

***Case No COMP/M.4709 -
APAX PARTNERS /
TELENOR SATELLITE
SERVICES***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/08/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20/08/2007

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.4709 – APAX PARTNERS/ TELENOR SATELLITE SERVICES
Notification of 13 July 2007 pursuant to Article 4 of Council Regulation No 139/2004¹**

1. On 13 July 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("ECMR") by which the undertaking Apax Partners S.A. ("Apax", France) acquires within the meaning of Article 3(1)(b) of the ECMR control of the whole of the undertaking Telenor Satellite Services AS ("TSS", Norway), currently a wholly-owned subsidiary of Telenor ASA ("Telenor", Norway), by way of purchase of shares.
2. The concentration has been notified to the Commission following a referral request pursuant to Article 22(1) of the ECMR made by the UK Office of Fair Trading on 4 May 2007, which the Commission decided to examine on 20 June 2007 pursuant to Article 22(3) ECMR.

I. THE PARTIES

3. Apax manages various capital investment companies/funds which hold investments in various business sectors. Apax notably controls France Telecommunications Mobile Satellite Communications ("FTMSC"), a French company active in the provision of communication services via satellite.

¹ OJ L 24, 29.1.2004 p. 1.

4. TSS is engaged in the provision of voice and data satellite communication and related services.

II. THE OPERATION

5. Apax intends to indirectly acquire the majority of voting rights in TSS through Mobsat and will have the right to appoint more than half of the members of the board of the latter. It will have the possibility to determine alone the strategic commercial behaviour of Mobsat. Hence, Apax will indirectly exercise sole control over TSS.

III. CONCENTRATION

6. Through the acquisition, Apax will solely control TSS. Therefore, the proposed operation constitutes a concentration within the meaning of Article 3(1)(b) of the ECMR.

IV. COMMUNITY DIMENSION

7. The proposed operation does not have a Community dimension within the meaning of Article 1(2) or 1(3) ECMR. The Commission acquired jurisdiction on this concentration pursuant to its decision of 20 June 2007 under Article 22(3) of the ECMR and hence the concentration is deemed to have Community dimension.

V. COMPETITIVE ASSESSMENT

A. Relevant product market

8. The proposed concentration concerns the satellite communication services industry. Satellites may be used to provide one-way or two-way communication services. One-way satellite communication services are used exclusively for broadcasting purposes (e.g. television and radio), whereas two-way satellite communication services ("2WSCS") allow end-to-end exchanges of voice and data with terminals usually located in areas where other telecommunications networks have no coverage (e.g. open sea, air, remote areas, etc.). The communication service links the terminal to the satellite, which in turn is connected to a land-earth-station ("LES"), or teleport, which is linked to the terrestrial telecommunication network.
9. The notifying party outlines the value chain of the 2WSCS sector in which the Satellite Network Operators ("SNOs"), such as Inmarsat, Eutelsat, Thuraya, Globalstar, Intelsat, Iridium and SES Global, own and manage their satellite fleets. They sell airtime of their satellites largely to wholesalers or other customers consuming large volumes. SNOs are therefore active at the upstream level of the economic chain. Satellite Service Providers ("SSPs"), such as FTMSC and TSS, bundle and sell packages of communication solutions, consisting of airtime purchased on a non-exclusive basis from SNOs to which they add specific services ("value-added services"), such as invoicing tools, remote activation of handsets and traffic monitoring. SSPs operate through a terrestrial interconnection network, by taking over the satellite signal and managing its terrestrial rerouting. For this purpose, they either own or have access through hosting agreements to Land Earth Station (LES)² to which the terrestrial-based telecommunication network

² The notifying party submits that, in particular in the MSS-type 2WSCS, some SNOs operate their own LES whereby they call SSPs "first Tier Service Providers" or distribution partners. Hence, such SNO have moved

is connected. The interconnection network enables SSPs to offer end-to-end communications solutions. SSPs mainly act as wholesalers re-selling airtime to retailers, but they also sell directly to large end-users. Both FTMSC and TSS are mainly active as wholesalers of 2WSCS. The Commission's market investigation largely confirmed the parties' view with respect to the segmentation of the value chain.

