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***Case No COMP/M.3803 -
EADS / NOKIA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 28/07/2005

***In electronic form on the EUR-Lex website under document
number 32005M3803***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.07.2005

SG-Greffe(2005) D/204089

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3803 – EADS/Nokia
Notification of 23.06.2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 23.06.2005, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 (“the Merger Regulation”) by which the undertaking EADS acquires sole control of the whole of Nokia’s professional mobile radio business (“the Nokia PMR Business”) by way of purchase of shares and purchase of assets.

I. THE PARTIES

2. EADS is a jointly-held vehicle which combines the former activities of Aérospatiale Matra SA, DaimlerChrysler Aerospace and Construcciones Aeronáuticas SA. EADS is jointly controlled by DaimlerChrysler, Lagardère and the French State. EADS is active worldwide in the production and marketing of commercial and military aircrafts, telecommunications equipment and defence and security systems. EADS is also active in the professional mobile radio (“PMR”) sector, where it achieved worldwide sales of approx. [...] in 2004 with products based on the TETRAPOL standard².

¹ OJ L 24, 29.1.2004 p. 1.

² Based on the terminology of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 (OJ L 204, 21.07.1998, p. 37) TETRAPOL is not a standard, but is a set of technical specifications.

3. The Nokia PMR Business consists of the development, sales, operation and maintenance of public safety and security communication network, terminals, systems applications and services based on the TETRA standard. In 2004, the worldwide turnover of the Nokia PMR Business amounted to approx. [...].

II. THE OPERATION

4. Pursuant to a Master Business Purchase Agreement signed on 04.05.2005, EADS will acquire sole control over the assets, employees, contracts and liabilities related to the Nokia PMR Business.

III. CONCENTRATION

5. Based upon the above, the notified transaction constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

IV. COMMUNITY DIMENSION

6. On 02.05.2005, the Commission received from EADS a referral request pursuant to Article 4(5) of the Merger Regulation which has been transmitted to all Member States. Since no Member State has expressed its disagreement as regards the request to refer the case to the Commission, the concentration shall be deemed to have a Community dimension.

V. COMPETITIVE ASSESSMENT

A. Market Definition

Relevant Product Markets

7. The notified transaction concerns EADS' and Nokia's activities in the area of PMR.
8. PMR systems are closed wireless radio communication systems used by certain groups of professional users with particular needs in terms of security. PMR is characterised by its use in closed networks (i.e. the access of the network is restricted to a defined user group) and by specific services it is able to provide (e.g., group calls, call priorities, quasi-instantaneous establishment of the calls, emergency calls, encryption, etc.). PMR systems guarantee the confidentiality and the reliability of communications, and as such they may be distinguished from open networks (e.g., public cellular networks).
9. PMR users typically include police and security forces (e.g., military, police, civil protection, customs, fire brigades), public services (e.g., health, public transportation), commercial users (e.g., taxi fleets or truck fleets), and protected infrastructures (e.g., airports, nuclear bases). Police and security forces represent the largest part of the demand for PMR systems.
10. PMR systems consist of an infrastructure (e.g., radio base stations, switching and control nodes, command and control centres, applications, interface elements), terminals, and services (maintenance and repair, deployment, system integration and network operation).
11. PMR systems can be based on either analogue or digital technology. While analogue PMR systems still represent the bulk of the PMR installed base, digital PMR systems are gradually replacing them. In Europe, the transition towards digital is ongoing since the beginning of the 1990's. Most new networks being built in Europe are now based on

digital technology. The Nokia PMR Business is only active in digital PMR, and EADS is almost exclusively in digital systems³. The key digital standards competing in the European PMR digital sector are TETRAPOL and TETRA. TETRAPOL is a proprietary technology developed and mainly supported by EADS. The Nokia PMR Business is not active in TETRAPOL systems. TETRA is a set of open standards developed by the European Telecommunications Standardisation Institute (“ETSI) and is supported by several vendors (including Nokia, Motorola, OTE/Finmeccanica, R&S Bick , etc.). EADS is not present in TETRA systems.

