

*Case No IV/M.496 -
Marconi / Finmeccanica*

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 05/09/1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.09.1994

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the Notifying Parties

Dear Sirs,

Subject: Case N° IV/M.496 - Marconi/Finmeccanica
Notification of 02.08.1994 pursuant to Council Regulation (EC) No. 4064/89

1. The above mentioned operation concerns the establishment of a concentrative joint venture between Marconi S.p.A ("Marconi"), an Italian company that forms part of the GEC Group, and Finmeccanica S.p.A. ("Finmeccanica").

I. THE OPERATION AND THE PARTIES

2. On February 24, 1994, Marconi and Finmeccanica signed a Memorandum of Understanding for the creation of a concentrative joint venture which will operate in a number of communications markets.

The obligations contained in the Memorandum of Understanding became binding only after the parties reached agreement as to the value of the assets to be transferred to the JVC. The parties reached this agreement on July 27, 1994.

3. With the notified operation the parties will merge the Italian activities of Finmeccanica and Marconi in the fields of radio-communications, value added telecommunications and information technology systems. In particular Marconi will transfer to the JVC some of the activities of Marconi's telematic systems, public telecommunications, military telecommunications and avionic systems divisions, along with its equity interest (85%) in Marconi Olivetti Defence Information Systems S.p.A. (MODIS) and its participation (60%) in Larimart S.p.A. (LARIMART).

The JVC will acquire from Finmeccanica its Alenia ITC and Alenia Spazio Ground Station divisions and two of its subsidiaries, OTE S.p.A. and Elmer S.p.A.

4. Marconi is an undertaking controlled by GEC Marconi Ltd., a wholly-owned subsidiary of the General Electric Company P.l.c. (GEC), which is a public company listed on the London Stock Exchange. Marconi is active in the design, manufacture and support of certain electronic systems for the military market and the civil infrastructure market.

GEC has activities in the sectors of electronic systems, power systems, telecommunications, consumer goods, electronic metrology, office equipment and printing, medical equipment, electronic components and industrial apparatus.

5. Finmeccanica is owned as to 86.15% of its share capital by the Istituto per la Ricostruzione Industriale S.p.A. (IRI). Finmeccanica operates as a fully independent company and its stock is quoted on the Milan Stock Exchange. IRI's function is limited to that of a holding company on behalf of the Italian State, and for the purposes of this notification, Finmeccanica is considered to be "an economic unit with an independent power of decision" as described in Recital 12 to the Merger Regulation.

II. CONCENTRATION

Joint Control

6. Finmeccanica and Marconi shall each own 50% of the issued share capital in the JVC and each shall have the right to appoint half of the members of the Board of Directors. The Chairman of the Board will be appointed by Marconi, which will also have the right to appoint the Chief Financial Officer of the JVC, subject to the consent of Finmeccanica. Finmeccanica will have the right to appoint the Managing Director, subject to the consent of Marconi.
7. The Shareholders Agreement sets forth that, in addition to the powers reserved to it by law or pursuant to the by-laws of the JVC, the Board of Directors shall have exclusive competence to decide strategic matters and matters of particular importance to the assets of the Joint Venture. These include among others:
 - approval of the budget and long-term business plans
 - approval of investments
 - appointment of management and fixing of their compensation.

A quorum of 75% of the company's share capital is required for adoption of resolutions in the Ordinary Shareholders' Meetings held on first call and in the Extraordinary Shareholders' Meetings held either on a first or second call.

8. As a result of the above, each of the parties will have the right at least to veto the principal decisions referring to the Joint Venture. Therefore they will have joint control of it.

Full Function Entity

9. The Joint Venture will have all the assets and resources necessary to enable it to perform the functions of an autonomous entity including R&D, manufacturing, distribution and after-sales support.

