

***Case No COMP/M.4465 -  
THRANE & THRANE /  
NERA***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 21/03/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21/03/2007

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.4465 – THRANE & THRANE / NERA - Notification of 14.02.2007 pursuant to Article 4 of Council Regulation No 139/2004**

- 1) On 14 February 2007, the Commission received a notification of a proposed concentration by which the undertaking Thrane & Thrane A/S ("Thrane & Thrane", Denmark) acquires within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004<sup>1</sup> ("EC Merger Regulation") sole control of the whole of Nera Satcom AS ("Nera", Norway), a wholly owned subsidiary of Nera ASA.
- 2) After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the EC Merger Regulation, and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

## I. THE PARTIES

- 3) The purchaser, **Thrane & Thrane** is a Danish company, active in the development, production and sale of equipment for land-based, maritime and aeronautical satellite communications based on the Inmarsat<sup>2</sup> system. It also produces and sells equipment

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1

<sup>2</sup> Inmarsat was founded in 1979 as an intergovernmental organisation to provide global safety and other communications for the maritime community. It was transformed into a private company in 1999 and is currently listed at the London Stock Exchange. With a 10-satellite constellation as well as a network of ground control and support facilities, it competes with other satellite system operators as Iridium, Globalstar and Thuraya for global satellite communications solutions.

for radio communication. It is also one of the appointed airtime distributors of Inmarsat's new generation satellites in the land communication segment (called BGAN<sup>3</sup>).

- 4) The target, **Nera** is a Norwegian company active in the development, production and sale of satellite terminals and land earth stations for land mobile and maritime satellite communications.

## II. THE TRANSACTION AND ITS DIMENSION

- 5) With the operation, Thrane & Thrane acquired 100% of Nera's shares. The transaction is therefore a **concentration** within the meaning of Article 3 of the EC Merger Regulation.
- 6) **Thrane & Thrane's** worldwide turnover amounted to 123 million EUR in 2005/2006 and its Community wide turnover was [...] EUR in the same financial year. **Nera** achieved in 2005 a turnover of [...] EUR worldwide and around [...] EUR in the Community. The transaction therefore does not have Community dimension within the meaning of Article 1 of the EC Merger Regulation.
- 7) The merger was announced on 2 August 2006, and notified to the national competition authorities of Norway (on 10 August 2006), Spain (on 30 August 2006) and Greece (on 31 August 2006). It was cleared by Norway on 2 October 2006 by a short non-intervention notice, by Spain on 4 October 2006 by a reasoned decision and "registered"<sup>4</sup> by Greece on 27 October 2006. It was also cleared in China. Following these clearance decisions the parties closed the transaction on 10 October 2006.
- 8) The transaction was not notified in the United Kingdom, which has a voluntary notification system. Following a complaint received by the Office of Fair Trading ("OFT"), the authority sent to the parties an initial information request on 29 September 2006. The OFT received the response of the parties' deemed to be complete for the purpose of the assessment in accordance with Article 22 on 10 October 2006.
- 9) The Commission received the referral request made by the United Kingdom pursuant to Article 22(1) of the EC Merger Regulation on 31 October 2006. None of the Member States and EFTA States has joined the request within 15 working days as foreseen by the EC Merger Regulation. Based on Article 22(3) of the EC Merger Regulation, the Commission has decided to acquire jurisdiction to examine the concentration on 11 December 2006. The transaction is therefore deemed to have Community dimension.

## III. ASSESSMENT

- 10) The proposed concentration will mainly result in an overlap in the manufacture and supply of maritime terminals. An additional overlap occurs between the parties with regard to land earth stations.

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<sup>3</sup> Broadband Global Area Network

<sup>4</sup> A notice declaring that the transaction is actually below the Greek notification thresholds.

