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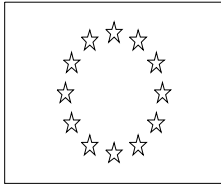
*Case No COMP/M.2938 -
SNPE / MBDA / JV*

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/10/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/10/2002

SG (2002) D/232408

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2938 – SNPE / MBDA / JV**
Notification of 27 September 2002 pursuant to Article 4 of Council Regulation No 4064/89¹.

1. On 27 September 2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which MBDA S.A.S ('MBDA') and SNPE S.A. ('SNPE') acquire joint control of NEWPRO, 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 TO THE OPERATION

3. MBDA is a French undertaking which is jointly-controlled by BAE Systems plc ('BAES', UK), the European Aeronautic Defence & Space Company ('EADS'), and Finmeccanica S.p.A. ('FNM', IT). MBDA primarily supplies guided weapons and guided weapons systems ('GW/GWS').
4. SNPE, currently controlled by the French State, produces energetic materials, pharmaceuticals and fine chemicals (including nitro-cellulose used for the propulsion of rockets). SNPE, together with EADS, jointly controls through Systèmes Propulsifs S.A.S. ("ISP") the French company Celerg International S.A. (Celerg), a company active in the supply of solid rocket motors for tactical military weapons.

¹ 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).

- NEWPRO, the joint venture to be established, will own and control Celerg and the propulsion systems for tactical weapons activities (RORM) of the UK company Royal Ordnance plc, a wholly-owned subsidiary of BAES.

II. THE OPERATION

Joint control

- As a result of the transaction, MDBA and SNPE will hold an equal number of shares in NEWPRO (50% each). Pursuant to the Shareholder's Agreement, and given that resolutions by the Shareholder's Committee must be unanimous, it can be concluded that both Parties jointly have the possibility to exercise decisive influence over the JV.

Full function

- NEWPRO will perform, on a lasting basis, all the functions of an autonomous economic entity. It will have its own management and sufficient resources. The majority of NEWPRO's sales are to its parents MBDA and SNPE. Such does not imply that the joint venture would be dependent on its parents, but merely reflects the long-term nature of contracts already awarded. There is no contractual exclusivity of NEWPRO's sales to its parents, future transactions will be agreed at arm's length and Intellectual Property rights will be transferred to NEWPRO to enable it to act as an independent undertaking. The proposed transaction is therefore a full-function joint venture constituting a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Community dimension

- The combined worldwide turnover of all undertakings concerned is well in excess of € 5,000 million in 2001. The aggregate Community-wide turnover of more than two undertakings concerned amounted to more than € 250 million in 2001. The undertakings concerned did not achieve more than two-thirds of their EU turnover within one and the same member state. The concentration therefore has a Community dimension pursuant to the Article 1(2) of the Merger Regulation.

III. COMPETITIVE ASSESSMENT

Relevant Product Market

- Both Celerg and RORM produce propulsion systems for military use, and in particular, develop, manufacture and supply rocket motors for tactical military devices². Rocket motors provide thrust by accelerating the exhaust produced by the combustion of a propellant.
- According to the parties, a distinction should be made between propulsion systems for tactical weapons, on the one hand, and propulsion systems for strategic ballistic missiles, on the other hand. The market investigation has confirmed this. Due to technical differences, relating to size, performance and the duration of burn of the propulsion system, there is no possible substitution from the demand-side. As to supply-side substitution, propulsion systems for strategic ballistic missiles are manufactured in dedicated facilities for technical and national security reasons. The market investigation has also confirmed that it is not necessary to apply a further segmentation of the rocket motor market according to the tactical

² Tactical military devices (tactical weapons) include tactical Guided Weapons / Weapons Systems (GW/GWS), non-guided weapons and other tactical military devices.

military devices application it is used for. As the same basic technology is applied regardless of the final use of the rocket motor, there is a high degree of supply substitutability.

11. Different technologies can be used in propulsion systems for tactical weapons, although solid propellants technology (“solid rocket motors”) appears to be the only type that is generally applied in tactical weapons. New technologies such as hybrid technology, gel propellant technology, pulse detonation engines and ramjets are in development. On the basis of the market investigation, it appears however that only ramjet technology is sufficiently advanced, although it is not yet on the market, to be applied in the foreseeable future applications. Even when fully operational, the use of ramjets will be reserved for niche applications. Therefore, with regard to the question whether the relevant market should include ramjets, the precise market definition can be left open as such would not materially affect the assessment of the notified concentration.
12. A solid rocket motor consists of a propellant charge, an igniter, a motor case, a blast pipe, a nozzle and insulation. It is however not necessary to define separate markets for these components as they are, with the exception of propellant charges, not sold on a stand-alone basis. As to propellant charges, the one most commonly used in solid rocket motors is made up of nitro-cellulose for military use, also known as Cotton Powder (CP), which is produced by, amongst others, SNPE. The production of propellants can be considered as a market upstream of solid rocket motors. With regard to the question whether the relevant market could be as narrow as only including CP, the precise market definition can be left open as such would not materially affect the assessment of the notified concentration.
13. As such, the relevant market can be defined as solid rocket motors for tactical military products.

