

***Case No COMP/M.3985 -
EADS / BAES / FNM /
NLFK***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/02/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07/02/2006

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3985 - EADS / BAES / FNM / NLFK
Notification of 03/01/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 03/01/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("EC Merger Regulation") by which the undertakings European Aeronautic Defence and Space Company EADS N.V. ("EADS", Netherlands), BAE Systems plc ("BAES", UK) and Finmeccanica S.p.A. ("FNM", Italy) through their joint ventures MBDA S.A.S. ("MBDA") and LFK – Lenkflugkörpersysteme GmbH ("LFK", Germany) acquire control of certain businesses and shareholdings ("VM") currently solely controlled by EADS's subsidiary EADS Deutschland GmbH ("EADS Deutschland") and of EADS Deutschland's subsidiary TDW Gesellschaft für verteidigungstechnische Wirksysteme mbH ("TDW") within the meaning of Article 3(1)b of the EC Merger Regulation by way of purchase of shares and assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES AND THE OPERATION

3. MBDA is a supplier of guided weapons and guided weapons systems (“GW / GWS”). LFK and VM also supply GW / GWS, and in particular tactical missiles. TDW produces GW / GWS sub-systems and components. MBDA’s parent companies - EADS, BAES and FNM - are suppliers of aerospace and defence technology.
4. The transaction consists of the acquisition of joint control by the undertakings EADS, BAES and FNM, through the joint ventures MBDA and LFK², over some businesses currently solely controlled by EADS through its wholly owned subsidiary EADS Deutschland. More specifically, EADS Deutschland is transferring its VM³ and TDW businesses – in essence, its German guided weapons and guided weapons systems’ (“GW / GWS”) activities - to the joint venture MBDA. The transaction brings about a structural change to the extent there is a switch from EADS Deutschland’s sole control over VM and TDW to joint control over VM and TDW by EADS, BAES and FNM, by virtue of their interests in MBDA. It is therefore a concentration within the meaning of Article 3(1)b of the EC Merger Regulation.

II. COMMUNITY DIMENSION

5. The combined aggregate world wide turnover of the undertakings concerned exceeds € 5000 million (EADS: € 31 761 million, BAES € 19 861 million and FNM 9 387 million in 2004). The aggregate Community wide turnover of each of the undertakings concerned exceeds € 250 million (EADS: €[...], BAES €[...] and FNM €[...]). These parties do not achieve more than two-thirds of their aggregate Community wide turnover in one and the same Member State. The notified operation, therefore, has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

III. RELEVANT MARKETS

The relevant product market

6. The above concentration relates to GW/GWS and GW subsystems / components.
7. GW are missiles reliant upon a guidance mechanism to direct them to their target. A GWS consists of a missile with its launchers and fire control system and may also include its own radars for surveillance and tracking. A first distinction is to be made between strategic GW on the one hand and tactical GW on the other hand. The current case only relates to tactical GW, for which previous Commission

² As part of the same transaction, LFK, currently jointly controlled by EADS Deutschland and MBDA, will become a wholly controlled subsidiary of MBDA. There is however no change in the quality of control exercised over LFK, which as a subsidiary of MBDA will remain jointly controlled by the same ultimate parents: EADS, BAES and FNM.

³ The VM business comprises the following assets and shareholdings:
- EADS Deutschland’s German missile-related activities conducted at its sites in Ulm and Unterschleißheim,
- [Shareholding interests in several JVs]

decisions⁴ have identified several categories according to the application of the missile (air to air, anti-ship, air to surface, ...) and range. Whilst limited substitutability from the demand side may lead to consider each of these categories as distinct markets, there is a certain degree of supply-side substitutability and interchangeability (i.e. medium range missiles can be used for shorter range missions). Such has been confirmed by the market investigation. In any case, the exact market definition for tactical GW/GWS can be left open for the purpose of this assessment as the proposed concentration would not significantly impede effective competition in the common market in any tactical GW / GWS market.

8. EADS's subsidiary TDW produces GW / GWS subsystems such as warheads and (to a very limited extent) proximity fuses. The warhead constitutes the payload of the GW, including the safety and arming device, the explosive charge and the impact fuse. As TDW supplies proximity fuses only as part of the warhead, proximity fuses will not be discussed further.

The relevant geographic market

9. In their Form CO, the parties state that many defence markets are becoming worldwide, pointing to the international procurement policy of some Ministries of Defence ("MoD's") and the creation of a Europe-wide defence procurement management agency between the United Kingdom, France, Germany, and Italy.
10. In past decisions concerning the defence sector, the Commission has defined the relevant geographic markets for defence equipment and subsystems overall as national for the Member States where domestic producers are active, given that traditionally the MoD's of such Member States have shown a clear preference to source from the national supplier(s), and as worldwide for other Member States. Whilst the Commission acknowledges that developments⁵ and initiatives in the defence sector could lead to European geographic defence markets in the future, its investigation in the present case has shown that for current projects the tendency of MoD's to favour national producers where they exist is still largely predominant, therefore confirming the previously upheld geographic market definition.
11. In any case, the exact market definition for tactical GW/GWS can be left open for the purpose of this assessment as neither on a national or a world-wide basis these transactions are likely to raise competition concerns.

