

***Case No COMP/M.3217 -
CARLYLE /
FINMECCANICA / AVIO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/08/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.08.2003

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Party

Dear Sir/Madam,

**Subject: Case No COMP/M.3217 - CARLYLE/FINMECCANICA/AVIO
Notification of 11 July 2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

- (1) On 11 July 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as last amended by Regulation (EC) No 1310/97, by which the undertakings Carlyle Group (“Carlyle”, USA) and Finmeccanica S.p.A. (“Finmeccanica”, Italy) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Avio S.p.A. (“Avio”, Italy) 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 the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

- (3) Carlyle is a private investment group which makes private equity investments through various funds in select industries, including aerospace, automotive, defence, energy, financial services, healthcare and telecommunications.

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).

- (4) Finmeccanica is a public quoted company of which the Italian Ministero dell'Economia e delle Finanze is the largest shareholder with 34%. The remaining shares are widely dispersed. Finmeccanica is active in the design and manufacture of military and civil aircraft, helicopters and satellites; missile systems, radar, components for power generation, trains and information technology services.
- (5) Avio is a company newly created under the laws of Italy. 100% of its share capital is owned by FiatAvio S.p.A. ("FiatAvio")² which has transferred all assets related to its business activities for the purpose of the proposed transaction to Avio. Avio is active in the following five business areas: a) aero-engine components (both military and commercial) for commercial and military aircraft; b) aero-engine components for military and commercial helicopters; c) aero-derivative systems used in power generation and for maritime propulsion; d) space propulsion; e) maintenance, repair and overhaul (MR&O) services.

II. THE OPERATION

- (6) The notified concentration consists of the acquisition of joint control by Carlyle and Finmeccanica of Avio through a newly created acquisition vehicle ("Avio Holding S.p.A."). Fiat Avio has transferred (effective on 1 July 2003) the target business to the newly created company Avio which will ultimately be acquired by Avio Holding S.p.A. Carlyle will hold 70% of Avio's share capital and Finmeccanica will hold the remaining 30%. However, Finmeccanica and Carlyle will exercise joint control over Avio. The Shareholders' Agreement between Carlyle and Finmeccanica provides that Finmeccanica - although a minority shareholder - will hold veto rights over major strategic decisions concerning Avio. These strategic decisions include [...].

III. CONCENTRATION

- (7) The operation constitutes a concentration within the meaning of article 3(1)(b) of the Council Regulation in that Carlyle and Finmeccanica, pursuant to the transaction, acquire joint control of Avio.

IV. COMMUNITY DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (Carlyle € [...] million; Finmeccanica € [...] million; Avio € [...] million). Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (Carlyle € [...] million; Finmeccanica € [...] million; Avio € [...] 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.

² Fiat Avio is in turn 100% owned by Fiat S.p.A.

³ 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.

V. COMPETITIVE ASSESSMENT

Relevant markets

- (9) The parties have submitted that the five areas of activities of Avio constitute the relevant *product markets* for the purposes of this case: a) aero-engine components (both military and commercial) for commercial and military aircraft; b) aero-engine components for military and commercial helicopters; c) aero-derivative systems used in power generation and for maritime propulsion; d) space propulsion; e) maintenance, repair and overhaul (MR&O) services. This is broadly in line with previous decisional practice of the Commission.⁴ However, the precise market definitions can be left open, as in all alternative market definitions considered, effective competition would not significantly impeded in the EEA or a substantial part of it.
- (10) As to the *geographical scope* of the relevant markets, the parties have submitted that, again in line with previous Commission decisions, all market are at least EEA-wide if not global as regards the commercial applications and national in scope when regarding military applications. The geographical scope of the market for MR&O services has on the contrary not been defined in previous Commission decisions. At any rate, it is not necessary to define the geographical scope of the market for MR&O, as this market is not affected by this operation.

Competitive Assessment

Horizontal overlaps

- (11) The parties have submitted that there are no horizontal overlaps (and therefore no horizontally affected markets) in any of the relevant markets.
- (12) The Commission has examined the Parties' claims, in particular as to the market for aero-derivative systems used in power generation and for maritime propulsion, in which Finmeccanica and Avio are both active.
- (13) Avio supplies components for industrial power generation. Avio's activities are confined to supplying General Electric ("GE") components for incorporation into small gas turbine marketed by GE. Avio thus has no direct contractual relations with the customers of these units and is, therefore, not present at this level of the market. Finmeccanica's subsidiary Ansaldo Energia S.p.A. business produces and sells heavy duty gas turbines based on Siemens technology.
- (14) Furthermore, although the market for gas turbines has not been defined, the Commission has, in previous decisions, based its analysis on a market segmentation between small turbines up to 15 MW, intermediary turbines of 15-60 MW and heavy-duty turbines above 60 MW.⁵ On the basis of such delineation of the market there is no overlap, since the smallest of Finmeccanica's gas turbines has 68 MW whereas GE's gas turbines (to which Avio contributes) are in the range of 18-31 MW (LM 2500) and 43-46 MW (LM 6000). These gas turbines are smaller and lighter and tend to be used

⁴ See cases M.1745 EADS; M.2781 Northrop Grumman/TRW; M.2938 SNPE/MBDA/JV

⁵ See case M.3148 – SIEMENS / ALSTOM Gas & Steam Turbines

for auxiliary and emergency applications rather than the base load electricity generation, for which Finmeccanica's turbines are used.