(1) **RELEVANT MARKETS**

**A. Relevant product market**

*a) Introduction*

- 11) The notifying party proposes as relevant market "the wholesale market for equipment for the global supply of mobile communications".
- 12) Satellite communication is provided via the following actors: (1) satellite system operators (such as Inmarsat, Iridium, VSAT) (2) manufacturers of land earth stations (3) manufacturers of terminals for end-users in the three segment (aeronautical, land and maritime) and (4) airtime and equipment resellers. Customers of land earth stations are either the satellite system operators or the airtime providers. Terminals are sold to OEM's (e.g. ship builders in the maritime segment) or via distributors to end-users.
- 13) The proposed market definition includes the supply of equipments for satellite communication in **three segments: land, maritime and aeronautical**. However, the market investigation does not support the wide market definition proposed by the parties. First of all, as explained below the three segments differ with regard to the equipment used. As also underlined by the Spanish Competition Authority in its decision to clear the proposed transaction<sup>5</sup>, these products differ both with regard to technical aspects and with regard to legal requirements. Furthermore, equipment suppliers and their market strength differ as well throughout the three segments.<sup>6</sup> For instance, whereas Nera is present in the land and maritime communication segment, it is not active in the aeronautical segment.
- 14) **Terminals** also known as hardware are the equipment used by end-users to receive and send data (which can be voice, fax, mail etc). Terminals are specific to each satellite system and – as indicated above - they are by and large different in all three segments (land, maritime and aeronautical) and are not regarded as interchangeable by end-users. As distributors submitted in the course of the market investigation, only a marginal part of ship owners are able to use terminals developed for land use in the maritime segment. Terminals are developed either by the satellite system providers themselves or by independent manufacturers on the basis of standards and protocols provided by satellite operators. As the target, Nera does not produce terminals in the aeronautical segment, the overlap occurs in the land and maritime segment.

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<sup>5</sup> See decision of the Spanish Competition Authority on case N-06082 T&T/NERA.

<sup>6</sup> Land terminal suppliers are among others Hughes Network, Add Value, Ericson, SWE-DISH, VIASAT, GILAT, EMS, APSI, Qualcomm, Comtech, Satamatics and Skywave. The maritime terminal manufacturers beside the parties (as explained further below) are Furuno, JRC, ICOM, EMS, Sea Tel, Orbit, Schlumberger and Raymarine.

*b) Maritime communication equipment*

- 15) **Maritime terminals** might be divided in two categories: legally required and operational terminals.
- 16) Vessels sailing in certain distances from the shore have legal obligations under the SOLAS ("Safety of Life At Sea") Convention of the United Nations. With regard to maritime communication, the relevant regulation is the one establishing the Global Maritime Distress Safety Services (GMDSS), an international system for automatic distress and safety alarms. It requires such vessels to be equipped with **regulatory-approved communication equipment** (so called GMDSS-approved equipment).
- 17) Depending on the distance from the shore, vessels have to be equipped with different types of communication equipment. For the high sea territories (called sea area A3) the obligatory GMDSS equipment is either an MF/HF radio or a terminal, which has to be routed through the Inmarsat satellite system (Inmarsat –C terminal). In order to ensure safety, the legally required equipment has to be duplicated by redundancy equipment should be installed on each SOLAS vessel.
- 18) Given the rather strict regulatory requirements, the choice of terminals is strongly reduced. The Commission has asked national maritime authorities<sup>7</sup> to indicate which are the most common solutions to fulfil regulatory requirements in the high sea territories where most SOLAS vessels sail. The answers consistently indicate that the most common solutions are the installation of either two Inmarsat-C terminals and a MF radio or one Inmarsat-C terminal with 1 MF/HF radio.
- 19) According to a third party in the proceedings (active in the provision of air-time), a third solution is available to meet the GMDSS requirement, consisting in one Inmarsat-C terminal and one other Inmarsat terminal (Inmarsat-A, Inmarsat-B or Fleet 77), which is also used for operational communication needs<sup>8</sup>. The Commission market investigation has confirmed that the option is available in theory, but its relevance seems to be rather small. Firstly, many maritime authorities do not consider other Inmarsat terminals as compliant with GMDSS requirements<sup>9</sup>. Other maritime authorities allow ships to have an Inmarsat-C and a Fleet 77 terminal to meet the GMDSS requirements; however, they confirmed that this is not a very common solution<sup>10</sup>. As it will be shown below, Fleet 77 (and the older versions Inmarsat-A and

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<sup>7</sup> On 21 February 2007, the Commission sent a dedicated questionnaire to maritime authorities in order to understand the regulatory situation as regards GMDSS regulation and its application by the authorities.

