EN

Case No COMP/M.3657 - AIRBUS / SITA

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 27/01/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27/01/2005

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3657 – Airbus / SITA / JV

Date of notification : 15/12/2004
Legal Deadline : 27/01/2005

1. On 15 December 2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Airbus Financial Services ("Airbus", France), belonging to the Airbus Group, and SITA Information Network Computing B.V. ("SITA", Netherlands) a member of the SITA Group, acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking OnAir N.V. ("OnAir", Netherlands) by way of purchase of shares in a newly created company constituting a joint venture.

I. THE PARTIES AND THE OPERATION

2. Airbus designs, manufactures and sells aircraft on a worldwide basis.

3. SITA is a provider of applications, communications and IT infrastructure to the air transport and related industries. It provides a range of in-flight communications services[1].

4. OnAir will develop, market and sell an integrated portfolio of aircraft cabin connectivity services such as: In-seat telephony, SMS messaging, E-mail and Instant Messaging, access to the Internet and to Virtual Private Networks and GSM onboard.

5. By […] December 2004, the parties had executed a Shareholders' Agreement whereby OnAir will be [majority%] owned by SITA and [substantial minority%] by Airbus. The remaining minority shareholding of [remaining minority%] will be held by Tenzing Communications Inc's. ("Tenzing") current shareholders other than Airbus. Tenzing is a US corporation which supplies e-mail and Web content software, hardware systems and services for in-flight passengers on board commercial and general aviation aircrafts. Airbus has a [significant%] shareholding in Tenzing and most of Tenzing's assets [(…)] will be contributed to the joint venture together with […], as a result of the transaction.

6. [Confidential - information containing business secrets in relation to Tenzing's business operations].

Full function joint venture

7. OnAir will be jointly controlled by Airbus and SITA[2]. The company appears as a full-function joint venture, as it will carry out all the functions of an independent undertaking operating in the markets indicated above. The scope of activities of OnAir will be to develop and market in-flight passengers' communication services, namely In-seat telephony, SMS messaging, Email and Instant messaging, Internet access and GSM onboard aircrafts. It will have its own facilities and resources. OnAir will receive [certain Tenzing business and licences] and SITA's passenger and cabin communication activities. [OnAir's] target customers are commercial airlines worldwide.

8. According to available information, the products offered by OnAir meet passengers' expectations of being able to use their own devices and to be billed through their normal mobile operator or Internet Service Provider (ISP). International roaming rates will apply for mobile use, while laptop communications will be charged on a usage basis. For airlines, the joint venture should deliver a path for bi-directional broadband communication to and from each aircraft. The services of OnAir will be offered for both Airbus and Boeing (or other manufacturers') long and short-haul aircrafts.

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1 In particular, SITA provides satellite communications to aircrafts for use with in-seat applications (such as those offered by Tenzing). SITA's competitors in this field include companies such as ARINC.

2 [Confidential/Business Secrets: corporate governance details in relation to composition of the OnAir board of directors and certain governance provisions in transaction agreements.] SITA shall appoint […], Airbus […] and Tenzing […]. The quorum for the transaction at any Board meeting shall be […]. Decisions of the Board will be adopted at […]. In any event, the shareholders' agreement provides for veto rights that allow Airbus and SITA to have blocking power vis-à-vis each other on a number of fields, inter alia concerning the approval of the annual budget and regarding changes to the business plan.

9. Based on this information, OnAir appears to be a full-function joint venture.

II. COMMUNITY DIMENSION

10. The parties have a combined world-wide turnover of more than € 5.000 million (€ 1,521 million for SITA and € 30.133 million for Airbus, all figures relate to turnover achieved in 2003). The aggregate Community-wide turnover of each of at least two of the undertakings exceeds € 250 million [confidential - business secrets: details of European turnover of the parties]. Neither party achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a community dimension.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

11. The notifying parties submitted that, given the emergence of some of the markets of the joint venture and the innovation which drives them, there may not be any existing product market definition; in fact, many of the intended products are still in development. However, they suggested that a delineation upon the following lines may be appropriate. Nevertheless, for the purpose of the present assessment, it is not necessary to take a final position as regards product markets, since, irrespective of the exact definition, the present transaction does not raise competition concerns.