12. Both EADS and Nokia PMR Business are active in the supply of PMR infrastructure and terminals. They are also active in the supply of PMR services.
13. The notifying party has identified three relevant markets:
 - the market for the provision of PMR infrastructure (including TETRA and TETRAPOL standards);
 - the market for TETRA terminals;
 - the market for TETRAPOL terminals.
14. According to the notifying party, PMR infrastructure should be distinguished from PMR terminals for the following reasons: (i) PMR customers tend to issue separate calls for tenders for infrastructure and terminals, (ii) the supply structure is different for infrastructure and terminals, and (iii) the life span of terminals is significantly shorter than that of infrastructure. The existence of separate product markets for PMR infrastructure and PMR terminals has been widely confirmed by the market investigation.
15. The notifying party also contends that there is one single market for PMR infrastructure which should not be further segmented on the basis of the underlying technologies (analogue/digital) or standards (TETRA/TETRAPOL). The notifying party explains that the technical characteristics of each technology (analogue and digital) or of each standard (TETRA and TETRAPOL) are, to a large extent, substitutable from a customer’s perspective and that PMR infrastructure suppliers are constrained in their competitive behaviour by suppliers of infrastructure based on a different technology or a different standard. Therefore the notifying party suggests that there is one single relevant market for PMR infrastructure which includes analogue and digital technologies as well as the TETRA and TETRAPOL standards.
16. Some respondents to the market investigation were of the opinion that although there is a clear trend towards digital systems, so far digital and analogue PMR infrastructure belong to separate product markets, notably because they address different needs and are therefore more suitable for different categories of customers or different categories of projects. However, given that, as noted above, the merging parties are almost exclusively active in the supply of digital PMR infrastructure, the question whether the relevant PMR infrastructure market includes both digital and analogue systems can be left open for the purposes of the present case.
17. By contrast, the market investigation has clearly confirmed that the relevant PMR infrastructure market includes both TETRA and TETRAPOL standards, mainly because they both target the same customer base. As noted above, EADS is only active in the

³ EADS has limited sales of analogue PMR infrastructure only in Germany.

provision of TETRAPOL products, whereas the Nokia PMR Business is only active in the provision of TETRA products. In any case, the question whether the relevant PMR infrastructure market includes both TETRA and TETRAPOL standards, or whether there are distinct markets for TETRA and TETRAPOL standards, can be left open for the purposes of the present case, as even in a market including both standards the proposed transaction does not raise competitive concerns.

18. As regards PMR terminals, a market downstream from the market for infrastructure, the notifying party submits that TETRA and TETRAPOL terminals belong to two separate product markets because: (i) there is no interoperability between TETRA and TETRAPOL terminals, and (ii) the structure of the offer is not the same for the TETRA and TETRAPOL terminals. Whereas many competing suppliers (including the Nokia PMR Business, Motorola, OTE/Finmeccanica, Sepura, etc.) offer TETRA terminals, almost all TETRAPOL terminals are supplied by EADS. The existence of separate product markets for PMR terminals based on the TETRA and TETRAPOL standards has been widely confirmed by the market investigation. In particular, all respondents to the market investigation have indicated that there is no interoperability between TETRA and TETRAPOL terminals, so that terminals based on a given standard can only interoperate with a network based on the same standard.
19. Finally, the notifying party contends that the main services provided in connection with PMR systems (which can broadly be classified in the following four categories: maintenance and repair⁴, deployment⁵, system integration⁶ and network operation⁷) are not restricted only to the PMR networks but are generic to systems in a large number of different sectors, including telecommunications, major infrastructures projects and IT. Thus, the notifying party is of the opinion that there is no specific PMR services market.
20. Evidence from the market investigation indicates that network operation and system integration services were clearly not PMR specific as they are usually provided by telecom or IT companies. By contrast, maintenance and certain deployment services (e.g., network design, encryption solutions) appear to be PMR specific as they require special skills and expertise concerning the infrastructure and, as such, they are usually provided by the manufacturer (or the distributor) of the infrastructure. However, for the purposes of the present case, it is not necessary to reach a definitive position on the existence of distinct relevant markets for PMR maintenance and certain PMR deployment services. Indeed, as noted above, these services are closely linked with the infrastructure as they are usually supplied in connection with PMR infrastructure. Therefore, should there be such distinct relevant markets for PMR maintenance and certain PMR deployment services, the competitive analysis of the present transaction on those hypothetical markets would closely follow the analysis for the PMR infrastructure market.