<sup>8</sup> According to this third party, this option is the most frequently used. To support this view, it provided data from the Norwegian Shipping Registry that would show that the 2 Inmarsat-C terminals option is not used very often. However, the data is far from conclusive and the party's claim is based on a number of non-verifiable technical assumptions. Additionally, the Norwegian registry covers only a very small proportion (around 1%) of the vessels subject to the SOLAS regulations and it is therefore not representative of the situation worldwide.

<sup>9</sup> This is because, although Fleet 77 is able to initiate and receive distress priority communication, it does not have the necessary Direct-Printing (TELEX) telegraphy function foreseen in the regulation. This is the case for example in Sweden, Germany and Greece.

<sup>10</sup> This is the case for example of Denmark and Norway.

Inmarsat-B) terminals are used first and foremost to fulfil operational communication needs and not to comply with GMDSS requirements.

- 20) On this point, it should also be noted that the market investigation has clearly indicated that end-users select terminals to meet GMDSS requirements and terminals to fulfil the operational needs according to different criteria. For the former, end-users focus on complying with the legal requirements for the lowest price possible, while for the latter the decision process is more complex, as will be explained below.
- 21) Once the legal requirements are fulfilled, ship owners need to fulfil the **operational communication needs** of their vessels. Although in a limited number of cases (i.e. where communication needs are very basic) the legally required equipment might fulfil these needs as well, most ship owners sailing on the high sea require more complex communication means. Operational terminals include a wide range of different products, which can be routed either through Inmarsat or through any other satellite system.
- 22) As indicated above, different decision-making mechanisms apply for the choice of operational communication equipment as for regulatory-approved equipment<sup>11</sup>. When it comes to fulfilling operational communication needs of the vessels, end-users base their choice on three aspects: the operational needs of the vessel, the cost of the actual terminal and costs relating to the use of air-time. As a general rule ship owners tend to base their operational communication equipment choice on the total cost of ownership. Customers take into account their needs first of all for coverage which depends on the region or regions where the vessel will operate, secondly with regard to data transmission capacity. Fleet-owners furthermore take into account the ease of communication within the fleet, and therefore tend to acquire terminals for new ships which rely on the same satellite communication system as their current vessels. Although the notifying party propose including in the market definition communication via both satellite and radio, customers responding to the market investigation indicated that they do not see radio solutions comparable to satellite solutions.
- 23) Different **satellite systems serving the maritime segment** have different coverage and different data transmission capacity. Whereas Inmarsat and Iridium and to a large extent VSAT have global coverage, Globalstar, Asia Cellular Satellite, Thuraya and MSV Mobile Satellite Ventures provide for regional coverage. Whereas for instance, VSAT and Globalstar allow higher speed data transmission, others such as Iridium only enable low-speed data transmission. Satellite systems allowing higher data transmission might provide both, basic and also more sophisticated services. The market investigation shows that operational maritime terminals are differentiated products serving differentiated needs, which are nevertheless in competition with each other for fulfilling the specific communication needs of specific customers.
- 24) Looking more in detail into the various types of maritime terminals, it appears that they can be divided into two further categories: low-end maritime terminals and high-end maritime terminals.

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<sup>11</sup> The questionnaire to distributors and air time providers, sent on 15 February 2007, specifically asked about purchasing patterns for operational communication and regulatory-approved equipment. See question 5 of the questionnaire.

