infrastructure because of the common know-how and expertise which is necessary for the development and production of each of the products regrouped in the same market. They submit that due to this common basis, supply side substitutability was high and therefore the producer of a given control product for instance would easily be able to compete for another product type in this market.
12. However, in this case the precise product market definitions for the different satellite components can be left open, as no matter the exact delineation of the markets, and even if one subdivided the generic markets further according to different equipment products, effective competition would not be significantly impeded in the EEA or any substantial part of it.

## **2. Relevant Geographical Markets**

13. Satellites and their equipment may be purchased by three different types of customers: (i) commercial operators (purchasing essentially communication satellites and equipment); (ii) civil institutional customers, i.e. national governments and space agencies such as ESA (focussing on observation and scientific satellites); and (iii) military customers (purchasing both types).
14. In previous decisions, in particular in the Astrium case (M.1636 – MMS/DASA/Astrium), the Commission found that (i) the markets for *commercial satellites and equipment* had to be considered as global, (since commercial customers purchase these products without concern for geographic considerations); (ii) the geographic markets for *civil institutional satellites and equipment* corresponded to the ESA Member State territories (since these products are primarily procured by the European Space Agency, which is required to grant preference to the fullest extent possible to industry in Member States (the "juste retour" principle); and (iii) that the geographic markets for *military products* would appear to be either national or world-wide, depending on the procurement pattern concerned.
15. The parties follow the geographical markets as previously defined by the Commission and which also apply to this case. They identify activities both on the commercial and European institutional market.

## **3. Assessment**

### *Horizontal effects*

16. As the parties' activities are mainly complementary, horizontal overlaps are limited to few products such as hot rudders, thermal system analysis and engineering and support for attitude and orbit control systems (AOCS). Their combined market share on all these

markets is 7% and below, on the institutional as well as on the commercial market, and also if one considered the more generic market definitions submitted by the parties.

### *Vertical issues*

#### European robotic arm

17. Fokker Space is the prime contractor for the “European robotic arm (ERA)”, a control device which is one of the main contributions of the Netherlands (via ESA) to the International Space Station (ISS). The parties submit that in case one considered this unique project as a separate product market, this would lead to an affected vertical market, since SES and Stork act as sub-contractors to Fokker Space with regard to a computer board (SES) and high tolerance mechanisms and electronic control for the ERA (Stork). However, there is no indication that competition concerns could result from this vertical relation, as the ERA is a unique project and as all sub-contractors have already been appointed.

#### Carbon fiber structures for solar arrays

18. Stork supplies carbon fiber structures, a base material for solar arrays, to Fokker Space. As regards solar arrays, Fokker’s market share on the European institutional market amounts to 55% for rigid wing type solar arrays if they are considered as separate product market. If all types of solar arrays are considered as one product market, the share reaches 65%. On the respective commercial markets, shares are around 10%. Although as a result carbon fiber structures are a vertically affected market, it appears that no competition concerns arise from this point.
19. Firstly, the carbon fiber structure accounts for only about 5% of the total cost of a solar array. Consequently, the possible leverage from this component on the downstream market for solar arrays or whole satellites is very limited. Secondly, it has to be noted that Fokker Space is the only customer of Stork for carbon fiber structures in the space industry. Thus, there is no risk of a restriction of Stork’s supplies to competitors of Fokker Space in the area of solar arrays as a result of this transaction. Finally, Stork’s position in the markets for carbon fiber structures is limited and subject to competition from several other suppliers. If one considered a market for carbon fiber structures for space applications, Stork’s share would be below 3%, on the commercial, as well as the European institutional market. The same applies for the commercial market if carbon fiber structures for solar arrays were considered separately. On a European institutional market for carbon fiber structures for solar arrays, Stork’s share amounts to around 35%. However, there are two other competitors, EADS LV and Eurocopter, which both hold comparable shares of around 30% in the institutional market. In addition, there are several other companies like Contraves Space (Switzerland), Hurel-Dubois (France) and SABCA (Belgium) that produce carbon fiber structures for space and aircraft applications. As production technology and know-how for these applications are similar to those for solar array applications, these companies can be considered as potential competitors able to enter the market for carbon fiber structures for solar arrays.