10. 2WSCS can use different frequencies in the electromagnetic spectrum. The L-Band (1.5-1.6 GHz) is used for mobile satellite services ("MSS"), whereas the C-Band (4-8 GHz) and Ku-Band (11-14 GHz) are frequencies used for very small aperture terminal services ("VSAT") and fixed satellite services ("FSS").
11. MSS was originally designed for voice transmission, while VSAT (because of its higher bandwidth) was considered better suited to other types of data transmission. However, the notifying party submits that, due to the fast technological development in this sector and to the progressive convergence in terms of bandwidth capabilities, MSS and VSAT services are increasingly seen as substitutes. In particular, as demand for broadband data has been growing, MSS has been further developed in order to offer aggregate bandwidth capacity suitable for all types of data³. Furthermore, the physical dimensions of the terminals for VSAT have been reducing so that, currently, the size differences between portable and fixed terminals are minimal.
12. In the notifying party's view, there should be no further sub-division between the three areas of use of 2WSCS, namely land, air and maritime. The parties contend that 2WSCS provide the same functionality (i.e. send and receive voice and data) irrespective of the area of use, and regulatory and technical requirements would only affect the choice of equipment or the choice of the reseller installing the equipment, but not the choice of the SSP⁴.
13. The notifying party therefore submits that the relevant markets for the purpose of the competitive assessment of the notified concentration are:
 - (i) the wholesale market for two-way satellite communications services, which includes the distribution of airtime from any SNO by SSPs for MSS and VSAT services to resellers and key accounts for any area of use (aeronautical, land, maritime)

down the value chain from a pure airtime provider to a kind of value-added service provider, which typically has been the role of the SSPs.

³ The parties submit that Inmarsat has recently launched a new MSS system, Broadband Global Area Network (BGAN), which provides simultaneous communication of digitized voice and other data via a laptop size terminal at 64 kb/s over ISDN and up to 492 kb/s over IP services.

⁴ The IMO (International Maritime Organization) SOLAS (Safety of Life At Sea) Convention imposes vessels sailing at certain distances from the shore to be equipped with communication equipments complying with the standards of Global Maritime Distress Safety Services (GMDSS). To fulfil this legal requirement, each ship needs to acquire certain types of approved terminals for such communications (in practice, it is commonly one Inmarsat terminal and a radio or alternatively two Inmarsat terminals). The parties submit that this requirement does not have any impact on the services offered by the SSPs, as the airtime used for a distress signal is negligible in volume and free of charge. Similarly, according to the parties also the regulation applicable to aeronautical communications has a negligible effect on the definition of the relevant product market.

(ii) the retail market for two-way satellite communications services, which includes the distribution of airtime from any SNO by resellers for MSS and VSAT services to end-users for any area of use (air, land, maritime).

14. With respect to the question whether VSAT services are distinct from MSS, the market investigation did not provide any clear view. Some respondents referred to the different type of equipment which is required to receive VSAT services and MSS. Differences also exist in terms of data transmission speeds and bandwidth. Other replies pointed out to technological developments which have approached VSAT and MSS closely enough that customers would have a choice between both services for many of their application needs. In any event, the question on whether VSAT services constitute a distinct product market within the overall 2WSCS market can be left open for the purpose of the present case, as FTMSC is not active in the supply of VSAT services at the wholesale level.
15. The market investigation further indicated that according to the area of use, i.e. aeronautical, land and maritime, the conditions of competition for the supply of 2WSCS at wholesale level may differ in some respects. Most respondents expressed the view that specific and different regulatory requirements exist for at least the aeronautical and the maritime applications, while no particular regulations appear to exist for the land application. In particular, specific regulations apply to aeronautical and maritime safety and distress communications⁵. Furthermore, some replies also referred to major differences in respect to the equipment used to provide 2WSCS for at least aeronautical and maritime applications. However, it is not necessary for the purpose of the present transaction to come to a definitive conclusion as to whether each 2WSCS application constitutes a separate product market, as under any alternative market definition the proposed transaction does not raise serious doubts as to its compatibility with the common market.
16. With respect to the retail market for 2WSCS, its precise delineation can be left open since even considering narrow market definitions, the proposed operation does not raise serious doubts as to its compatibility with the common market.