- (15) The Commission has therefore concluded that there exist no horizontal overlaps and therefore no horizontally affected markets result for the transaction. In particular, Avio and Finmeccanica are not in competition in the market for aero-derivative systems used in power generation and for maritime propulsion.

Vertical Relationships

- (16) The parties have submitted that the operation does not give rise to any vertically affected markets. The Commission has examined the Parties' claims, in particular as to the nature and the importance of certain existing vertical relationships, both as regards a) supplies by Carlyle and b) supplies by Avio.

a) Supplies by Carlyle

- (17) Carlyle produces certain components (forged parts and engineered seals) for aeroengines and aeroderivative industrial units.

Forged parts

- (18) The forged parts are supplied by Carlyle's subsidiary Firth Rixson (including Forged Metals Inc., a US business recently merged with Firth Rixson). These parts are used by Avio in its components for aero engines and aero derivative industrial units.

- (19) Precision forgings for the aerospace industry are necessarily produced to a high specification. Supply relationships exist globally and Firth Rixson/Forged Metals supply customers all around the world. There are numerous suppliers that compete with Firth Rixson/Forged Metals for aerospace customers, including Wyman Gordon, Carlton Forge, Snecma (both a customer and competitor), Carmel Forge, Doncasters, Ladish, Schlosser Forge Co., VSMPO, Smiths Group Plc, Otto Fuchs, Manior and Baltiyskiy Isc.

- (20) No comprehensive data exists for shares of supplies of precision forgings to the aerospace sector, but it is estimated that total supply by Firth Rixson/Forged Metals was less than [10-20%] of global consumption of precision forged parts for aerospace and less than [0-10%] for precision forged parts used in power generation units including aero derivative units. Avio's own share of such demand is modest, according to the notifying parties between [0-10%] and [0-10%] globally for aerospace forged components and even less for power generation forged components.

- (21) Total sales by Firth Rixson/Forged Metals to Avio for aero engine forged parts in 2002 were some €[...] million ([...] % of Avio's total purchases) and for aero derivative units parts were approximately €[...] in 2002 (less than [...] % of Avio's purchases). As explained in para. 13, Avio is only incidentally involved in the supply of gas turbines, and its activities in this field are minor. Therefore, no vertical concerns arise.

Engineered Seals

- (22) Carlyle's subsidiary Rexnord supplies engineered seals for aerospace and industrial equipment applications. These are frequently custom designed seals for specific high-risk failure applications. Rexnord manufactures these at a facility in the US but supplies them globally. The pattern of supply is global and alternative suppliers to Rexnord

include Perkin Elmer, CRI (Chicago Rawhide Industries), Stein Seal Co and Smiths Group plc (John Crane UK).

- (23) No comprehensive data for engineered seals sales is available but the notifying parties estimated that Rexnord may supply some [0-10%] of global consumption of engineered seals. Its share of sales to the EEA is thought to be significantly less than this. Avio's estimated share of consumption of engineered seals are a small fraction of consumption of these seals (estimated to be less than [0-10%] globally).
- (24) The sales of seals by Rexnord for use in Avio's aerospace and gearbox components for aeroengines and helicopter engines in 2002 were less than €[...] ([...] % of Avio's purchases). Given the minor position of Rexnord in this market no vertical concerns arise.

b) supplies by Avio

- (25) Avio supplies components for military satellites, torpedoes and tactical missiles, as well as aero engines. All these supplies occur either within international space or military programmes, or within national, Italian programmes.

Components for aero engines and aero engines

- (26) Avio supplies components to aero engine OEMs (frequently within risk and revenue share arrangements). Finmeccanica (and the companies in which it has an interest in) do not manufacture or assemble aero engines. Consequently, there is no vertical relationship as concerns the supply of components for aero engines.
- (27) However, Finmeccanica has joint control over two producers of helicopters, Agusta-Westland and Nato Helicopter Industries (NH). Finmeccanica also acts as the final assembler of aircraft or rotorcraft for the Italian Ministry of Defence (MoD). For some of these Italian defence projects, Avio assembles and supplies complete engines. By way of example, Avio assembles the GE T-700 engines for the Agusta-Westland EH 101 helicopters ordered by the Italian military, and will do the same for the NH 90 helicopter. In addition, Avio supplies components or assembles the entire engines for other defence projects that Italy participates in, for example the Tornado and the future Eurofighter.
- (28) None of these supply relationships results in true vertical relationships. Avio is not an aero engine OEM. The fact that it assembles GE T-700 engines only for helicopters for the Italian military illustrates the principle that Avio is an aero-engine assembler and supplier rather than an OEM. The T-700 is a project led by GE. In this case, Avio assembles the engines from parts supplied by GE. The concentration will not have a significant impact on the Italian market, due to the preference for domestic suppliers. Moreover, for both the EH 101 and the NH 90 there are two competing engines available, one designed by GE, the other one designed by Rolls Royce. Therefore, no vertical concerns arise as a result of the proposed concentration.