Relevant geographic market

14. In previous decisions, the Commission has considered that the relevant geographical market is national in those Member States where a domestic supplier exists and worldwide otherwise³. The market investigation has confirmed this practice with regard to solid rocket motors as sub-systems for tactical military products.
15. Ministries of Defence (“MoDs”) are the ultimate customers for tactical weapons. Although MoD may leave the selection of the propulsion system supplier to the prime contractor (such as MBDA) for a given tactical weapons programme, the market investigation clearly indicates that the solid rocket motor supplier is generally established in the Member State that has initiated the tactical weapons programme⁴. Even though MoDs increasingly refrain from selecting sub-suppliers, contracts are still awarded to domestic rocket motors supplier in countries where such a national supplier exists. Such can be explained by the fact that MoD’s request that their national industries are assigned with a portion of the overall workload generated by the programme (offset schemes). Member States can also co-operate in tactical weapons programmes initiated by other Member States (or in a wider context such as NATO).
16. The market investigation has pointed to a number of instances where EEA-based tactical weapons suppliers have selected or put into competition US-based rocket motor suppliers. As confirmed by the market investigation this trend is accelerating as the importance of offset

³ See inter alia Decision COMP/M.1745 – EADS of 11 May 2000.

⁴ Even within the MBDA group, national units have remained to supply national MoDs.

schemes is gradually decreasing. The market investigation has also confirmed that there are no major restrictions for US rocket motor suppliers to enter the EEA other than export restrictions to countries outside NATO. Whilst taking into account the competitive pressure that US rocket motor suppliers can exert on NEWPRO for future competitions, the limited number of competitions in which US rocket motor suppliers competed does not allow to conclude that the relevant geographic market can already be considered to be wider than national for those member states where a domestic supplier exists.

17. MoD with no domestic tactical weapons industry can, apart from co-operating in tactical weapons programmes, also procure off-the-shelves tactical weapons systems on the international market (generally the US). In this case, the system is procured as a package with no individual selection of the propulsion system. Without exception, US sourced tactical weapons systems contain a US developed rocket motor. In such case, the market for solid rocket motors can be considered as international (including the EEA and the US).

Competition effects

A. Introduction

18. The formation of MBDA⁵ has created a leading manufacturer of GW/GWS, which is on a worldwide level second only to the US producer Raytheon. MBDA competes for GW/GWS programmes with both EU prime contractors, such as Thales and SAAB Bofors Dynamics, and US companies such as Lockheed Martin, Boeing and Raytheon.
19. The European defence industry has undergone a series of consolidations over the past years, which have resulted in the creation of several structural links between major defence players, including rocket motors suppliers. Consequently, structural links exist between MBDA (jointly controlled by BAES, EADS and FNM) and Celerg (jointly controlled by SNPE and EADS), as well as between MBDA and RORM (solely controlled by BAES). In addition, a structural link also exists between the third largest European rocket motors supplier, Bayern-Chemie/Protac (jointly controlled by EADS and Thales) and MBDA.
20. On the face of it, the operation does not alter the structural links between Celerg, RORM and MBDA. The only change brought about by the concentration is that it will create a direct vertical link between MBDA and RORM, whereas before the operation, the structural link between MBDA and RORM was indirect, via BAES. Consequently, the Commission's analysis has not only focused on the impact of the operation on the market for rocket motors, but also on its possible impact on the downstream market for tactical weapons, and in particular GW/GWS.
21. The market investigation has not indicated that the existence of structural links between MBDA and Bayern Chemie/Protac has hindered the latter to act as an independent competitor on the market. It can therefore be considered that the present concentration merely restructures the already existing structural links between MBDA on the one hand and Celerg/RORM on the other hand whilst not affecting the independence of Bayern Chemie/Protac. In addition, MBDA currently already accounts for [a substantial share] of Celerg's and RORM's combined sales, illustrating the strong links existing between MBDA and Celerg and RORM, already before the operation.

⁵ MBDA was not reviewed by the Commission, following action of Member States invoking Article 296(1)(b) EC.

B. Market Positions

22. In the national markets for solid rocket motors, the creation of NEWPRO leads to a limited horizontal effect. Indeed, the market investigation has indicated that Celerg and RORM have rarely competed directly with one another for the same programme. In the French and UK national markets -which represent a large proportion of the total procurement in the EEA- RORM and Celerg never competed against one another: without exception, RORM has supplied rocket motors to UK initiated tactical weapons systems whilst Celerg was selected in the case of French initiated programmes. In other countries, RORM and Celerg have sometimes competed, although domestic suppliers have generally been preferred, i.e. Bayern Chemie/Protac in Germany, FiatAvio in Italy, and Nammo/Raufoss in Scandinavian countries. As a result, the vast majority of sales by the respective rocket motors suppliers are made in their home country. The operation will not have a significant impact on national markets, due to this preference for domestic suppliers. In addition, tactical weapons suppliers will continue, after the operation, to have to ability to select rocket motors suppliers other than NEWPRO: both European suppliers such as Bayern Chemie/Protac, FiatAvio, Nammo/Raufoss and SNECMA, and US suppliers like ATK⁶ or ARC⁷ for instance. Due to an internationalisation trend, US rocket motor suppliers are becoming increasingly credible bidders, not only for transatlantic co-operation programs but also for national programs.
23. In the markets with an international geographic scope, competition takes place at the prime contracting level, and not at the level of sub-suppliers. On the basis of an international market (comprising the EEA and the US), the combined market shares of RORM and Celerg would amount to [15-25]%, facing a number of US competitors: ARC with [15-25]%, ATK with [15-25]% and CSD with [5-15]%. Bayern Chemie/Protac would hold [5-15]% of the market. With regard to the structural links between EADS and Bayern-Chemie/Protac, the market investigation has indicated that the latter is to be considered as behaving independently in the market. Although Bayern Chemie is consistently selected as the rocket motor supplier for German tactical weapons programmes, it has also competed against Celerg for French/German tactical weapons programmes.
24. In conclusion, the operation does not raise any horizontal competitive issues.