B. Relevant geographic market

17. The geographical scope of the wholesale market(s) is proposed by the notifying party to be worldwide. They refer to the fact that SSPs purchase airtime and sell their services throughout the world, since their suppliers, retailers and end-customers are located all around the world. According to the notification, there are no transportation costs, duties, legal or technical hindrances that could create barriers for customers to buy internationally. In the party's view, the prices for the services are homogenous worldwide.
18. Many respondents to the Commission's market investigation agreed with the parties' view that the geographic scope of the wholesale market(s) for 2WSCS is worldwide. Some replies indicated that not all SNOs operate satellite fleets with a worldwide footprint and that not all SSPs operate a network of LES with a worldwide coverage.. However, customers can procure airtime either from SNOs with a global footprint (e.g. Inmarsat,

⁵ For maritime: Safety of Life at Sea ("SOLAS"), Global Maritime Distress Safety Services ("GMDSS") regulations; for aeronautical: Standards and Recommended Practices (SRP) of the International Civil Aviation Organisation, and Minimum Operational Standards (MOPS) of the Radio Technical Commission for Aeronautics.

Iridium) or from several SNOs with complementary regional footprints (e.g. Thuraya, Eutelsat). In addition, SSPs which do not operate a network of LES with a global reach can either enter into mutual hosting agreements (as it is the case for LES accessing Inmarsat's services) or procure interconnection directly from the SNO which operate their own LES (as it is the case with Iridium). Therefore, it can be concluded that the geographic scope of the wholesale market(s) for 2WSCS can be considered to be worldwide.

19. In respect of the retail market, the replies to the market investigation did not provide any clear indication. Some respondents suggest considering a national scope to be appropriate as 2WSCS are largely sold through nationally-based retailers and national specifications appear to differ among the various countries. Other replies made reference to the fact that 2WSCS are not different across the various regions and hence considered the geographic scope to be rather worldwide or at least EEA-wide. However, the precise geographic market definition can be left open, since under any alternative definition, the proposed operation does not raise serious doubts as to its compatibility with the common market.

C. Assessment

a) Retail of 2WSCS

20. FTMSC is only marginally active in the retail supply of 2WSCS. Its worldwide market share is approximately [0-10]% and its turnover negligible (less than [...]). The table below outlines the parties' market shares for the EEA and at national level in Germany for the retail of MSS maritime 2WSCS, in which their combined market share would exceed [10-20]%.

Retail MSS maritime 2WSCS	World-wide	EEA	Germany
FTMSC	[0-10]%	[0-10]%	[0-10]%
TSS	[0-10]%	[10-20]%	[10-20]%
<i>FTMSC + TSS</i>	<i>[0-10]%</i>	<i>[10-20]%</i>	<i>[10-20]%</i>
DH Intercom			[30-40]%
Global Wireless Germany			[10-20]%
Telemar			[10-20]%
Telaurus			[10-20]%

21. At the EEA-level, the combined market of the new entity would amount to [10-20]% in the retail MSS of maritime 2WSCS. Only in Germany, the new entities' combined market share would exceed [10-20]%, i.e. FTMSC holds approximately [10-20]% and TSS about [0-10]%. Strong competitors are present on this market, namely DH Intercom with a market share of approximately [30-40]%, Global Wireless Germany with about [10-20]%, and both Telemar and Telaurus with each approximately [10-20]%. The only other Member State in which the parties' retail activities overlap is France, in which FTMSC enjoys a market share of approximately [0-10]% and TSS with about [0-10]%. Competitors are Geolink which has

market share in France of approximately [20-30]%, Pochon with about [20-30]%, Themys with approximately [10-20]% and Saint Gué Electronique with about [10-20]%.