In-seat Telephony

12. This may be a separate market because usage will be satellite-based which will make in-seat telephony more expensive compared to the same terrestrial service.

In-seat SMS

13. The parties submitted that In-seat SMS would form a separate market to that of In-seat telephony and would also represent a separate market from similar terrestrial services for the same reason as In-seat telephony would.

In-flight E-mail and Instant Messaging ("IM")

14. The parties submitted that In-flight Email and IM would form a separate market to that of the same kind of terrestrial services (which may be generally considered to be part of broader data or internet markets) for the same reasons as above. Furthermore, given that similar services are possibly in development by competitors of OnAir, such as CBB (Connexion by Boeing) and ARINC, the parties submitted that these In-flight services are part of a new emerging market.

Access to Virtual Private Networks ("VPN") and Internet

15. The parties submitted that such in-flight services will be more expensive than terrestrial ones and therefore represent a separate market. These services are currently under development. Furthermore, given that similar services are possibly in development also by competitors of OnAir, the parties submitted that these In-flight services are part of a new emerging market.

GSM Onboard

16. The parties submitted that the provision of GSM services for aircraft would be licensed separately from other national networks and limited in scope therefore to aircrafts. On this basis, they state that that this would constitute a separate market. GSM onboard is a service under development by the joint venture as well as by some of its competitors[3].

B. Geographical product markets

17. According to the notifying parties, the geographic scope for these markets is at least EEA wide and possibly worldwide as long haul aircraft become fitted with this technology. In any event, for the purpose of the present case, it is not necessary to finally decide on the exact geographic scope of the markets, as irrespective of this delineation, the transaction does not raise competition concerns.

C. Competitive assessment

18. The parties identified as a possible "reportable market" (due to the creation of the joint venture) the market for In-flight email and IM (where both SITA and also Tenzing are already active pre-merger). The other markets would be emerging markets, and the activities of the joint venture will be that of a start up, which takes over the operations of one of the parent companies (SITA).

In-seat telephony, In-seat SMS markets

19. In these markets, the merger will not have a likely significant impact on the competitive situation, as it brings about no horizontal overlaps. According to the parties, main suppliers of the first two kind of services (In-seat Telephony, In-seat SMS) are niche aviation communications providers such as SITA (OnAir's parent) and

3 OnAir will provide a roaming service and charge a roaming tariff (inter-operator tariff, or IOT) to home mobile operators. It has to be noted that this service is currently under development and the earliest current projection for readiness to market is [Confidential -Business Secrets: details of OnAir intended timeframe and stages to bring services to market.].

ARINC. These companies tend to use in-seat applications (such as those offered by Tenzing), and services are accessed through aircraft specific in-flight equipment (called "IFE"), provided by third party manufacturers (Matsushita, Rockwell and Thales).

20. The activities of SITA as regards both In-seat telephony and In-seat SMS will be transferred to OnAir. [Confidential - business secrets: details of OnAir marketing plans for these services] Post-merger, SITA will continue to provide satellite connections as airlines may require for all the above services. This means that, whereas prior to the merger, the above services/activities may have been offered by SITA[4] in one solution, post merger they will be split.

GSM onboard services

21. As regards GSM onboard, as mentioned earlier these services are still nascent. OnAir expects to launch these services [Confidential - business secrets: details of business plans, in particular timetable and scope, in relation to the intended launch of these services.].

22. CBB (Connexion by Boeing) is not active in this possible market. In any event, at this stage any possible foreclosure is to be excluded since the choice of the service provider is with the airline customer and, if anything, beyond Airbus aircrafts, short-haul Boeing aircrafts will still be available for non-OnAir products, if so required by the airline customers. Furthermore, other providers may be able to enter this market besides the joint venture. Therefore, the present transaction does not raise competition concerns as regards this possible relevant market.

Access to VPN and Internet

23. These services are nascent and main providers are niche aviation communications providers such as CBB (Connexion by Boeing a major OnAir competitor)[5], ARINC and Tenzing, rather than internet service providers. Other players besides OnAir are believed to be deploying investments and R&D efforts in order to develop such services and bring them to market as well; therefore, the present transaction does not raise competition concerns as regards this possible relevant market.