- 25) **Low-end maritime communication equipment** serve less complex data communication needs and enable lower data transmission, such as voice and fax. They might be routed via satellite systems not providing global coverage such as Thuraya or via satellite systems providing global coverage, such as Iridium. Among low-end operational terminals overlap occurs among the parties with regard to three Inmarsat terminals: Mini-M and Fleet 33 and Fleet 55. Mini-M primarily offers data voice services and enables low speed data transmission. According to the market investigation there are a number of other low-end terminals which might substitute Mini-M such as Thuraya, Iridium, Globalstar. Fleet 33 and 55 are terminals relying the recent, third generation satellite system of Inmarsat offering voice and data applications. The market investigation shows that Fleet 33 competes with Thuraya, Iridium, Globalstar and small VSAT, whereas Fleet 55 might be substituted with Thuraya or VSAT.
- 26) **High-end maritime communication equipment** serve more complex data communication needs providing usually global coverage and high data transmission capacity. These terminals are used for instance by larger commercial vessels, shipyards and larger yachts. Such more sophisticated needs are currently served by two satellite systems: Inmarsat and VSAT. Among the high-end Inmarsat terminals, the first generation serving more complex communication needs was Inmarsat A, which has been discontinued and will cease to operate from 31 December 2007. The second generation is represented by Inmarsat-B terminals which are still widely used by ship-owners but has been discontinued by the parties. Fleet 77 terminals, for which overlap occurs among the parties, rely on the third Inmarsat generation. Finally, as detailed below the new, fourth generation of Inmarsat satellites allows for the introduction of FleetBroadband.
- 27) When looking for high-end communication equipments customers currently have the choice between Inmarsat-B, Fleet 77 and VSAT. Inmarsat B however will be phased out from the market in the future. At the same time the new FleetBroadband will be introduced in the course of 2007. With regard to Fleet 77, distributors indicated in their replies to the market investigation that to an important extent VSAT is its closest substitute<sup>12</sup>. Whereas both belong to the latest technology and allow high-speed data transmission, they have a different air-time pricing policy. Whereas for the Fleet terminals end users pay for the actual air-time used, and/or the volume of data actually transmitted, in case of VSAT they pay a flat-rate independently from the air-time used. Certain respondents underline furthermore the advantage that Fleet 77 fulfils besides the operational needs, the regulatory obligations as well. However, as indicate above, the market investigation has indicated that this option is quite limited in practice.

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<sup>12</sup> The same view is proposed to the Norwegian Competition Authority by Inceptum 1 AS, a wholly owned subsidiary of Apax Partners SA and the owner of France Telecom Mobile Satellite Communications SA, a major distributor of Mobile Satellite Services [MSS] such as Inmarsat, in its filing relating to the acquisition of Telenor Satellite Services AS, another major distributor of MSS: "[...] *customer's price awareness leads them to switching between MSS and VSAT solutions, depending on which system is the most economically advantageous. Thus, the price competition between MSS and VSAT services is fierce, and there are no significant differences in prices between these services*".

28) The Commission considers that further segmentation of the market by specific terminal types would not be appropriate.<sup>13</sup> The elements reported above indicated that competition is not between terminal types, but between satellite services based on the total cost of ownership, within which the cost of the terminal is usually a fraction of air-time cost. Furthermore, as further described below given the rapidly developing and changing technology, such a narrow market definition would not take into consideration the competition constraint exercised by the products of newer technologies. It should be noted as well that there is a considerable supply-side substitutability among maritime terminals underpinned by the fact that manufacturers have in general a rather wide product range.