22. With respect to the retail of MSS land 2WSCS, the combined market share of the new entity would amount to approximately [0-10]% worldwide and about [0-10]% at EEA-level. Only in France and Germany, the parties' activities overlap with a combined market share of approximately [0-10]% and about [0-10]% respectively.
23. In view of the presence of strong competitors in the national retail markets of Germany and France with respect to MSS maritime 2WSCS and the low levels of market share with respect to MSS land 2WSCS, it can be concluded that the proposed operation would not lead to serious competition concerns.

b) Wholesale of 2WSCS

24. When considering the overall market for the wholesale supply of 2WSCS, the combined market share of the merging parties would amount to approximately [20-30]% worldwide, whereas TSS represents a market share of about [10-20]% and FTMSC about [10-20]%. The main competitors include Stratos/Xantic enjoying a market share of approximately [20-30]%, KDDI with about [0-10]%, SingTel with about [0-10]%. Numerous other competitors, with smaller market shares, account for the remainder.
25. As regards the land area of use, the combined market shares of the merging parties would be [0-10]% worldwide (TSS: [0-10]% and FTMSC: [0-10]%). The main competitors include Stratos/Xantic ([0-10]%), COMSAT ([0-10]%) and Arrowhead and Caprock ([0-10]% each).
26. Further examination in the present case appears necessary for the maritime and aeronautical areas of use.

Maritime area of use

27. With respect to the maritime area of use, the merging parties would achieve a combined market share of about [10-20]%, whereby TSS would contribute with a market share of about [0-10]% and FTMSC of approximately [0-10]%. Competitors are Stratos/Xantic with a market share of approximately [10-20]%, KDDI and SingTel each with [0-10]%. Many other competitors account for the remainder.

Non-coordinated effects

28. Some 3rd parties raised concern that both TSS and FTMSC were to be the largest providers of 2WSCS in Inmarsat services in the maritime area of use. On the basis of wholesale 2WSCS turnover achieved by selling airtime of the Inmarsat satellite, the combined market share of the new entity would amount to approximately [30-40]%, of which TSS would contribute about [10-20]% and FTMSC about [10-20]%. Stratos' market share would be in the same range as that of the new entity.
29. With respect to the value chain through which Inmarsat has to sell a large part of its services, Inmarsat is obliged to sell airtime for its three technology generations 2WSCS exclusively through wholesalers and/or resellers. Inmarsat, which operates a fleet of satellites in geo-stationary positions, was previously an intergovernmental organisation later privatised. At the moment of privatisation, Inmarsat has become an independently operating company with respect to its service offers as a satellite operator. However, the

sale of such services remained restricted in a way that Inmarsat has been prevented from directly approaching customers for such services. The agreements restricting Inmarsat in this respect, however, expire in April 2009. Hence afterwards, Inmarsat would be allowed to vertically integrate downstream the value chain, i.e. to enter into the distribution of 2WSCS themselves, be it at wholesale or retail level. In any event, Inmarsat is not bound by such restrictions in respect of its new fourth generation 2WSCS, which already provide a very similar range of services.

30. Some respondents voiced concern that, after the merger, the two largest wholesalers would own and operate many land-earth stations ("LES"), upon which in particular other wholesalers and retailer are depending on. The market investigation revealed that many 3rd parties, however, don't necessarily see a need to operate an own LES. Although customised value-added services would be better offered through an own LES, it appears that many customers but also competitors would see the lease of LES operations to be a viable option. In this respect, no particular concern was raised by 3rd party competitors. Furthermore, with the introduction of the fourth Inmarsat 2WSCS generation⁶, LES from wholesalers are no longer a pre-requisite to offer Inmarsat 2WSCS.
31. A further aspect to examine is the role of the equipment, which vessel owners have to have on board, to which the SOLAS and the GMDSS regulations apply. Inmarsat is the only provider of such services if they were to be provided via satellite. The volume of communication traffic, however, represents a small fraction of the volume generated by other voice and data communications. Moreover, this service is provided free of charge by Inmarsat. Some respondents to the market investigation express concern that due to Inmarsat's exclusive provision of such obligatory services, customers would be locked-in with respect to the equipment which they also use for other communication purposes. However, the market investigation brought evidence that alternative communication equipment, which is in particular HF-based radio, can be used by vessel owners to be in compliance with their obligations as regards safety and distress signalling. Its range of use is similar to that of Inmarsat's satellite footprint and it even covers the poles. Moreover, both regulations do not necessarily impose on vessel owners the use of Inmarsat communication equipment.
32. Furthermore, some replies indicate that demand for bandwidth increases which MSS can hardly satisfy but VSAT-based services which provide higher bandwidth and which are provided by SNOs other than Inmarsat only. In this respect, end customers would be able to use alternative communication equipment to comply with safety and distress signalling regulations and to use alternative equipment for all of their other communication needs, which would not have to be provided through the same Inmarsat equipment.