Satellite components

- (29) Avio designed and supplied the satellite control system for the Italian military satellite Sicral I, which was manufactured by Finmeccanica. This project was a military one, and the Italian MoD required this control system to be supplied by an Italian producer. The Italian MoD, therefore, sponsored the entry of Avio into this market, since Avio has never produced such a system before. It is not clear whether a Sicral II will be

commissioned by the Italian MoD. However, the proposed concentration would not change the competitive situation on the Italian market for military satellites since Finmeccanica is the only Italian prime contractor for satellites, and Avio is the only Italian supplier of satellite control systems. Therefore, if the Italian MoD opts for Italian suppliers, it would lead to the same combination of suppliers as for the Sicral I.

- (30) If, however, the Italian MoD chooses a competitor from outside Italy such as Astrium (part of EADS), Alcatel Space or one of the major US suppliers such as Boeing or Lockheed Martin, it seems unlikely that such a foreign prime contractor would have difficulties in submitting a bid by being denied access to Avio's control system, given that there are numerous other suppliers of control systems, and, in case of a local content requirement, that Avio's share of the value of such a satellite is only 10-15%.

[Components] for torpedoes

- (31) Avio supplies [components] of the MU 90 light torpedo produced by the Eurotorp consortium in which Finmeccanica has a 50% share through its WASS subsidiary (Whitehead Alenia Sistemi Subacquei). The other shareholders are Thales (24%) and DCN (26%). The key element of [components] is provided by [...], whereas Avio only contributes [...] parts to [components] designed by [...]. Avio, therefore, only assembles and supplies a subsystem which is designed by another company, [...]. Avio has lost the capability of a [components] provider which it previously had for the [...] torpedo [...]. Avio will also not be part of the latest [...] torpedo, the [...], where Finmeccanica is the prime contractor and [...] the supplier of [components]. Therefore, any vertical competition effects seem to be unlikely.

Propulsion systems for tactical missiles

- (32) Avio supplies solid propulsion systems for tactical missiles to MBDA, a French company, which Finmeccanica controls jointly with BAe Systems and EADS. MBDA is primarily active in the manufacture and sales of guided weapons/guided weapon systems (GW/GWS).
- (33) Avio supplies only to MBDA for the [...] in Italy. [...]. The value of its supplies are very small (approximately [...] €). MBDA itself has joint control over two alternative suppliers, Celerg and RORM, which together are the European market leaders. Apart from the [...] contracts, Avio has only submitted one other, unsuccessful, bid for the propulsion of tactical missiles. Given the rather limited market presence of Avio, it seems unlikely that though the proposed concentration MBDA would be able to raise competing GW/GWS suppliers' costs by denying them access to Avio's solid propulsion systems.

c) Other vertical relationships

- (34) Apart from the activities giving rise to the supply relationships described above, neither Finmeccanica nor the portfolio companies controlled by Carlyle are active in the upstream or downstream markets in which Avio is active.
- (35) This remains valid also for the activities of Aviall Inc, a US based after market distributor to the after market supply chain for the aviation and marine industries, controlled by Carlyle. Aviall's aviation business essentially consists of the distribution of readily packaged supplies from US producers for the aviation after market that are collected and distributed from its central facility in Texas. It also provides basic service support in the US for replacement wheels, tubes, batteries and hoses. Aviall's activity in the European market is confined to the distribution of parts, which amounted to some

[5-15%] of its sales, the overwhelming portion of which were made to the UK ([0-10%] of total sales). The nature of the market is such that virtually all the parts that Aviall distributes are produced in the US. The supply chain for the after market in Europe for parts is typically through OEMs and not through distributors such as Aviall. The parts produced by Avio are not distributed through intermediaries such as Aviall.

- (36) Moreover, Avio's own products do not lend themselves to such distribution. Even when Avio purchases less sophisticated products such as igniters or cleaning fluid, it does not source them from distributors such as Aviall. Therefore Aviall is not present in any vertically connected market to Avio's activities. In addition, Aviall itself would not have any significant share of supplies of products distributed in Europe and certainly below 25%.

Conclusion on vertical relationships

- (37) In the light of the above, the Commission has concluded that existing vertical relationships between Carlyle's portfolio companies, Finmeccanica and Avio do not raise any competition concerns. There exist no other vertical relationships which may give rise to vertically affected markets.

VI. CONCLUSION

- (38) 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)

Erkki Liikanen

Member of the Commission