29) Based on the above, the Commission considers that there is a separate market for Inmarsat-C communication equipment as it is obligatory to have this terminal on board in order to comply with the GMDSS legal requirements. As for communication equipment used to fulfil communication needs, the market investigation has pointed at a distinction between low-end maritime communication equipments and high-end maritime communication equipments constitute, which should therefore be regarded as two separate relevant product markets for the purpose of this decision.

c) *Land earth stations*

30) Land earth stations ensure the connection between the satellite and the terrestrial communication systems. When a satellite operator designs a new satellite system, it needs to have land earth stations adapted to it. For illustration, there are currently around 15-25 Inmarsat land earth stations.<sup>14</sup> Land earth stations are specific to each satellite communication system, but often also to terminals. For instance, there are specific land earth stations for Inmarsat-A (the first generation Inmarsat satellite system), to Inmarsat-B (the second generation Inmarsat satellite system) etc. The parties submit therefore that there is a separate market for each terminal-specific Inmarsat land earth station, in which case there is no overlap between the parties. Should the market be larger including all Inmarsat land earth stations, there is an overlap between the parties. On the other hand, it appears that land earth stations consist of a number of components such as satellite dish, the radio access network and the core network which can be delivered by different suppliers. According to certain respondents, expertise and products are sufficiently similar across the three segments and even among satellite networks.

31) Existing land earth stations requires maintenance during the life-time of the satellite system which varies between 6 and 16 years depending on the orbital structure of the satellite system. Given this maintenance requirement, customers usually have to have long-term relationship with the manufacturer of the actual land earth station.

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<sup>13</sup> To provide an indication on the size of such hypothetical narrow markets, the Fleet terminals (consisting of Fleet 77, Fleet 55 and Fleet 33) represent together less than 10% of all Inmarsat maritime terminals activated worldwide by 31 December 2006.

<sup>14</sup> Inmarsat's answer to the Article 11 letter of the Commission of 27 February 2007.

32) However, for the purpose of this decision the question of exact market definition might be left open as the transaction does not raise competition concerns under any market definition.

### **B. Relevant geographic market**

33) According to the notifying party, given the very nature of the market, it is global in scope. The market investigation has clearly confirmed the proposed geographic market definition. Whereas there are only few manufacturers of terminals and land earth stations, both products are sold and serviced globally, often through quotations. Transportation costs do not play a major role. Distributors source globally independently from the location of manufacturers.

34) Therefore the geographic market for low-end and high-end maritime communication equipments and land earth stations should be regarded for the purpose of this decision as being worldwide in scope.

### **COMPETITIVE ASSESSMENT**

#### *a) Maritime communication equipments*

35) According to the parties, the merged entity's combined market share in the proposed market for equipment for the global supply of mobile communication irrespective of whether it is in land, aeronautical or maritime segment would be [10-20]%<sup>15</sup> (Thrane & Thrane [5-10]%, Nera [5-10]%). Such market definition, however, has not been confirmed by the Commission market investigation, as argued above

36) Regarding the market for Inmarsat-C communication equipment, worth around 85 million Euros worldwide in 2005, there is no overlap between the parties, as Nera is not active in this area, having terminated its activities relating Inmarsat C a few years ago. A third party in the proceeding (active in the provision of air-time) has indicated to the Commission that the merger would nevertheless remove Nera as the best placed potential (re-)entrant on the market. However, as no factual evidence was brought forward by the third party or emerged from the market investigation to sustain this claim, the Commission does not consider that the merger is likely to lead to a significant impediment of effective competition in the market for Inmarsat-C terminals.

37) On the market for low-end maritime communication equipments, worth around 175 million Euro worldwide in 2005, the parties' combined market share is [15-25]% (Thrane & Thrane [5-15]%, Nera [5-10]%), with competitors such as Furuno ([15-25]%), ICOM ([15-25]%), JRC ([10-20]%) and Raymarine ([5-10]%). On the market for high-end maritime communication equipments, worth around 55 million Euros worldwide in 2005, the parties' aggregate market share is [35-45]% (Thrane & Thrane [15-25]%, Nera [15-25]%). Sea Tel and Orbit (two VSAT terminal producers) account for [40-50]% of the market, whereas JRC holds [5-15]% and Furuno [0-5]% of the market by manufacturing Fleet 77 and Inmarsat B terminals.