⁴ Maintenance services mainly include customer care, repairs and provision of software and software updates.

⁵ Deployment services include network design, specific development, factory acceptance, logistics, project management, installation, commissioning and training.

⁶ System integration services include site acquisition, civil engineering, power engineering, microwaves, antennas, leaky feeders, control centres, surveillance systems.

⁷ Network operation services include the daily operation of the network. It can also include leasing (i.e. transforming investment into yearly subscriptions, with or without buying option at the end of the agreed period). Such services are generally requested by the customer for nation-wide networks.

21. In light of the foregoing, the following markets can be considered as relevant for the purposes of the assessment of the present case:
- the market for the provision of PMR infrastructure (including TETRA and TETRAPOL standards),
 - the market for the provision of PMR terminals based on the TETRA standard,
 - the market for the provision of PMR terminals based on the TETRAPOL standard,
 - the market for the provision of PMR specific services.
22. Given that PMR terminals based on the TETRA and TETRAPOL standards belong to distinct product markets, there is no need to examine them further because the proposed transaction will not result in any increment in either market.

Relevant Geographic Markets

23. The notifying party submits that all the relevant product markets listed above are EEA-wide. This statement is in line with a decision adopted in 1994 (M.496 – Marconi/Finmeccanica) where the Commission found that there were strong indications that the PMR market was EEA-wide, even though the precise geographic market definition was left open. The Commission based its reasoning on the facts that: (i) PMR equipment was covered by EC procurement directive, and (ii) the emergence of Europe-wide standards for digital PMR.
24. The notifying party contends that these characteristics are still relevant. In addition, the notifying party submits that some additional elements suggest that the PMR markets are EEA-wide. These elements are: (i) PMR suppliers are essentially the same in every EEA country, (ii) customer requirements are similar in each EEA country, (iii) there are no significant price differences within EEA, and (iv) market conditions (e.g., regulatory constraints) are similar throughout the EEA.
25. The market investigation has broadly confirmed that the PMR markets are EEA-wide, and possibly worldwide excluding North America. Indeed, in North America Motorola, is by far the leading supplier with its proprietary APCO P25 technology which constitutes a strong barrier to entry in the North American market. However, there is no need to define the exact geographic scope of the relevant PMR markets as the parties' activities do not significantly overlap at a national level or outside the EEA⁸.

B. Competitive Analysis

26. The notifying party submits that an important feature of the PMR markets is that these are bidding markets where contracts are awarded through competitive tenders. The notifying party believes that market shares based on revenues do not reflect the actual market power of the players on the market, notably because revenues stemming from the award of PMR contracts, especially large public safety contracts which represent a large amount of revenue, can extend over a 15 to 20 year period. Therefore, the notifying party contends that market shares based on revenues do not convey meaningful

⁸ See below the section “Competitive Analysis”.

information regarding market power as they reflect the competitive situation at the time when the contract has been awarded.

27. The notifying party has therefore provided the Commission with estimates of market shares based on: (i) revenues for the period 2002 to 2004, and (ii) on bidding data for the period 2000 to 2005.
28. The only relevant affected markets on which the parties' activities overlap is the market for PMR infrastructures and PMR specific services.