In-flight E-mail and Instant Messaging ("IM")

24. This is the area where there may be a vertical relationship due to the merger, as SITA and Tenzing are both active in the market for the provision of In-flight email and IM. These services will move to OnAir […]. Post-merger (similar to In-seat telephony and In-seat SMS), SITA will cease to market these services, but will continue to provide satellite communications services to airlines. Therefore, to the extent that airlines select

[4] For example In-seat SMS services are delivered by SITA in conjunction with roaming agreements.

[5] CBB (Connexion by Boeing) has announced service charges for providing its service on Singapore Airlines.

SITA as a provider of satellite communications for their aircrafts, OnAir products may be deployed over SITA satellite communications[6].

25. Indeed, while OnAir will have to provide the mentioned services, also other players are deemed to be developing similar services as those of the joint venture. In 2004, gross revenues were [Confidential -business secrets: details of gross revenues generated by the services.]], while for 2005, projections are approximately […], which indicates that the shape of the market could rapidly change.

26. In the absence of independent data, the parties have provided estimates of the current installed base (number of aircrafts already equipped for such In-flight communications via a satellite connections[7]) for email and IM services both at world-wide at EU-wide level. At world-wide level, the "vertical relationship" (Tenzing email/SITA communications) would involve a share of [10-20%] of the installed base considering In-flight email services offered by Tenzing (including to parties other than SITA) and a share of [0-10%] considering satellite communications offered by SITA (in connection with In-flight email services).

27. At EU-wide level, pre-merger SITA has [Confidential - business secrets: details of SITA installed satellite systems on EU based airlines that support In-flight email services]; therefore the transaction will not bring about any change as regards the possible "vertical relationship" between Tenzing email service and SITA satellite communications within the EU.

Claim from third parties

28. Very late in the procedure, some third parties have put forward that the merger could cause some distortions in the market place. Allegedly, this may occur in two forms: i) pre-installation and certification of OnAir products on Airbus aircrafts may give customers (i.e. the airlines) no viable commercial choice other than to use Airbus products, thereby excluding competing services by other providers; ii) OnAir may bundle two or more products or services and restrict choices available to airlines/aircraft operators to products/services offered by OnAir or by its parent companies individually (for example SITA), foreclosing competitors and other equipment providers.

29. In respect of the above issues, the arrangements bringing about the concentration specifically provide that, post merger Airbus will remain free to install competing products if so requested by customers; at the same time, Airbus undertakes to [Confidential - business secrets: the parties entered into certain non-compete arrangements ancillary to the concentration]] for three years. This non-compete ancillary provision appears to be in line with the Commission's Notice on restriction directly related and necessary to concentrations[8].

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6 In this respect, it is important to note that the choice of the satellite communication provider is with the airline installing the In-seat Email and IM service.

7 This is the number of aircrafts equipped with Inmarsat satellite connection. Inmarsat is the system of mobile satellite services currently used by the aviation industry.

8 OJ L 24, 29.01.2004, Notice on restrictions directly related and necessary to concentrations, paragraphs 18-23.

30. In any event, the Commission has come to the conclusion that, to the extent that option i) above would be technically feasible, it would not be in the commercial interest of Airbus to limit the choice of its airline customers, excluding at the outset products competing with those of OnAir, as it clearly is reflected in the provision of the ancillary restraint mentioned earlier.

31. As regards "bundling", the claim appears to be unsubstantiated. The bundling option is theoretically also open to competitors of OnAir. In addition, it should be borne in mind that already pre-merger some services are offered as integrated packages by some providers (for example, by SITA, Stratos, Verizon for both In-seat telephony and In-seat SMS), while the joint venture would cause the package to be split as regards the products offered by OnAir. Furthermore, it should be borne in mind that the choice of providers (both for communications services and for satellite connection) is determined by the airline and, for instance, as regards satellite communication systems, it is normally driven by "cockpit requirements" rather than by the onboard communication service requirements.

C. Conclusion

32. In view of the foregoing, the setting up of the joint venture does not give rise to any competition concern in any of the possible relevant markets as outlined above, and therefore it will not significantly impede effective competition in the common market or in any part of it, in particular as a result of the creation or strengthening of a dominant position.

IV. CONCLUSION

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 (EC) No 139/2004.

For the Commission

(signed)
Neelie KROES
Member of the Commission