Coordinated effects

33. As regards the possibility that the proposed transaction could entail coordinated effects, it should be underlined that, as indicated above, radio communication exerts a competitive constraint on the suppliers of satellite communication services.

⁶ Inmarsat's fourth generation service, called BGAN (Broadband Global Area Network), have been introduced at the end of 2005. They provide broadband data and voice communication within the footprint of Inmarsat's new generation I-4 satellites.

34. Moreover, as noted above, current distribution agreements preventing Inmarsat to act as a wholesaler in competition with its existing distribution partners will terminate in April 2009. Hence, Inmarsat would be a likely candidate entering wholesale maritime 2WSCS market after April 2009. As a consequence of such a move, both the merged entity and Stratos would be facing a new entrant in the wholesale market, which contrary to them will be vertically integrated, thus having different interest and incentives. Such entry would represent a significant change in the overall market structure which in turn would make coordination between Stratos and the merged entity unsustainable in the long term.
35. With respect to the possible acquisition of Stratos by Inmarsat, reference is made to paragraph 58., in which the arguments provided would also apply in respect of the 2WSCS for the maritime area of use.

Conclusion

36. It can be concluded from the above, that the proposed operation does not raise serious doubts as to its compatibility with the common market since sufficient alternatives would exist after the merger for customers of 2WSCS for the maritime area of use.

Aeronautical area of use

Non-coordinated effects

37. When considering the wholesale market for 2WSCS (encompassing both MSS and VSAT services) for the aeronautical area of use, the proposed transaction would lead to the combination of the current second largest supplier world-wide (TSS, market share of [30-40]%) with the fifth one (FTMSC: [0-10]%). The merged entity would be the largest world-wide supplier of such services at the wholesale level, closely followed by Stratos (approximately [30-40]%), and by two other suppliers (Boeing (about [0-10]%) and ARINC (about [0-10]%). The remaining of the market is accounted for by a large number of wholesalers, including Satcom Direct, Satcom1, Avionica, Gilat Gayacom, Skytrac, Sky Connect, Bluesky Network, and Morsviazspudnik, who mainly distribute aeronautical 2WSCS based on Iridium's satellite fleet⁷.
38. The situation is only slightly different when one looks only at the aeronautical wholesale MSS market, as the use of VSAT services is currently very limited in the aeronautical sector. Only Boeing, and to a lesser extent ARINC, are significant suppliers of VSAT services to aeronautical customers. The positions of the other wholesale suppliers of aeronautical satellite communication services are therefore broadly similar in the global 2WSCS (encompassing both MSS and VSAT services) and in the narrower MSS market⁸.
39. In light of Stratos' position in the aeronautical 2WSCS wholesale market compared to that of the merged entity, the proposed transaction would not result in the creation of a single dominant position. This conclusion is also strengthened in view of the fact that

⁷ Form CO, page 80.