Market for PMR infrastructure

Market shares

29. On an EEA-wide market for PMR infrastructure including analogue and digital systems, the parties hold a combined market share based on revenues in the range of [25 - 40%] (EADS: [15 - 25%], the Nokia PMR Business: [5 - 15%]) for the period 2002 to 2004. The merged entity will rank first, before Motorola ([10 - 30%]). Other players include notably OTE/Finmeccanica, ETELM, Teltronic, R&S Bick, but the parties have been unable to estimate their revenues and therefore unable to estimate their market shares either.
30. If the PMR infrastructure market were to be broken out into analogue and digital systems, the parties' activities will only overlap in the digital segment (Nokia being no longer active in analogue system and EADS being only marginally active in that segment through limited sales in Germany). On a hypothetical EEA-wide digital PMR infrastructure market, the parties would hold a combined market share based on revenues for the period 2002 to 2004 in the range of [40 - 60%] (EADS: [25 - 40%], the Nokia PMR Business: [10 - 20%],). The merged entity would rank first, followed by Motorola ([20 - 45%]), OTE/Finmeccanica ([0 - 10%]) and several fringe players below ([0 - 10%]).
31. On an EEA-wide market for PMR infrastructure including analogue and digital systems, the parties hold a combined market share based on the number of contracts won during the period 2000 to 2005 in the range of [20 - 30%] (EADS: [10 - 20%], the Nokia PMR Business: [5 - 15%]). The merged entity will rank second, behind Motorola ([30 - 40%]), and before OTE/Finmeccanica ([5 - 15%]), Etelm ([0 - 10%]), Teltronic ([0 - 10%]) and R&S Bick ([0 - 10%]). All other players are below ([0 - 10%]). Furthermore, EADS' market share based on contracts won has dropped from [30 - 40%] in 2000 to [10 - 20%] in 2004.
32. When looking at the value of the contracts won by each competitor during the period 2000 to 2005 at the EEA-level, Motorola appears to be the clear market leader with an estimated market share in the range of [60 - 70%]. The merged entity would rank second with a combined market share in the range of [15 - 25%] (EADS: [5 - 15%], the Nokia PMR Business: [5 - 15%]), followed by OTE/Finmeccanica ([0 - 10%]). All other players are below 4%. Moreover, EADS' market share based on the value of the contracts won has sharply declined from [10 - 20%] in 2000 to [0 - 10%] in 2004.
33. On hypothetical national markets for analogue and digital PMR infrastructure, the parties activities marginally overlap in France (EADS: [40 - 60%], the Nokia PMR business: [0 - 10%]), Germany (EADS: [30 - 50%], the Nokia PMR Business: [0 - 10%]), and Spain (EADS: [50 - 65%], the Nokia PMR Business: [0 - 10%]). In all these 3 countries, the merged entity will be the market leader, followed by Motorola ([0 -

10%] in France, [15 – 35%] in Germany, and [15 – 30%] in Spain). These market shares figures are based on revenues for the period 2002 to 2004. In all other countries, there are no overlaps, except for a de minimis accretion of market shares in the UK (EADS: [0 – 10%] , the Nokia PMR Business: [0 – 10%]). The same conclusion applies to hypothetical national markets for digital PMR infrastructure.

34. The analysis of the bidding data submitted by the notifying party in Form CO confirms that the parties' activities overlap to a limited extent in France, Germany and Spain. Over the last five years, Nokia won [0 – 10] and EADS won [5 – 15] contracts for PMR infrastructure in France (out of 36 contracts awarded), Nokia won [0 – 10] and EADS won [15 – 25] contracts for PMR infrastructure in Germany (out of 41 contracts awarded) and Nokia won [0 – 10] and EADS [5 – 15] contracts for PMR infrastructure in Spain (out of 30 contracts awarded). By contrast, over the same period, ETELM won [10 – 20] contracts for PMR infrastructure in France, Motorola won [5 – 15] contracts for PMR infrastructure in Germany and [5 – 15] in Spain.
35. Outside the EEA (with the exception of North America), the parties had, in 2004, a limited combined market share by revenue of [15 – 25%] (EADS: [5 – 15%], the Nokia PMR Business: [5 – 15%])⁹. This therefore, when aggregated with their EEA market share, lowers their overall market share at a world-wide level (again with the exception of North America).
36. It therefore appears that following the contemplated transaction, the merged entity and Motorola will be by far the two main players in the EEA market for PMR systems with the presence of an active competitive fringe.