⁴ Case IV/M.945, Matra BAe Dynamics / DASA / LFK and Case COMP/M. 1745, EADS

⁵ See in particular Commission Communication COM(2003) 113 "Toward a European Union policy for defence equipments", setting an action plan, Green Book COM(2004) 608 dealing with "Public defence markets" and Council Action 2004/551/PESC of 12 July 2004 dealing with the creation of a European Defence Agency (OJ L245, 17 July 2004, p. 17).

IV. COMPETITIVE ASSESSMENT

Horizontal overlaps

12. The only structural change resulting from the transaction⁶ consists of MBDA's parents obtaining via MBDA joint control over VM and TDW, which are currently under the sole control of EADS Deutschland. The Commission has therefore assessed the competitive overlap between VM and TDW on the one hand, and MBDA and its parent companies on the other hand for tactical GW / GWS and their subsystems.
13. According to the parties, the horizontal overlaps that will result from the transaction are limited and merely result from VM and MBDA participating in the same programmes. In the overall tactical GW / GWS market worldwide, LFK/VM would add less than 5% to MBDA's [25-35]% market share. The US suppliers Raytheon ([25-35]%), Lockheed Martin ([20-30]%) and Boeing ([5-10]%) remain strong competitors. In the German market, the addition of VM (accounting for 10% to 15% of the German market) to LFK (accounting for between 30% and 40% of the German market) does not have an important impact, as the German company Diehl BGT Defence will remain an alternative independent supplier of roughly the same size as LFK/VM and the German MoD is a monopsonist buyer in this market.
14. The only segment of the tactical GW / GWS market where VM is active is that for surface-to-air, medium range missiles (MSAM). However, in this segment, the combination of MBDA and LFK on the one hand and VM on the other hand does not lead to a market share above [5-10]% on a worldwide level. Also, and specifically with regard to the German market, MBDA, LFK and VM are already linked through [...]. VM also participates as a sub-contractor in a number of other ongoing collaborative air defence programmes. For each of these programmes, the selection of the prime contractor and sub-system suppliers has already taken place. In any case, alternative suppliers independent from MBDA and its parents, such as Diehl BGT Defence, remain in the German market for surface to air medium range missiles.
15. With regard to GW / GWS subsystems produced by TDW, a limited horizontal overlap results from the fact that both TDW and BAES (and its subsidiary Saab) produce warheads. Neither BAES nor Saab have supplied the German market in the past. A combined BAES – Saab ([15-25]%) and TDW ([0-5]%) would account for [20-30]% of the worldwide market, competing with the US suppliers ATK ([20-30]%), Aerojet ([20-30]%) and General Dynamics ([5-10]%) and a number of smaller suppliers including European suppliers such as GIAT, Thales, RUAG, Hellenic Defence Systems and Diehl BGT Defence (each less than 5% of the market).

⁶ As LFK is currently jointly controlled by EADS Deutschland and MBDA, there is no change in the quality of control exercised over LFK, which will remain jointly controlled by MBDA's parents. The overlaps between the GW/GWS activities of LFK, MBDA and MBDA's parent companies were assessed in decisions IV/M.945 - Matra BAE Dynamics / DASA / LFK and COMP/M.1745 - EADS.

16. Neither customers (MoDs) nor competing GW / GWS manufacturers consider that the proposed concentration could lead to an adverse effect on competition in the relevant markets.

Vertical relations

17. The concentration also brings about a vertical integration as MBDA - a leading GW / GWS producer- will obtain control over TDW's warheads activities. TDW currently uses [approximately two thirds] of its warhead production internally, with sales to LFK and indirectly to MBDA through co-operative programmes. Post transaction, TDW warheads could be sourced internally by MBDA (missiles), Saab (missiles) and BAES (torpedoes). The Commission's investigation has ruled out any risk that the transaction could lead to input or output foreclosure. As indicated above, GW / GWS competitors can be supplied by a number of alternative warhead suppliers, including European suppliers such as Thales, RUAG, Hellenic Defence Systems, GIAT and DBD. As regards downstream foreclosure, warheads' suppliers would still be able to supply third party missile manufacturers, which account for a significant share of the total market. In any case, the parties submit that end customers (MoDs) exercise strict control over sub-system selection and that for future programmes, the selection of sub-systems – including warheads – is increasingly made on the basis of open calls for tenders. The above has been broadly confirmed by the market investigation.
18. Competing GW / GWS manufacturers have indicated that the concentration will make MBDA a vertically more integrated company, although this will not impede them to continue competing with MBDA in the markets downstream of warheads.

V. CONCLUSION

19. It can therefore be concluded that the concentration will not significantly impede effective competition in the common market or in a significant part of it, in particular as a result of the creation or strengthening of a dominant position.
20. 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 by Neelie KROES
Member of the Commission