Absence of Coordination

10. While parts of the GEC group will remain active in some of the same product markets as the JVC, Finmeccanica is to withdraw from the markets concerned by transferring its relevant businesses to the JVC. The only slight exception to this is that Eltag Bailey S.p.A., a subsidiary of Finmeccanica, is active in industrial process control/automation, and as part of this activity, occasionally produces and sells products for building automation, which is a joint venture product. The potential for coordination arising from this is minimal given that the demand is for distinct products but that there is a certain technology link on the supply side.
11. The Memorandum of Understanding ("MOU") between the parties includes a non-compete clause covering Italy, and preventing certain other parts of GEC from competing with the JVC in Italy. A number of products, constituting less than 10% of the JVC's turnover, are, however, exempt from this clause. This exemption was necessary because products in certain of these JV markets represent specific applications of fundamental technologies with far wider uses and the parents wished to remain free to deploy variants of these technologies on other markets outside the scope of the JVC without risking infringement of the MOU. A separation of such activities from the parents would affect their ability to operate in markets other than those of the JVC.
12. Thus effectively only GEC will remain active on the JVC's markets, and for the most part outside Italy. It is technically possible under the terms of the MOU for Finmeccanica to re-enter independently certain markets in Italy and all of the JVC's markets outside Italy. Having transferred, however, its assets and expertise in the high-tech products concerned, it would be costly and commercially unreasonable for Finmeccanica to attempt to re-enter. The risk of coordination between the parents and between the JVC and Finmeccanica can thus be excluded.

III. COMMUNITY DIMENSION

13. The undertakings have a combined aggregate worldwide turnover in excess of 5,000 million ECU. Finmeccanica achieved a turnover of 5,958 million ECU in 1993 and GEC one of 12,437 million ECU in the financial year ending on March 31, 1994. They both have a Community-wide turnover of more than 250 million ECU. They do not achieve more than two-thirds of their aggregate Community-wide turnover in one and the same Member State. The operation therefore has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

A Product markets

14. The parties are combining their activities in a large number of related areas in the new JV some with civil and some with military applications and one with joint use.

Military products

15. The parties have been unable to provide market share information for the military markets because of the absence of publicly available information in the sector.
16. The parties argue that while some of the military products concerned have civilian counterparts (eg computers, radios), the potential for civilian applications is negligible. The special features required in order to meet a military specification (eg resilience of computers under arduous conditions of climate or transport) dramatically increase the price of the product. The parties estimate that over 95% of their sales of the products designated as "military" are sold exclusively to military authorities (NATO or national ministries of defence) or consortia developing other military products (eg the European Fighter Aircraft consortium).
17. The parties' customers for military products are thus, directly or indirectly, monopsonist buyers with an element of countervailing market power were a supplier ever to attempt to abuse its market position.
18. The sort of equipment to be manufactured by the JV is normally the subject of sizeable contracts and procurement is therefore "lumpy". A large contract may be awarded one year and none for the next three, or one company might win a contract one year and another supplier be successful the following year. The effect of this is reduce the usefulness of market shares as an approximate index of market power. In these sorts of markets it is thus important to assess the number and strength of alternative potential suppliers who could compete for a contract. The sales figures given below are, for the same reason, averages over the last three years.
19. Although detailed specifications may vary between the military of different countries for these military products, suppliers are well able to adjust their product to meet these different requirements. The question of whether the geographic market is, as a consequence, wider than national can be left open since the competition assessment would not change whichever market definition were adopted.
20. Of the military products to be sold by the JVC, one, that of informatic platforms (an integrated computer and application software), is made only by Marconi and not by Finmeccanica resulting in there being no overlap and no change arising out of the operation.

High frequency radio equipment

21. HF military radio equipment enables single channel communication at frequencies up to and including 30 MHz. Such systems may be used for voice or data, include optional cryptography functions and are designed for military or paramilitary use over distances of up to 1000 kilometres. Finmeccanica's sales in Italy averaged some [...] ¹ million ECU over the last three years with marginal sales to Belgium, Netherlands, Norway and NATO. Marconi is not active in this market while GEC averaged sales of [...] ² million in the United Kingdom. Alternative suppliers include Thomson CSF, Ericsson, Alcatel, Rode & Schwarz of Germany and Harris of the US.

VHF/UHF radio equipment

22. VHF/UHF radio equipment enables single channel communication at frequencies between 30 MHz and 400MHz. Such systems may be used for voice or data, include optional cryptography functions and are designed for military or paramilitary use over distances of typically up to 40 kilometres. Marconi and Finmeccanica are both present on this market as is GEC and each had sales in three or four EEA states over the last three years. Alternative suppliers include Thomson CSF, Ericsson, Alcatel, Siemens and Harris and ITT both of the US.