### *The link to Astrium*

20. As indicated above, BAe Systems, which jointly controls Saab, one parent company of SES, also jointly controls Astrium. Astrium is active at the prime contracting level both

for the commercial and institutional sector, as well as at the equipment level. If one considered Astrium to be in the same group as SES and finally Fokker Space, there would firstly be horizontal overlaps as regards rigid wing type solar arrays (Astrium does not produce rigid flat pack solar arrays and Fokker Space has no sales of body mounted solar arrays), where Astrium on the European institutional market holds a 6,7 % share, and a 15% share in all solar arrays taken together. Given Astrium's leading position in the downstream market for prime contracting for institutional satellites, a link to Astrium would also raise vertical issues, for instance, if BAe Systems instructed Astrium to preferably source from Fokker Space to the detriment of Fokker's competitors, or if it instructed Fokker Space to restrict supply of equipment such as solar arrays to competitors of Astrium. However, there are no indications that such competition concerns will materialise.

21. Firstly, it should be noted that BAe Systems does not have sole control over SES or Astrium. In addition, the link between Fokker Space and Astrium appears to be remote. As regards Fokker Space, BAe Systems' instructions would have to go through three levels of joint ventures (Saab, Saab Ericsson Space and ultimately Fokker Space). BAe Systems is not directly represented in the boards of Directors of SES or Fokker Space, and there are no direct links between BAe Systems and SES on either management level, employee level or through commercial contracts between these companies. Finally, the commercial importance of Fokker Space's activities in relation to BAe Systems business is minor. SES' activities account for only 2.5% of the turnover of the Saab group, which leads to an even smaller figure if one considered the relation between Fokker Space and BAe Systems.
22. Secondly, the transaction is of very minor impact against the background of the current business relations between Astrium and Fokker Space. In that respect, it must be noted that Fokker's market share relates primarily to sales to Astrium. Astrium today accounts for over 95% of Fokker's sales of solar arrays on the institutional market. Therefore, BAE/Astrium's margins to further increase Astrium's supplies from Fokker Space are very limited and any increment would not lead to a significant change in Fokker's current position. Accordingly, there are no significant risks of foreclosure to the disadvantage of Astrium's competitors on the prime contracting level, Alcatel and Alenia. Alcatel has its own captive production and does not purchase solar arrays on the market. Alenia purchased only [very few solar arrays] for European institutional programs in the last three years [...] from Fokker Space. Alenia considers Alcatel to be a sufficient supply alternative and identified several potential suppliers in Europe such as Officine Galileo (belonging to Alenia's group), Fiar (IT), Dera (UK) and Contraves (CH).

*No impact on the parties' position resulting from the principle of fair geographic return*

23. Finally, there is no impact on the above assessment of the parties' position on the markets for solar arrays and carbon fiber structures resulting from the principle of fair geographic return. According to this principle which governs European institutional programs, ESA is required to grant preference to the fullest extent possible to industry in all participating Member States. Although the transaction combines two Dutch companies, Fokker Space and Stork, which account for a part of the return of the Netherlands' participation in ESA programs, this situation is unlikely to affect Stork's or Fokker's market position in the two above mentioned markets. Fokker represented for the last five years approximately 40% of the geographical return of the Netherlands, Stork accounted for around 4%. In addition, there are currently around 200 firms in the

Netherlands that represent the remaining share of the return. Therefore, a situation where there would not be sufficient alternative suppliers for ESA projects in the Netherlands that could meet the Dutch geographical return, with the result that the parties' guaranteed sales and their market share in the above mentioned markets would likely increase, is very unlikely.

*Conclusion of the assessment*

24. In the light of the above, it can be concluded that the operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

**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