

***Case No COMP/M.2924 -  
EADS / ASTRIUM***

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: 20/12/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.12.2002  
SG (2002) D/233490

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2924 - EADS/ASTRIUM  
Notification of 21/11/2002 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 21.11.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking European Aeronautic Defence and Space Company EADS N.V. ("EADS") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Astrium N.V. ("Astrium") by way of purchase of shares.
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. EADS is a jointly-held undertaking which combines the former group activities of Aerospatiale Matra SA, DaimlerChrysler Aerospace (DASA) and Construcciones Aeronauticas. EADS is jointly controlled by DaimlerChrysler, Lagardère and the French State via EADS Participations B.V., a Dutch limited liability company that acts on the basis

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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).

of a Contractual Partnership between DaimlerChrysler, SEPI<sup>2</sup> and SOGEADE (a company jointly controlled by Lagardère and the French State). EADS consists of five business units (Airbus, Military Transport Aircraft, Aeronautics, Space Systems and Defence and Civil Systems). Its business activities are far-reaching and include: commercial aircraft, telecommunications equipment, civil and military helicopters, space vehicles and orbital infrastructures, guided weapons and guided weapons sub-systems, drones, military aircraft and defence electronics and systems.

4. Astrium was formed in 2000 by the combination of the activities of Matra Marconi Space (“MMS”) and all the DASA activities performed in its subsidiary Dornier Satellitensysteme GmbH (supply of satellites and sub-systems) and its division Raumfahrt-Infrastruktur (supply of space infrastructure and launchers). The formation of Astrium was the subject of a merger notification dated 29 October, 1999 (case COMP/M.1636), and was approved by the Commission on 21 March, 2000 on the basis on some commitments by the parties. Upon its creation, Astrium was jointly controlled by DASA and by MMS. As a result of the creation of EADS, and of the merger between British Aerospace and Marconi Electronic Systems to create BAE SYSTEMS (“BAES”), Astrium is now owned as to 25% by BAES and as to 75% by EADS, which jointly control Astrium. The principal activities of Astrium are the design, development and manufacture and supply of space systems, including satellites and their payloads, sub-systems for launchers and manned space flight vehicles, ground stations, and various other sub-systems and technologies.

## **II. THE OPERATION**

5. The operation consists in the acquisition of sole control over Astrium by EADS, through the purchase by EADS of all shares owned by BAES in the Astrium group. The transaction is conditional upon regulatory clearance and upon the financial close of the Skynet 5 contract between the UK Ministry of Defence (MoD) and Paradigm, a consortium led by Astrium<sup>3</sup>. Paradigm was granted preferred bidder status by the UK MoD. The Commission in a letter dated 4 September, 2002 agreed that despite this condition, sufficient elements of a concentration were present for the transaction to be reviewed under Council Regulation (EEC) No 4064/89<sup>4</sup>.

## **III. CONCENTRATION**

6. EADS acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Astrium by way of purchase of shares. The operation therefore constitutes a concentration pursuant to Article 4 of the Regulation 4064/89.
7. [The concentration notified to the Commission did not cover] the TX business unit -which presently is within Astrium responsible for the Skynet 5 project-. [...]

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<sup>2</sup> Sociedad Estatal de Participaciones Industriales (SEPI) is a Spanish state holding company that holds a minority shareholding of 5.52% of the share capital of EADS.

<sup>3</sup> BAES and EADS submitted a bid for the Skynet 5 programme through their joint-venture Astrium. The bid is referred to as Paradigm.

#### IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>5</sup>. Each of EADS and Astrium have a Community-wide turnover in excess of EUR 250 million (EUR Mio 13,324 for EADS and EUR Mio 1,731 for Astrium), 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

9. The transaction involves the change from joint control of Astrium by EADS and BAES to sole control by EADS. To that extent, the only change in terms of the competitive assessment is the closer vertical link between EADS and Astrium. However, the formation of Astrium was the subject of a merger notification dated 29 October, 1999 (case COMP/M.1636), and was approved by the Commission on 21 March, 2000 on the basis of some commitments by the parties. In its investigation of Astrium, the Commission examined in particular the vertical links between EADS and Astrium but did not rely on the stake of BAES in Astrium to lift competition concerns.
10. The parties submit that the transaction does not affect any market in the sense that it does not change the relative strength of the different market players in the markets where Astrium and EADS are active. They argue that for purposes of assessing the competition impact of the transaction under the EC Merger Regulation, it should be noted that Astrium and EADS belonged to the same group of companies before to the transaction. EADS was already a controlling shareholder of Astrium and the transaction does not therefore, according to the parties, alter the competitive position of EADS.
11. The Commission does not share the view that there are no affected markets in the sense of Section 6 III of Form CO as set out in Commission Regulation (EC) N°447/98 of 1 March 1998 on the notifications, time limits and hearings provided for in Council Regulation N° 4064/89 on the control of concentrations between undertakings<sup>6</sup>. In some markets, EADS and Astrium could be found to be in a horizontal or in a vertical relationship and meet the market share thresholds. For example, EADS' satellites components business is upstream of Astrium's activities as prime contractor for satellites, and Astrium holds

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<sup>5</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.

<sup>6</sup> [...] affected markets consist of relevant product markets where, in the EEA territory, in the Community, in the territory of the EFTA States, in any Member State or in any EFTA State: (a) two or more of the parties to the concentration are engaged in business activities in the same product market and where the concentration will lead to a combined market share of 15% or more. These are horizontal relationships; (b) one or more of the parties to the concentration are engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and any of their individual or combined market shares is 25% or more, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration. These are vertical relationships.

market shares above 25% in particular on the European market for institutional satellites.

12. However, these relationships had already been examined by the Commission at the time of the Astrium decision, which dealt with all competitive concerns resulting from the creation of Astrium and among other things the vertical links between EADS and Astrium. The parties have provided information showing that market conditions have not changed in a significant way since the operation, apart for the undertakings implemented following the creation of Astrium. This has been confirmed by the market investigation: it does not appear that the competitive structure of the market is any different for the present operation from what it was after the implementation of the remedies in the Astrium case. Furthermore, the investigation has indicated that the current state of the European space market had remained broadly competitive despite the vertical links between EADS and Astrium that have already existed before the present operation. Finally, respondents to the Commission's questionnaires did not indicate competition concerns.
13. In conclusion, the present operation does not seem to change the competitive structures of the satellite and space markets and does not raise serious doubts as to its compatibility with the common market.

## **VI. CONCLUSION**

14. 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

*(Signed)*  
Mario MONTI  
Member of the Commission