⁸ Notifying party's responses to question 11 of Commission's request for information of 31 July 2007 and to question 14 of Commission's request for information of 6 August 2007.

both Boeing and ARINC have significantly increased their market shares in the period 2004-2006, as shown in the table below:

Arinc and Boeing shares of the aeronautical two-way satellite communication wholesale services market– World-wide

	2004	2005	2006
Boeing	[0-10]%	[0-10]%	[0-10]%
ARINC	[0-10]%	[0-10]%	[0-10]%

Source: Notifying party's responses to question 32 of Commission's request for information of 6 August 2007

40. The same conclusion can be reached as regards the narrower aeronautical wholesale MSS market. Indeed, FTMSC and to a lesser extent TSS have lost market shares since 2003, while wholesale distributors of Iridium-based aeronautical services have significantly increased their position during the same period, as indicated in the table below:

Aeronautical MSS Wholesale market– Worldwide

	2003	2004	2005	2006
TSS	[30-40]%	[30-40]%	[30-40]%	[30-40]%
FTMSC	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Stratos	[40-50]%	[40-50]%	[30-40]%	[30-40]%
Iridium distributors	[0-10]%	[10-20]%	[20-30]%	[10-20]%

Source: Notifying party's responses to question 1 of Commission's request for information of 31 July 2007 and to question 32 of Commission's request for information of 6 August 2007

41. Furthermore, there is no indication that, despite its limited market share, FTMSC is an important competitive force exerting a significant competitive pressure on the other suppliers in the aeronautical wholesale market. As indicated in the table above, FTMSC has been constantly losing market shares since 2003, while distributors of Iridium-based services and of VSAT services (Boeing and ARINC) have considerably strengthened their positions. In addition, it should also be underlined that FTMSC has only a very limited customer base, as it provides its aeronautical services to three customers only: SITA, Honeywell and Aviasat⁹.
42. The evolution of the market shares of the different suppliers since 2003 therefore clearly indicates that: (i) FTMSC is a declining competitive force in the market, and (ii) the main competitive constraint on the two largest wholesale suppliers of aeronautical

⁹ Notifying party's response to question 6 of Commission's request for information of 31 July 2007.

services (TSS and Stratos) comes from the distributors of VSAT and Iridium-based services. In this context, it is likely that suppliers of Iridium-based services will continue to increase their share of supply, as Iridium is close to obtain full approval from the International Civil Aviation Organisation (ICAO) to provide air safety satellite communication services between aircrafts and the air traffic control centres (ATC)¹⁰. Until now only Inmarsat-based air safety services have been approved by the ICAO.

43. In addition, the market investigation did not provide any evidence that TSS and FTMSC would be each other closest competitors in the supply of 2WSCS to aeronautical customers at the world-wide level. On the contrary, it would appear that all wholesale suppliers of aeronautical services are regarded as relatively interchangeable by customers. This is mainly because aeronautical services are relatively homogeneous services, as they have to comply with international standards from the International Civil Aviation Organisation (ICAO) and the Radio Technical Commission for Aeronautics (RTCA), or with industry standards, such Aircraft Communications Addressing and Reporting System (ACARS).
44. Finally, as airtime for aeronautical services can be provided by a number of satellite operators (including Inmarsat, Iridium, Intelsat, Thuraya, SES Global), wholesale distributors of such services are not capacity constrained as regards access to this key input and can therefore increase their supply. In this respect, it should be stressed that almost all wholesale distributors, including TSS and FTMSC, supply aeronautical services based on airtime procured from several satellite operators.
45. In the course of the market investigation, some third party competitors stated that, among satellite operators, currently only Inmarsat's "Classic Aero" services¹¹ are approved by the ICAO for safety satellite communications between aircrafts and air traffic control (ATC) centres. In this context, they claimed that TSS and FTMSC are the only suppliers that currently provide Inmarsat's "Classic Aero" services over the whole of the Atlantic Ocean East and West Regions (AOR-E and AOR-W)¹².
46. It is further outlined in this respect that such a situation is a consequence of the fact that TSS and FTMSC are the sole suppliers of aeronautical services who own and operate Land Earth Stations (LES) accessing Inmarsat's Classic Aero services in the Atlantic oceanic area¹³, since Stratos shut down its LES in Goonhilly (UK) in 2006. While both FTMSC and TSS have hosting agreements with a number of other suppliers of 2WSCS, including suppliers of aeronautical 2WSCS, whereby they grant access to their LES

¹⁰ Iridium's press release of 15 June 2007. According to this press release Iridium expects to obtain full approval from the International Civil Aviation organisation in November 2007 and be able to rapidly deploy its offerings afterwards.