Airborne VHF/UHF radios

23. Airborne VHF/UHF radio equipment includes additional features required for airborne operation, including those enabling the equipment to operate under high acceleration and deceleration forces. Finmeccanica, Marconi and GEC are all present in this market, although in the past three years the only overlap was between Marconi and Finmeccanica in Italy. Alternative suppliers include Thomson CSF, Ericsson, Alcatel, Rode & Schwarz and Harris and ITT both of the US.

Global positioning systems equipment

24. Global positioning systems (GPS) equipment enable military airborne users to determine their position to within a few metres by processing the so-called P-code signals from a series of satellites managed by the US Department of Defence. The civil applications of this technology, which use the so-called C-code signals are much less sophisticated and less accurate.
25. Finmeccanica sales averaged [...] ³ million ECU over the last three years in Italy while GEC had marginal sales in the Netherlands and UK. Marconi is not active on this market. Alternative suppliers include Thomson CSF, Alcatel, Siemens and Rockwell-Collins and Magnavox, both of the US.

¹ Deleted as a business secret. Less than 50.

² Deleted as a business secret. Less than 25.

³ Deleted as a business secret. Less than 25.

Integrated Systems

26. This is an emerging market for equipment combining airborne radio and GPS radio navigation systems into a single architecture. Only GEC has achieved any sales in this area. It is thought that in the near future, alternative suppliers will include Thomson CSF, Alcatel and Rockwell-Collins, Honeywell and Magnavox, all of the US.

Communications electronic warfare

27. This equipment enables the military to detect the existence of enemy communications, analyse their content or direction and to jam them. Both Finmeccanica and Marconi are present on this market while GEC is not. Marconi's EEA sales averaged only [...] ⁴ ECU, entirely in Italy over the last three years. Alternative suppliers include Thomson CSF, Rhode & Schwartz and Watkins & Johnson and Loral both of the US.

Dual use products

28. The only dual civilian/military product to be made by the joint venture is satellite ground stations. Satellite ground stations fall into two categories: firstly, those for the command and control of spacecraft and secondly, those providing an interface (ie transmission of voice and data signals) with orbiting satellites or vehicles. Both types of station typically comprise a number of sub-systems including antennae, sensitive receivers, high power transmitters, frequency conversion equipment, highly stable clocks and oscillators, modulation and multiplexing equipment and appropriate control and monitoring facilities. The Commission, however, considers that market shares calculated on the basis of ground stations as a whole give a good indication of the relative strength of the prime contractors in this sector (a prime contractor would hold overall responsibility for a project but would in most cases need to source certain sub-systems from other suppliers) and it can be left open whether the relevant product market should distinguish between component sub-systems. The question of whether the market should also include satellites, launchers and space flight vehicles can be left open because even on the more restrictive definition of ground stations only, there is no competition problem.
29. Whilst the geographical reference market may be global, it is possible to leave this question open since a more restrictive EEA market definition would not change the competition assessment.
30. The parties estimate that the global ground stations market is worth about 3.4 - 6.8 billion ECU, and that the EEA accounts for 20% of this global market ie between 1360 million and 680 million ECU. Both Finmeccanica and GEC are active in this market in both command and control stations and communications interface stations, while Marconi is not active. Finmeccanica and GEC's combined turnover is

⁴ Deleted as a business secret. Less than 1 million.

[...] ⁵ ECU, giving them an EEA share of [...] ⁶. Even were the market smaller than the parties estimate, it is unlikely that they would acquire a market share such as to give rise to competition concerns. Furthermore, there are a number of strong alternative suppliers including Alcatel Espace, Deutsche Aerospace, Hughes Space and Communications, NEC corp., Space Systems/Alliance (comprising Aérospatiale, Alcatel, DASA, Alenia and the US company Loral) and Andrews Vsat.