Analysis

37. In light of the market shares presented above, the notified operation will not lead to the creation or strengthening of a dominant position in the market for PMR infrastructure. Indeed, Motorola will continue to exert a significant competitive constraint on the merged entity at both the EEA and substantially at national levels. In addition, it should be noted that the analysis of EADS' share of the EEA market for PMR infrastructures contracts won has constantly been declining over the period 2000 to 2004¹⁰.
38. Furthermore, a number of capable competitors will remain in the PMR infrastructure market who will continue to exert competitive pressure on the merged entity as well as on Motorola, as evidenced by the number of contracts won by these players in the EEA during the years 2000 – 2004. These competitors include OTE / Finmeccanica ([20 – 30]), ETELM ([15 – 25]), Teltronic ([10 – 20]) and R & S Bick ([10 – 20]). By comparison during the same period, the Nokia PMR business won [15 – 25] contracts, EADS [35 – 45] and Motorola [55 – 65]. In addition, these other competitors also win contracts for large PMR networks, as illustrated by the bidding data¹¹.

⁹ These figures are based upon EADS' and Nokia's internal documents.

¹⁰ EADS' market share based on contracts won has dropped from [30 – 40%] in 2000 to [10 – 20%] in 2004. Its market share based on the value of the contracts won has sharply declined from [10 – 20%] in 2000 to [0 – 10%] in 2004.

¹¹ Bidding data revealed that R & S Bick won a contract for [...] base stations (Austria, 2002); OTE / Finmeccanica for [...] base stations (Spain, 2005) and [...] base stations (Italy, 2002); ETELM for [...] base stations (France, 2003); Frequentis [...] base stations (Austria, 2000).

39. The foregoing conclusion is not put in doubt by concerns relating to the degree of closeness of the competition between the merging parties, because they are not, in fact, each other's closest substitutes in the PMR infrastructure market.
40. First, it should be outlined that the Nokia PMR Business' products are based on the Tetra standard, whereas EADS' products are based on the TETRAPOL standard. Although these two standards are broadly similar in terms of functionalities, they nonetheless present certain differences from a customer's standpoint. In particular, the notifying party explains that TETRA is well suited to high-density and limited coverage networks, whereas TETRAPOL is better suited for low-density and wider coverage networks. Therefore, depending on the customer's technical requirements, one standard may be better suited to a particular project than the other. In addition, the notifying party explains that whereas TETRA is a publicly sponsored standard developed by ETSI, TETRAPOL is a proprietary solution developed by EADS and which is not an official standard. It can be deduced from this that customers' perception of these two standards is different, notably because TETRA, as an industry-supported standard, brings more long term confidence than TETRAPOL.
41. Second, an analysis of the bidding data in the EEA submitted in the Form CO reveals that EADS and the Nokia PMR Business meet infrequently in tender offers. Actually, over the past 5 years, EADS and the Nokia PMR Business only met in [10 – 20%] of the EEA tenders in which either bid ([20 – 30] out of 166). Further analysis of the [20 – 30] tenders where both parties competed indicates that Motorola won [5 – 15] of them, followed by the Nokia PMR Business ([5 - 15]), Frequentis ([0 – 10]), ETELM ([0 – 10]) and OTE ([0 – 10]). EADS did not win any of these tenders. Three tenders have not yet been finalised. Finally, an analysis of these [20 – 30] tenders where both parties bid reveals that (i) in none of these tenders were the Nokia PMR business and EADS the only bidders (ii) on only 5 occasions, Nokia, EADS and Motorola were the only bidders. These tenders were broadly representative of all the tenders in which they bid (i.e. the parties did not meet more frequently in any particular sector) and of all the countries in which they are active (i.e. the parties did not meet more frequently in any particular country).
42. Finally, it is also very unlikely that the present transaction will lead to any co-ordinated effects as a result of Motorola and the merged entity becoming collectively dominant.
43. First, it is not probable that the main PMR suppliers (in particular Motorola and the merged entity) will be able to reach terms of co-ordination for the following reasons: (i) PMR systems are heterogeneous products (the characteristics and value of each system sold depends on the specific needs and requirements of each customer), (ii) the PMR infrastructure market is not transparent (it is bidding market where the pricing and non-pricing conditions offered by each bidder is unknown to the others), and (iii) the PMR market is a growing market (an average of 5% per year in the EEA is expected by respondents to the market investigation for the next five years), and (iv) PMR suppliers usually team-up with other companies (typically telecom operators, software vendors, system integrators, etc.) to form consortia in order to bid for larger PMR projects. Given the involvement and strong commitment of these other companies in the bidding process for the award of large PMR contracts, any attempt to reach co-ordination terms amongst PMR suppliers would be extremely difficult, as it would require the consent and support of companies having their own and distinct interest.

