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*Case No IV/M.318 -
THOMSON / SHORTS*

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

Article 6(1)(b) NON-OPPOSITION
Date: 14.04.1993

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Brussels, 14.4.1993

PUBLIC VERSION

MERGER PROCEDURE -
Article 6(1)b decision

To the Notifying Parties.

Dear Sirs,

Subject : Case No. IV/M.318 - Thomson/Shorts
Your notification of 08.03.1993 pursuant to Article 4 of Council Regulation No. 4064/89

1. The operation was notified on 8 March 1993 and consists in the creation of a joint venture between Thomson-CSF S.A. ("Thomson"), a subsidiary of the French company Thomson S.A., and Short Brothers PLC ("Shorts"), a U.K. subsidiary of the Canadian company Bombardier Inc. The joint venture, Shorts Missile Systems Limited ("SMS") will be engaged in the development and production of Close Air Defense Systems activities ("CADS"), which consist of very short range missiles, electronic command and control systems and firing units.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I THE PARTIES

3. Thomson is active in high technology military products. Its main strengths are in aircraft equipment, communication and command networks, detection systems, missile systems (excluding CADS missiles) and technical components including semiconductors. It is also involved in computer equipment, software and technical services. Thomson S.A., which is controlled by the French State, holds 59 % of Thomson-CSF S.A. and 75 % of its voting rights.
4. Shorts is involved in the design, development, manufacture and sale of aircraft, aircraft components, guided missiles, aerial targets, internal security vehicles and training and simulation products. Its main strengths are in aeronautical engineering and CADS missiles.

II CONCENTRATION

- a) Joint control
5. The parties have agreed that Thomson will acquire 49 % of the equity share capital of Shorts Missile Systems Limited, a wholly owned subsidiary of Shorts into which the whole of its CADS related activities have been hived down prior to creation of the joint venture; Shorts will retain the other 51 % of the shares in Shorts Missile Systems Limited.
 6. Shorts will acquire a shareholding of 43.75 % in a newly created subsidiary of Thomson, Thomson Shorts Systèmes S.A. ("TSS"), into which Thomson will transfer certain CADS related activities, Thomson holding the other 56,25 % of the shares.
 7. []¹ The effect of these arrangements is that Shorts and Thomson will each have from the outset an equal investment in economic terms in the joint ventures, exercised through their equal representation on the board of SMS and TSS (see below).
 8. As regards SMS, Thomson and Shorts will from the outset have equal rights of management of the joint venture, exercised through their equal representation on the board, which will have eight members, four appointed by Thomson and four by Shorts. The chairman will be proposed by Shorts subject to approval by Thomson. He will not have a second or casting vote. Day-to-day management of SMS will be carried out by an Executive Committee. []²
 9. Day-to-day management of TSS will be carried out by a Conseil d'Administration consisting of a President Directeur Général proposed by Thomson and subject to approval by the CEO and the board of SMS, the CEO and two members, one proposed by the CEO and subject to approval of Thomson and the other proposed by Thomson and subject to approval of the CEO.
 10. The effect of the above arrangements is that Shorts and Thomson will from the outset exercise joint control, via the board, of Shorts Missile Systems Limited, which will have operational control of TSS. After a brief transitional period of a few months, TSS will become a wholly-owned subsidiary of SMS, in which Thomson's and Shorts' shareholdings will be equalised.
 11. It follows that the joint venture ultimately resulting will operate in all respects as a single entity, under the joint control of Thomson and Shorts and therefore the operation is a joint venture within the meaning of Article 3 of the Merger Regulation.
- b) Concentrative joint venture
12. SMS will perform on a lasting basis all the functions of an autonomous economic entity. All Shorts' CAD-related activities will be transferred to the joint venture, including land,

¹ Deleted for publication

² Deleted for publication. The composition of the Executive Committee is consistent with the existence of joint control.

buildings, state of the art plant and machinery and intellectual property. Shorts' CADS products consist almost exclusively of CADS missiles; it has also developed an armoured firing unit ('SP Startreak'). Shorts will retain no CADS-related activities.

13. Having transferred all of its expertise and facilities to the joint venture, it would be economically unfeasible for Shorts to re-enter the domain of the joint venture independently. This would result in particular from the following factors :
 - the existence of technological barriers to entry; although Shorts and Bombardier retain certain activities relating to general aircraft design and production, these resources are not applicable to missile technology (such as missile aerodynamics, propulsion technology, warhead technology, systems engineering, detailed guidance and control engineering); and a very small research and development group retained by Shorts will not be product-dedicated, but will be concerned with general electronics research;
 - the need for investment at a level that Shorts could not afford independently. The Starstreak production facility created at a cost of []³ will be transferred to the joint venture, which will have full responsibility for all aspects of research, development and production relating to its products;
 - the time scale for developing new products and showing a profit (at least []⁴;
14. Consequently, since Shorts will withdraw from the market of the joint venture with little realistic prospect of re-entering the market, there is no danger of any coordination between Shorts and the joint venture.
15. Thomson does not produce CADS missiles. The main product of Thomson which will be transferred to the joint venture is a command and control system, 'Samantha' (and a light-weight version, 'Clara') which coordinate the operation of different air defence units; it is capable of being used not only in connection with CADS but with other air defence systems. Thomson also produces a non-armoured vehicle system with a lightweight turret, ASPIC, which will be transferred to the joint venture.
16. Thomson will continue to be involved in defence-related electronics activities, and in particular []⁵ and non-CADS missiles (shortand medium-range missiles). However, these sectors are not directly related to the JV's field of activity.
17. For these reasons, the creation of the joint venture will not give rise to coordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture. The joint venture is therefore a concentration within the meaning of Article 3 of the Merger Regulation.