Civilian products

Private mobile radio systems

31. Private mobile radio ("PMR") is a non-cellular system providing communication between mobile terminals and one or more base stations. Typically the systems do not allow simultaneous two-way communication and are used by operators of fleets of cars, lorries, trains and aircraft. Local users include police, taxi firms, ambulances and the fire brigade. Historically, manufacturers supplied their own proprietary system with only limited inter-operability with other systems. PMR equipment is thus generally sold as a system, including terminals.
32. The parties argue that the market for the supply of PMR equipment is EEA-wide. While there is some evidence historically for national procurement by some of the public sector customers, these products are now covered by the EC procurement directives and furthermore the emergence of European-wide standards for digital PMR (TETRA) and the greater use of cordless PABX extensions (with the corresponding DECT European standard) will remove major technical barriers on the supply side. There are thus signs that the market is EEA-wide, but this point can be left open since even on a more restrictive national definition there is no competition problem arises.
33. The JV's market shares are estimated to be [...] ⁷ in Italy and [...] ⁸ in the EEA as a whole. Alternative suppliers are major telecommunications equipment manufacturers. On the European level, Motorola and Ascom/Bosch are the market leaders followed by a second level of suppliers, Matra/AEG, Philips and Alcatel and only then by Marconi. Ericsson and Nokia are also active on this market. The Commission concludes therefore that the JV will not be dominant on this market.

PTT network traffic management and supervisory systems

34. These systems comprise software enabling a telecommunications network operator to perform traffic management, quality control, remote monitoring, real-time alarm collections and alarm history tasks. The parties consider that demand for the product is national reflecting the unique configurations of national public networks and a history of local preference in procurement. Whilst this may be true, potential

⁵ Deleted as a business secret.

⁶ Deleted as a business secret. Less than 10%.

⁷ Deleted as a business secret. Less than 25%.

⁸ Deleted as a business secret. Less than 5%.

suppliers have the capacity to customise their product to the specifications of individual networks, multi-vendor environment products are being developed and Community rules on public procurement have recently come into effect, suggesting that the market may be wider. The precise scope of the geographic market can be left open, however, since even on the more restrictive national definition no competition problem arises.

35. Marconi and Finmeccanica are only active in this market in Italy, where the parties estimate that the JV will as a result have a [...] ⁹ share of sales, while GEC has marginal sales in three other EEA states. There is a large range of alternative suppliers in Italy, Europe and further afield which includes full-line suppliers of telecommunications equipment such as Italtel, Alcatel, Siemens, AT&T, Northern Telecom and Ericsson, major information technology businesses such as IBM, Hewlett-Packard, Bull and DEC and large software houses such as Telesoft in Italy and Cap Gemini Sogeti of France. The Commission concludes therefore that the JV will not be dominant on this market.

Other products

36. The operation will result in the combination of the parties' activities in the following areas where the resulting market shares will be below 10%, whether the market is national or EEA-wide:
- a) infrastructure for public cellular radio networks;
 - b) equipment for the provision of value-added services over PTT networks;
 - c) road pricing/automatic vehicle monitoring equipment;
 - d) public information displays;
 - e) building automation.
37. The JV agreement also includes in the JV's range of activities air traffic control communications equipment, game/lottery automation, point of sale equipment and terminals for public cellular radio networks (which products neither GEC nor Marconi produce) and automatic ticketing (in which market none of the parties has made any sales to date).
38. The Commission concludes that no competition issues arise in these markets as a result of this operation.

ANCILLARY RESTRAINTS

39. The MOU signed by the parties provides for the transfer directly from Finmeccanica to Marconi of Finmeccanica's activities in radio relays for military applications and multiplex systems. The parties have requested that this transfer be treated as an ancillary restraint within the meaning of Article 8(2) of the Merger Regulation.
40. Article 8(2) refers only to "restrictions directly related and necessary to the implementation of the concentration". The Commission considers that the transfer

⁹ Deleted as a business secret. Less than 25%.

envisaged is neither a "restriction", nor "necessary" to allow the concentration to take place and this decision does not cover these transfers of assets.

CONCLUSION

41. In respect of the military products, the Commission considers that the number of other potential suppliers and the monopsonist nature of demand preclude any risk that this operation will result in the creation of a dominant position for the JV. In respect of the civilian and dual use products the combined market shares post-operation and the array of strong multinationals as alternative suppliers are not such as to give rise to any competition concerns.

On the basis of these findings, the Commission has decided not to oppose the notified operation and to declare its compatibility with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89 and Article 57 of the EEA Agreement.

For the Commission