

***Case No COMP/M.3156 -  
EADS / ASTRIUM (II)***

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: 26/05/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.05.2003  
SG (2003)D/229920

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3156 - EADS/ASTRIUM**  
**Notification of 16/04/2003 pursuant to Article 4 of Council Regulation**  
**No 4064/89<sup>1</sup>**

1. On 16.04.2003, 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. On 20 December 2002, the Commission already issued a clearance decision concerning a transfer of BAES’ shares in Astrium to EADS (case M.2924), following an agreement reached in July 2002 (the ‘Initial SPA’). At the time, the Parties intended to transfer the TX business unit of Astrium into the two shell companies which were still under the joint control of EADS and BAES (the TX unit is mainly responsible for the handling of a bid under the project name “Paradigm” for a new generation of a military satellite communication system called “Skynet 5” which is tendered by the UK MoD). Consequently, the notification in case COMP/M.2924 did not cover the TX business unit of Astrium since EADS and BAES intended to keep it under their joint control.
6. Because the conditions precedent to the Initial SPA were not met before the deadline, the Initial SPA lapsed on 20 December 2002, and was never implemented. On 30 January, 2003, the Parties entered into a new agreement whereby EADS acquires all shares of BAES in Astrium. This agreement contains some modifications in relation to the initial SPA, and in particular provides that the TX Business Unit will come under sole control of EADS.
7. On 24 April 2003, the Commission granted a derogation under Art. 7 (4) MR as requested by the parties, due to the urgency in implementing the intended restructuring of EADS/Astrium with the aim to remedy the difficult financial situation of Astrium.

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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.

### **III. CONCENTRATION**

8. 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.

### **IV. COMMUNITY DIMENSION**

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</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**

10. In case M.2924, the Commission concluded that the acquisition of sole control of Astrium by EADS –excluding the TX business unit- does not raise competition problems. The relevant market conditions did not change in the meantime, so that the Commission's assessment is still valid. The considerations made in the Commission's decision of 20 December 2002 in case COMP/M.2924 EADS/Astrium are fully endorsed.
11. The only relevant difference between the present case and case M.2924 is the inclusion of the TX business unit, formerly intended to remain under joint control of EADS and BAES.

#### **1. Activities of the TX unit**

12. The TX unit has the following current and future activities: First, it provides OEM support services in connection with Skynet 4, the current military satellite communication system of the UK MoD, which is to be replaced by the new generation Skynet 5. These services are generally provided by the space system manufacturers and are closely related to the architecture of the space system concerned. In other words, such contracts are ancillary to the design and manufacturing of the space system and do not constitute a separate business.
13. Second, it provides telecommunications services to the UK and Belgian MoDs' personnel stationed abroad. These so called WELCOME contracts (WELfare COMmunications Everywhere) allow the UK and Belgian military personnel to make private phone calls and to use the internet wherever they are deployed abroad.
14. Third, and most importantly, the TX business unit is responsible (as part of the Paradigm consortium) for the bid for the Skynet 5 project. Paradigm was selected as the preferred bidder for the programme on 26 February 2002. It will likely carry out the Skynet 5

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<sup>3</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.

contract, if and when it is awarded. However, the TX business unit does not handle any manufacturing activity. Within the Paradigm consortium, Paradigm/TX has a functional role to manage the activities of the system/service suppliers (such as Astrium, SERco, LogicaCMG, Paradigm ServiceCo, and Cogent) and deals with the administrative and legal aspects of the bid.

15. As part of the Skynet 5 programme, Paradigm will essentially provide services to the UK MoD. In addition, Paradigm may also take over some existing telecommunications services provided to the UK MoD (which would account for a marginal part of Paradigm revenues). Most of them are currently carried out in-house by the UK MoD. In addition, Paradigm will be able to provide services to entities other than the UK MoD. The business plan prepared in connection with the Skynet 5 programme envisages that these services will be limited to providing WELCOME services and selling transmission capacity on Skynet 5. The most likely potential customers for such capacity are MoDs of NATO countries in Europe.

## **2. Horizontal issues**

16. TX was already jointly controlled by EADS. EADS is not active in any business areas of TX outside this unit, so there are no horizontal concerns resulting from the transaction.

## **3. Vertical elements**

17. The only company within the EADS group companies which is upstream or downstream of the TX business unit is Cogent Defense and Security Networks (“Cogent”), a UK-based company. The principal activity of Cogent is the supply of secure communications solutions and support for military applications.
18. Cogent is a supplier of the TX business unit in connection with the WELCOME services. Cogent provided the design, development and supply of baseband segments at the UK gateways and the satellite cabins, as well as related technical assistance and repair and maintenance services. Cogent is also a member of the Paradigm consortium for the design, development and supply of baseband network equipment and software for UK ground fixed and overseas mobile platforms. In addition, Cogent will also provide cryptographic services and cryptographic management facilities for secure traffic and overall Skynet 5 network management.
19. This equipment falls within the fixed military telecommunications systems product market, as identified by the Commission in Case COMP/M.1745, *EADS*, which is essentially national in scope. Cogent’s only activities in this market over the 2000-2002 period were in the UK. According to Cogent’s best estimates, its market share in the UK market for fixed military telecommunications systems was approximately [15-25]% in 2001 and 2002, and its market share over the 2000-2002 period was approximately [15-25]%. Therefore, there would be no vertically affected market resulting from the transaction. Other suppliers include BT/Lockheed as the market leader, BAE, Fujitsu and SERco. Furthermore, it has to be taken into account that Cogent is a joint venture jointly controlled by EADS and Nortel, a Canada based global telecommunications company<sup>4</sup>. There are no indications that Nortel would support any discriminatory foreclosure strategy of Cogent to the specific detriment of Astrium’s competitors.

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<sup>4</sup> See case M.2546 EADS/Nortel, decision of 1 October 2001.

20. In addition, as regards the Skynet 5 project, the acquisition of sole control over the TX business unit/Paradigm will not allow EADS to reinforce its or its subsidiaries' position since the industrial partners within the consortium as well as the work allocation have already been determined by the UK MoD. EADS alone could not decide to amend or take over certain aspects of the production, assembly or servicing of the Skynet 5 satellites and it is very unlikely that the UK MoD decides to dismiss any existing industrial partner at such a late stage in the process.

## **VI. CONCLUSION**

21. 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)*

Michaele SCHREYER  
Member of the Commission