¹¹ Inmarsat's "Classic Aero" services comprise the following voice and/or data services: Aero H, Aero H+, Aero I, Aero L, Mini M Aero and Aero C. The four former services are ICAO approved for safety communications. Inmarsat aeronautical services brochure submitted in Annex 6.1.c of the Form CO.

¹² AOR-E and AOR-W correspond to two of the spot beams of Inmarsat 3 satellites which primarily deliver Classic Aero services. These two regions are partially covered by the LES operated by Stratos in Perth (Australia).

¹³ FTMSC own and operate a LES in Aussaguel (France) whereas TSS own and operate two LES, one in Eik (Norway) and one in Southbury (USA). TSS plans to transfer

covering the AOR-W and AOR-E, none of these agreements currently allow the hosted suppliers to access Inmarsat's Classic Aero.

47. As a consequence the merged entity would currently be the only supplier of of aeronautical safety satellite communication over the Atlantic oceanic area via satellite¹⁴. Even under such considerations, the proposed transaction does not raise serious doubts as to its compatibility with the common market for the following reasons.
48. At the outset, it should be underlined that the evidence gathered in the course of the market investigation indicates that communications between aircrafts and ATC centres, including safety communications, are primarily provided by HF or VHF radio systems. Even in remote oceanic areas, including the Atlantic area, where there is no or insufficient VHF coverage, HF radio services systems can and actually are used by aircrafts to communicate with ATC centres as an alternative to satellite communication services. Most of the airlines operating short-haul and medium-haul flights responded in the market investigation that they did not use such type of satellite-based communications, but used VHF and/or HF radio. Even not all of the airlines operating long-haul flights do not use such satellite-based communication systems but rely on radio communication. Hence, it appears that radio communication exerts a competitive constraint on the suppliers of satellite communication services, including safety communications. In any case, for passenger deck satellite communications, i.e. communication undertaken by passengers during the flight, other satellite operators and other Inmarsat services, distributed by other wholesalers, can be used.
49. Wholesale distributors of Inmarsat's "Classic Aero" services are essentially facing two customers: SITA and ARINC, which act as resellers of the services to individual airlines. According to the Notifying Party, SITA and ARINC would collectively account for [70-80]% of the purchase of Inmarsat's "Classic Aero" services at the wholesale level world-wide, and for [80-90]% in the AOR-E and AOR-W areas. Concerning more specifically those Inmarsat's Classic Aero services that are approved by the ICAO for safety communications¹⁵, SITA and ARINC are virtually the only wholesalers' customers¹⁶, as they are the only ones to have a message processing equipment necessary to provide an integrated service to the airlines¹⁷.
50. Currently SITA has a sale contract with FTMSC and ARINC with TSS for the provision of Inmarsat' "Classic Aero" services in the AOR-E and AOR-W. These two contracts, which run until the December and September 2011 respectively, prevent FTMSC and TSS from unilaterally increasing their price.

¹⁴ According to the Notifying Party, Stratos would hold a [0-10]% market share as it can provide safety satellite communication from its LES located in Perth over Europe (which is included in the AOR-E) and over the West coast of the USA (which is included in the AOR-W).

¹⁵ These services are Aero H, Aero H+, Aero I and Aero L.

¹⁶ According to the Notifying party, SITA and ARINC generate more than [90-100]% of all the wholesale revenues for Inmarsat's Aero H, Aero H+, Aero I and Aero L services. See point 8 of the Notifying Party's submission of 6 August 2007.

¹⁷ SITA's response to question of Commission's request for information sent on 31 July 2007.