38) A third party (active in the provision of airtime) intervening in the Commission proceedings, provided data indicating high market shares in Europe: [55-65]% for

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<sup>15</sup> Market share data are from 2005 and reflect best estimates of the parties.

Inmarsat B (Thrane & Thrane [5-10]%, Nera [50-60]%) and [80-90]% for Fleet 77 (Thrane & Thrane [35-45]%, Nera [40-50]%), although conceding that these market shares are not representative of the worldwide position of the parties, which is weaker. As indicated above, the Commission does not consider being appropriate using such a narrow market definition. Moreover, for the reasons stated below, these market shares underestimate the competitive constraints faced by the merging parties as well as the dynamics of competition on the market.

- 39) As distributors indicated during the market investigation, the most important competitors of the merging parties are the Japanese companies Furuno (producing for instance Fleet 55, Fleet 33, Inmarsat C and radio equipment) and JRC (producing a wide range of equipment such as VHF, MF/HF radio, Inmarsat-C, Fleet 77 and soon Fleetbroadband). There are a number of smaller players such as ICOM, EMS, Sea Tel, Orbit, Schlumberger and Raymarine and Glocom also present on the market.
- 40) Competition on the markets for communication equipment is ensured in both high-end and low-end maritime terminal markets by the competition in the upstream market among satellite system operators, having global coverage such as Inmarsat, Iridium VSAT and those having regional coverage like Globalstar, Asia Cellular Satellite, Thuraya and MSV Mobile Satellite Ventures. The fact that Inmarsat is in competition with these operators is reflected by the fact that it does not charge different prices according to the location or region but uses unique prices for similar services globally.
- 41) Given the competition among satellite system operators, they have a strong interest to ensure competition on the market for terminals in order to have as many subscribers as possible. As Inmarsat indicated “*Should the prices be raised by the new merged entity, Inmarsat would face loss of sales. However, given that Inmarsat is the owner of IP rights to develop terminals compatible with its satellite system, it might sponsor easily entry to the market.*”<sup>16</sup> Inmarsat also indicated that it has provided development funding to manufacturers to design and develop new equipment or services. A recent example the funding provided for Thrane & Thrane, Nera, Hughes Network Systems (HNS) and AddValue Technologies to develop terminals for new broadband services.
- 42) As the example of FleetBroadband shows, it is in the interest of satellite system providers to have manufacturers developing equipment for their respective satellite systems in order to effectively compete on the market and increase the number of subscribers. It must be furthermore noted that even if Inmarsat would not face competition by other satellite system providers it would have little interest to share hypothetical monopoly profit with the new merging entity, instead of trying to vindicate it for itself.
- 43) On the face of these elements, it is important to note that Inmarsat does not consider as likely that prices of Inmarsat-compatible terminals would rise as a result of the proposed transaction: “*whereas the merged entity will enhance its strategic commitment to supplying Inmarsat compatible equipment, it will not acquire market power because it will be constrained by a number of competing terminal manufacturers, such as Furuno or JRC. Inmarsat considers that there are enough manufacturers exercising competitive constraint on the merged entity. Given the number of manufacturers able to*

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<sup>16</sup> Minutes with Inmarsat of 5 March 2007

*develop Inmarsat terminals, the company is not concerned about lessening of competition.”<sup>17</sup>*