44. Second, any attempt from the main PMR suppliers to co-ordinate in order to raise prices in the PMR infrastructure market above competitive level would be challenged by customers and outsiders¹².
45. As regards customers, it should be recalled that the PMR infrastructure market is a bidding market where customers are large and sophisticated buyers (typically police, military, transportation companies, utilities, oil companies, etc.). The market investigation has evidenced that these buyers usually have a good knowledge of the technologies and the costs involved. Where they don't directly have such knowledge (for instance when they purchase a PMR system for the first time), they can rely on specialised consultants in the procurement process in order to evaluate bids. In addition, evidence from the market investigation suggested that buyers enjoy a significant degree of buyer power. For instance, in 2004, the five main customers of the parties accounted for [50 – 60%] of EADS' PMR revenues and [65 – 75%] of the Nokia PMR Business' revenues. These figures are roughly similar for the other suppliers of PMR infrastructure.
46. As regards actual competitors, as mentioned above, capable competitors will remain who can counterbalance any potential attempts at co-ordinated activity by the main suppliers.
47. Finally, with respect to potential competitors, the notifying party submits that cellular-based solutions already exert price pressure on the PMR market and that in the coming years non-radio technologies (derived from the GSM technology) will provide significant competition to traditional PMR solutions. Although this point has not been confirmed by the market investigation, it should be noted that at least two companies have recently entered the PMR infrastructure market: ZTE Corporation, a Chinese company started supplying PMR infrastructure products based on a technology derived from the GSM technology in 2004, and Thales, a French company involved in professional electronics started supplying PMR infrastructure products based on the TETRA standard in 2002. In addition, it is worth recalling that TETRA, which has become the *de facto* standard in the EEA¹³, is an open standard publicly accessible to any company willing to supply TETRA PMR infrastructure.
48. During the market investigation, certain respondents raised the concern that following the proposed transaction EADS and Motorola would relax the competitive pressure they exert on each other as result of the fact that they will both supply PMR products based on their own proprietary technologies (TETRAPOL for EADS, and APCO P25 for Motorola) in addition to products based on the TETRA open standard. These respondents explained that the Nokia PMR Business used to play an important role in the development and success of the TETRA standard, as all its products were based on that standard. Following the proposed merger, the two main suppliers of TETRA products, EADS and Motorola, would not be as committed to the promotion of the

¹² “Outsiders” as defined in “Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings” OJ C 05.02.2004 p.5, para. 41: “...such as current and future competitors not participating in the co-ordination, as well as customers, should not be able to jeopardise the results expected from the co-ordination”.

¹³ TETRA is a European-wide standard developed by the European Telecommunications Standardisation Institute (“ETSI”). With the exception of EADS' sales of TETRAPOL equipment, all PMR infrastructure equipment sold in the EEA over the last years are based on the TETRA standard. PMR infrastructure based on the TETRA standard broadly accounts for 80 - 90% of the new PMR infrastructure deployed in the EEA each year.

TETRA standard as the Nokia PMR Business was, and their incentives might be to favour the products based on their own proprietary technologies (where they would achieve higher margins) and therefore to compete less in the TETRA area (where they would achieve lower margins due to competition from other suppliers).