³ a substantial amount

⁴ a significant time period

⁵ Deleted for publication

III COMMUNITY DIMENSION

18. The combined aggregate worldwide turnover of Thomson S.A., which controls Thomson-CSF, and Bombardier Inc., which controls Shorts, exceeds 5,000 million ECU, and the Community-wide turnover of both Thomson S.A. and Bombardier Inc. exceeds 250 million ECU. The parties do not achieve more than two-thirds of their Community-wide turnover in one and the same Member State. Thus, the operation has a Community dimension.

IV COMPATIBILITY WITH THE COMMON MARKET

Relevant product markets

19. The products affected by the joint venture are Close Air Defence Systems, or CADS, which comprise CADS missiles, and may include CADS firing units and CADS Command and Control ("C2") systems. These are "modular" products which can be sold separately, in association with each other, or as a single integrated system.

- a) CADS missiles

20. CADS missiles constitute a separate product market. On the demand side, CADS are distinguished from other categories of air defence systems (short range ('SHORADS') and medium range ('MSAM')) by their function, price and technical characteristics. Thus CADS have a range of up to 5 kilometres, SHORADS up to 12 kilometres and MSAM up to 100 kilometres. Again, CADS, SHORADS and MSAM differ markedly in price, which increases by a factor of about []⁶ with each move to a higher level. CADS missiles are available separately, whilst SHORADS and MSAM are always integrated with firing units and 'C2' systems. On the supply side, no CADS manufacturer produces SHORADS or MSAM, and vice versa.

- b) CADS firing units

CADS firing units comprise a launching turret for CADS missiles incorporating a fire control system and a display console, which are designed to optimise the range and accuracy of the missiles.

21. Shorts has developed an armoured firing unit (SP Starstreak) and Thomson, a non-armoured one (ASPIC). SP Starstreak has been selected by the UK MOD to satisfy the British Army's operational requirement for a Close Air Defence Vehicle offering crew protection through its armour, and heavy terrain mobility through the use of a tracked under-carriage. ASPIC, by contrast, is an altogether more lightweight, less expensive, highly mobile system, designed to meet different military operational requirements, which call for the Close Air Defence of assets some distance from the heavy fire experienced in the forward battlefield area. By reason of the differences in their prices, functions and characteristics, SP Starstreak and ASPIC are distinct products.

- c) CADS Command and Control ("C2") systems

22. These are distinct from firing units, but communicate with them by radio or automated data transmission : C2's comprise systems which detect, identify, and select targets. CADS-dedicated C2 systems constitute a distinct product, since they are "modular" (see above) whilst SHORADS and MSAM C2's are necessarily integrated into a missile/firing unit/C2 package.

⁶ a significant amount

Relevant geographic markets

23. Markets for defence equipment within and outside the Community, tend to remain closed to foreign suppliers, and therefore remain national where a domestic supplier exists. However, where there is no domestic supplier, then, subject to other barriers such as export restrictions and national preferences, CADS suppliers compete with each other worldwide.
24. Since the concentration does not lead to any product overlap, the exact geographic market definition may be left open, since no dominant position is created or reinforced (see below).

Assessment

The joint venture will comprise :

- Short's CADS missiles production facilities;
- Short's 'SP Starstreak' firing unit and Thomson's 'ASPIC' firing unit;
- Thomson's 'SAMANTHA' and 'CLARA' CADS-dedicated C2 systems.

a) CADS missiles

25. Shorts' main activity is the design, development and manufacture of CADS missiles. Thomson does not produce CADS missiles and hence no horizontal overlap exists. In the event that hitherto national markets should become more open in future, there exist strong competitors in this sector, such as Hughes (USA), Bofors (Sweden) and Matra (France).
26. Thomson is not a significant supplier of components for CADS missiles, the only such product supplied by it being a fuze, []⁷ its production capacity in respect of this product representing only about 1 % of available worldwide capacity. Shorts does not supply any CADS missile components as a subcontractor. There will therefore be no adverse vertical effects on competition.

b) CADS firing units

27. As described above, Shorts, 'SP Startreak' and Thomson's 'ASPIC' are different in terms of price, function and characteristics. They would not be regarded by a prospective purchaser as being in competition with each other, and hence no horizontal overlap exists. []⁸.

c) 'C2' systems

28. Shorts does not produce C2 systems. Thomson produces "SAMANTHA" and 'CLARA' C2 systems, which are solely dedicated to CADS. There is no overlap between the parties with regard to these products.
29. There is no overlap between the CADS activities of Shorts and Thomson. The complementarity of their products means that the transaction will not give rise to any increase of any market share irrespective of the definition of the relevant geographic market. Moreover, the existence of competition from financially strong enterprises would limit any possible conglomerate effects of the combination of Thomson's and Shorts' financial resources.

⁷ Deleted for publication

⁸ Deleted for publication

V CONCLUSION

30. Therefore, the concentration will not create or strengthen 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