- 44) Furthermore, as indicated above, end-users have to have specific terminals to each satellite system they would like to use as a communication channel. However, technical specifications and protocols required to develop the equipment are owned by satellite system operators and are based upon open standards. It follows that airtime terminal manufacturers have free access to these standards to develop compatible terminals. Contrary to the airtime wholesale contracts between satellite system operators and airtime providers to sell airtime, contracts relating to terminal development between satellite system operators and terminal manufacturers are not exclusive. On the contrary, as Inmarsat indicated, it does not choose manufacturers to produce terminals, but manufacturers are free to produce terminals meeting its specifications. Inmarsat carries out the approval in order to ensure that the terminal is compatible with the satellite system it is adapted to and it will not damage the network.
- 45) Finally, it appears that the market shares indicated above overstate the market position of the parties given the rapidly developing and changing technology. It appears that innovation plays a very important role in these markets. Even if following Inmarsat-B, currently Fleet 77 and VSAT are the most advanced high-end products in the market, new developing technologies may quickly weaken their market position. In fact, Inmarsat's new satellite generation provides broadband services.
- 46) In the maritime segment under the name FleetBroadband, it will allow for using more advanced technology, than the actual Fleet 77. As in the land segment BGAN, in the maritime segment FleetBroadband targets the high-end of the market providing higher band with increased coverage, lower air-time rates, smaller equipment and lower airtime rates and lower terminal cost than the actual Fleet 77. The new FleetBroadband terminals are expected to be introduced to the market during the course of the year by the merged entity and also by JRC. According to Inmarsat further competitors such as EMS and AddValue are also committed entrants, albeit at a later date<sup>18</sup>.
- 47) A previous generation change among high-end terminals is illustrated by the gradual take-over of sales of Fleet 77 over sales of Inmarsat-B. According to the data from the Inmarsat Data Warehouse System the change took around 2,5 years. This data was also confirmed by the distributors during the market investigation, who estimate based on previous experience that FleetBroadband sales take over Fleet 77 sales within 2-3 years.
- 48) Consequently, considering the number and strength of the remaining competitors as well as the low barriers to entry, the Commission concludes that the transaction will not lead to a significant impediment of effective competition within the EEA.

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<sup>17</sup> Minutes of a conference call with Inmarsat of 5 March 2007

<sup>18</sup> The role of innovation in defining the competition landscape in the market have been underlined also by the Spanish Competition Authority in its clearance decision.

*b) Land earth stations*

- 49) With regard to land earth stations, the parties do not overlap, if there is a separate market for each specific Inmarsat land earth station.<sup>19</sup> However, they do overlap with regard to all Inmarsat land earth stations taken together.
- 50) The market investigation shows that the landscape with regard to the market for land earth stations has recently evolved. Whereas previously land earth stations were owned by their operators, the air-time providers, now land earth stations are owned by the satellite system providers such as Iridium, Globalstar, Thuraya who carry out building and maintenance. As a consequence, the same land earth station can currently be used by different air-time providers at the same time, avoiding duplications of equipment. This evolution has led to a sharp decline in the number of new land earth stations commissioned and therefore in the size of the market.
- 51) As Inmarsat explained to the Commission, previously it was contractually prevented from operating land earth stations. However, Inmarsat owns and operates directly the land earth stations serving the new fourth-generation satellite system (called "Satellite Access Stations").<sup>20</sup> It follows that Inmarsat is becoming the only client for Inmarsat-compatible land earth stations. The company confirmed during the market investigation that it has enough alternative suppliers beside the merged entity. For instance, Inmarsat selected recently Lockheed Martin to build a new gateway. Beside the parties, further manufacturers of land earth stations are for instance Hughes Network Systems (HNS) (building stations for instance for Thuraya), Lockheed Martin (building stations for instance for ACeS), Motorola (building stations for instance for Iridium), Qulacomm (building stations for instance for Globalstar) and Alcatel (building stations for instance for Globalstar).
- 52) As outlined above, the market is in decline in term of number of land earth stations required on the other hand there are a number of companies able to supply land earth stations. With regard to the after-market to maintain existing land earth stations, customers rely on the original supplier. Therefore in that respect, the merger will not affect the parties' incentive to carry out these services. It follows that the transaction will not lead to a significant impediment of effective competition within the EEA.

#### **IV. CONCLUSION**

- 53) 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  
Charlie McCreevy  
Member of the Commission

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<sup>19</sup> Whereas Thrane & Thrane builds land earth stations for Inmarsat-C, NCS, SBS, RAN Nera builds them for Inmarsat-B, M, Mini-M, GAN, Fleet & Aero. (Form CO p.36)