49. Such a scenario can safely be excluded for the following two reasons. First, the market investigation clearly reveals that TETRAPOL is a declining standard in the EEA, as evidenced by EADS' declining share of the PMR contracts won over the last five years in the EEA. Second, all respondents to the market investigation indicated that TETRA is already the *de facto* standard for PMR systems in the EEA. As noted above, this is due notably to the fact that TETRA is an industry-supported standard, which brings more long term confidence to customers than proprietary technologies, such as TETRAPOL or APCO P25. In addition, as an industry-supported open standard, TETRA allows customers to multi-source their procurement and to therefore optimise their costs.
50. In light of these elements, the proposed transaction could be seen as a strategic move by EADS [...] and to also compete more effectively in the PMR market with a TETRA-based offering. As for Motorola, even though its incentives might be to favour products based on its own proprietary APCO P25 technology (which is the leading technology in the USA), there is no evidence that Motorola has developed such a strategy in the EEA. In any case, none of Motorola's clients in the EEA has selected a PMR system based on APCO P25¹⁴. In order to remain a successful player in the European PMR market, Motorola will therefore have to keep competing in the TETRA area, as it is the standard which is required by EEA-based customers and which is the gateway to success in the EEA.
51. During the market investigation, another respondent also raised the concern that following the proposed transaction EADS would be in a position to take advantage of the commonalities between Nokia's PMR switches and Nokia's GSM/GPRS switches. According to that respondent, it would indeed be possible to upgrade Nokia's GSM/GPRS switches to provide some PMR-like services (e.g., priority calls, group calls) with existing GSM/GPRS networks coupled with PMR radio base stations. Given that the TETRA standard does not define the interface between PMR radio base stations and PMR switches (which are therefore to be provided by the same manufacturer or by two manufacturers having a bilateral agreement), and given Nokia's strong installed base in the GSM/GPRS networks, EADS would thus enjoy a strong competitive advantage to provide PMR radio base stations to GSM/GPRS operators wishing to upgrade their networks (using Nokia's GSM/GPRS switches) in order to provide PMR-like services.
52. Regardless of whether the scenario described above is technically and commercially credible, the concern expressed by this respondent can be dismissed on the ground that it is not merger-specific. Absent the proposed transaction, the Nokia PMR Business would have been in a position to take advantage of the alleged possibility to upgrade existing GSM/GPRS networks to provide PMR-like services. In addition, it should be outlined that the merger will make it more difficult for EADS to take advantage of such a possibility than it would have been for the Nokia PMR Business absent the merger. Indeed, the merger will result in a separation of Nokia' PMR activities (which will be take over by EADS) and Nokia's GSM/GPRS business (which will remain with Nokia

¹⁴ The Form CO states that "Motorola's APCO P25 technology is only marginally in present in Europe". To the knowledge of the Commission, this technology has been selected in Bulgaria, but not by any EEA-based customer.

and which will keep control over the GSM/GPRS switches' technology). Therefore, following the merger, Nokia's incentives to facilitate the upgrade of the GSM/GPRS networks and to favour EADS in such a context will be minimized compared with what its incentives would have been absent the proposed transaction.

53. There is therefore no tangible risk that the intensity of competition in the PMR infrastructure market, or even within the TETRA infrastructure segment of the market would significantly decrease as a result of the proposed transaction. Indeed, with respect to the TETRA segment of the market, the number of suppliers, as well as their incentives to compete within that segment of the market, will remain unchanged.

Market for PMR specific services

54. The notifying party explains that EADS and the Nokia PMR Business do not supply services in relation with PMR systems without also supplying the underlying infrastructure¹⁵. In addition, the market investigation clearly indicates that services which are PMR specific, such as maintenance and certain deployment services, typically form part of the same calls for tenders as the PMR infrastructure, and are therefore provided together with the infrastructure by the same supplier (or by the same consortium).
55. Therefore the analysis of the effects on competition of the proposed transaction in the market for PMR specific services is not materially different than the analysis for the PMR infrastructure market as exposed above. Therefore, for the reasons mentioned above, it can be concluded that the proposed transaction will not significantly impede effective competition in the market for PMR specific services.

VI. CONCLUSION

56. In light of the foregoing, the Commission concludes that the proposed operation will not significantly impede effective competition in the common market or in any substantial part of it, in particular as a result of the creation or strengthening of a dominant position.
57. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and 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

¹⁵ For the sake of completeness, the notifying party indicates that on occasion EADS has supplied services without also supplying the infrastructure, but "only to a very limited extent".