C. Vertical integration

25. The Commission investigated two vertical relationships: one between rocket motors and propellants, and one between rocket motors and GW/GWS, because the parents of NEWPRO, SNPE and MBDA are present on these upstream and downstream markets.
26. Concerning propellants, this market is not vertically affected as SNPE's market shares remain below 25% whatever market definition for propellants is retained. There are consequently no competitive issues regarding NEWPRO's vertical links with SNPE.
27. Regarding the vertical links between NEWPRO and MBDA, it is worth recalling that structural links between MBDA on the one hand and Celerg / RORM on the other hand, already exist. However, three possible risks of market foreclosure have been examined during the market investigation : (i) the risk that MBDA may switch from one of NEWPRO's competitors to NEWPRO during an existing programme ; (ii) the risk that MBDA may stop considering competitors to NEWPRO in selecting solid rocket suppliers for its bids in future

⁶ As shown from the Brimstone UK program where ATK is the propulsion system sub-contractor.

⁷ As shown from the Rb 15 Mk2 Swedish/Finnish program where ARC is the propulsion system sub-contractor.

programmes, which would result in them being foreclosed from access to the main European customer ; (iii) the risk that MBDA may use NEWPRO to reinforce its competitive position in the GW/GWS market by preventing its competitors from using NEWPRO's propulsion systems, by increasing their costs through discriminative pricing⁸ or by lowering the general quality of the products they would buy from NEWPRO.

28. With regard to (i) the risk that MBDA may switch from one of NEWPRO's competitors to NEWPRO, the Commission found that no switching occurs during the life time of a GW/GWS programme⁹. Consequently, for on-going programs, it does not appear that MBDA will switch from their existing third party sub-contractors in favour of the joint venture. Regarding, (ii) the risk that MBDA may stop considering competitors to NEWPRO in its future bids, it appears that MBDA may have the ability to do so, but that there would not be incentives for MBDA to have an exclusive relationship with NEWPRO. In the past, MBDA has used a variety of rocket motor suppliers (RORM, SNECMA, FiatAvio, ATK, Bayern Chemie/Protac). There is no reason to believe that MBDA would refrain in the future from using sub-contractors that could make offers of better quality or lower price than NEWPRO, especially if this could damage the competitive positioning of MBDA against its competitors in the GW/GWS markets. Moreover, the importance of offset schemes, albeit decreasing, would restrict the ability of MBDA to use exclusively NEWPRO.
29. Finally, regarding (iii) the risk that MBDA may use NEWPRO to reinforce its competitive position in the GW/GWS market, the Commission found a number of factual elements which negate the likelihood of such a scenario. The investigation showed that market participants do not consider it likely that MBDA would prevent NEWPRO from supplying other GW/GWS manufacturers altogether. This would go against NEWPRO's profit maximising strategy, and SNPE, which has joint control and the right to appoint the CEO of NEWPRO, would oppose it. But even a situation whereby MBDA would use NEWPRO to foreclose its rivals through discriminative pricing or by lowering the general quality of the products does not seem likely. Firstly, there will still remain after the operation other rocket motor suppliers, which have the capacity to take part in new programs and to supply equivalent products to NEWPRO (e.g. Bayern Chemie/Protac, FiatAvio, Nammo/Raufoss and SNECMA, ATK, or ARC). Secondly, MoD have the ability to detect and oppose such a behaviour from MBDA¹⁰. Finally, MBDA is not in a position to foreclose its US GW/GWS competitors through NEWPRO and would therefore not prevent competition from US players in the GW/GWS market.
30. In conclusion, it appears that the present operation does not raise competition concerns regarding vertical issues

IV. CONCLUSION

31. In light of the above, the Commission has concluded that the proposed transaction is not likely to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

⁸ The propulsion system accounts for a substantial part of the total cost of a tactical weapon.

⁹ This is due to the high cost and duration of the 'qualification process' used to verify the ability of manufacturers selected to produce new tactical military products and sub-systems such as solid rocket motors.

¹⁰ The investigation showed that MoD have specific powers in terms of price control, through dedicated staff with investigating powers into the books of armament suppliers and the possibility to conduct audits, through sophisticated benchmarking techniques, cooperation between MoDs on price control.

32. 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