51. By this date, there is a significant likelihood that Iridium's services will have obtained full approvals for ICAO's aeronautical safety standards (see supra), and that they will be available to customers in the AOR-E and AOR-W, where Iridium's wholesale distributors already supply aeronautical services.
52. Furthermore, there is a significant likelihood that Inmarsat will enter the aeronautical 2WSCS wholesale market soon after April 2009 when the current distribution agreements it has entered with its existing Distribution Partners will terminate. Indeed, in the context of its privatisation, Inmarsat concluded in 2004 distribution agreements with its former shareholders pursuant to which it can only sell its services to operators of Land Earth Station (LES), called Distribution Partners. It should be stressed that these agreements have been concluded at a time when Inmarsat's Distribution Partners were also its controlling shareholders. Since then, the Distribution Partners have divested their shareholding in Inmarsat, which is thus likely to expand the scope of its activities. After the termination of the distribution agreements, Inmarsat can be expected to move down the value chain and act as a wholesaler in competition with its current Distribution Partners or to grant access to its own LES to other resellers¹⁸. As a consequence, these resellers would not need to buy wholesale services from TSS and FTMSC (or any other wholesalers) but would be able to access the services directly from Inmarsat.
53. In view of the foregoing, it can be concluded that the notified transaction does not raise serious doubts as to its compatibility with the common market as a result of non-coordinated effects in any of the possible relevant markets for the supply of aeronautical 2WSCS.

Coordinated effects

54. As regards the possibility that the proposed transaction could entail coordinate effects, it should first be underlined that FTMSC's share of supply of aeronautical 2WSCS at world-wide level is rather limited and declining. Hence, there is little probability that this company alone would have been able to defeat any attempt by the two largest suppliers of such services world-wide (i.e. Stratos and TSS) to tacitly coordinate their competitive behaviour pre-merger.
55. Second, as noted above, both the wholesale distributors of VSAT and Iridium-based aeronautical services have significantly increased their market shares since 2003. In particular, distributors of Iridium-based services accounted for [10-20]% of the supply of 2WSCS to aeronautical customers in 2006, compared with [0-10]% only in 2003, on a world-wide basis. It can be expected that these suppliers will continue to increase their share of supply as Iridium is close to obtain full approval from the International Civil Aviation Organisation (ICAO) to provide air safety satellite communication services between aircrafts and the air traffic control centres (ATC). Until now only Inmarsat-based air safety services are approved by the ICAO.

¹⁸ Inmarsat currently owns and operate several LES, including one in Burm (The Netherlands). Pursuant to the existing distribution agreements, Inmarsat can only use its LES to access new generation (aeronautical) services (SwiftBroadband) delivered through its new generation I-4 satellites. However, there are no technical restriction to the use of Inmarsat's LES to access other (aeronautical) services, such as the Classic Aero services currently delivered through I-3 setallites.

56. Third, as indicated above, radio communication exerts a competitive constraint on the suppliers of satellite communication services.
57. Fourth, as noted above, current distribution agreements preventing Inmarsat to act as a wholesaler in competition with its existing Distribution Partners will terminate in April 2009. There is therefore a significant likelihood that Inmarsat will enter the wholesale aeronautical 2WSCS market in April 2009. Such a move would mean that both Stratos and the merged entity will be facing a new entrant in the wholesale market, which contrary to them will be vertically integrated, thus having different interest and incentives. Such a change in the market structure will make coordination between by Stratos and the merged entity unsustainable in the long term, as the outcome that they can mutually expect from aligning their behaviour will be jeopardised by the possible reaction of Inmarsat.
58. The possible acquisition of Stratos by Inmarsat would not change the conclusion that the notified operation is not likely to entail coordinated effects. On 19 March 2007 Inmarsat publicly announced that one of its subsidiary (Inmarsat Finance III) has provided finance to fund the proposed acquisition of Stratos by CIP Canada, and that its subsidiary obtained in return a call option to acquire CIP Canada as from April 2009 when the current distribution agreement with its Distribution Partners will terminate¹⁹. However, the acquisition by Inmarsat of control over Stratos will likely be subject to merger control review. In any case, this operation does not increase the probability of coordinated effects between the TSS/FTMSC and Inmarsat/Stratos but rather strengthen the differences between them, notably in terms of vertical integration.

VI. CONCLUSION

59. 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

¹⁹ Inmarsat presentation to investors and analysts dated 19 March 2007. Document submitted in Annex 6.4.1 of the Form CO