EN

Case No COMP/M.5168 - EADS / SSTL

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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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.5168 – EADS/ SSTL
Notification of 18.11.08 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 10 October 2008, the Commission received a notification of a proposed concentration by which European Aeronautic Defence and Space Company EADS N.V. ("EADS", The Netherlands) acquires control of Surrey Satellite Technology Limited ("SSTL", United Kingdom) by way of purchase of shares. The notification was declared incomplete on 7 November 2008 and the transaction was re-notified on 18 November 2008.

I. THE PARTIES

2. **EADS** is active in the manufacture and marketing of commercial and military aircrafts, telecommunications equipment, defence and security systems, satellites, launchers and orbital infrastructures. In particular, the company is active in the space sector through its subsidiary, **Astrium**, which designs, develops and manufactures satellite systems and their subsystems and equipment.

3. **SSTL** is active in the production of satellites and to a lesser extent in the supply of subsystems, equipment and services (including launch services). The main shareholder of the company is the University of Surrey.

[1] OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. The proposed concentration concerns the acquisition by EADS, through its subsidiary Astrium, of sole control over SSTL. On 4 April 2008, Astrium and the University of Surrey signed a Share Purchase Agreement through which the University of Surrey and the minority shareholders agreed to sell and EADS agreed to acquire 99% of the shares of SSTL.

5. The proposed concentration is an acquisition of sole control within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004 of 20 January on the control of concentrations between undertakings ("ECMR")[2].

III. COMMUNITY DIMENSION

6. The notified concentration originally did not have a Community dimension within the meaning of Article 1 of the Merger Regulation. However, on 27 June 2008, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the ECMR that the concentration was capable of being reviewed under the national competition laws of Bulgaria, Germany, Italy, Spain and the UK, and requested the Commission to examine it. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral.

7. Therefore the concentration is deemed to have a Community dimension pursuant to Article 4(5) of the ECMR.

IV. RELEVANT MARKETS

A. Satellites - prime level

Product market

8. Both parties are active as prime contractors of satellites. In previous decisions, the Commission found that the following distinctions could be relevant:[3]

   - Distinct product markets for (i) military satellites and (ii) civil satellites, due to different conditions of competition and specific adaptations required for military satellites.

   - Within the market for civil satellites, distinct product markets for (i) satellites sold to commercial customers (essentially communication satellites), and (ii) satellites sold to institutional customers.

9. The market investigation has confirmed the relevance of these distinctions.

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2 OJ. L 24/1, 29 January 2004.

3 See Commission decision of 04.04.2007, Case No. COMP/M.4403 – Thales/Finmeccanica/Alcatel Alenia Space & Telespazio.

10. Military satellites include notably reconnaissance satellites, EO (Earth Observation) satellites or communication satellites deployed for military or intelligence purposes.

11. In the military market, Astrium is active in most of the EU at the prime contracting level. SSTL has only been active in the military market in the United Kingdom as a platform subcontractor and has never acted as a prime contractor for a military program. The military market will therefore not be affected by the proposed transaction and will not be further analyzed.

12. Civil institutional satellites can be sold to three types of customers: (i) European space agencies, (ii) national space agencies of Member States and (iii) national space agencies of non-EU countries. Due to the specific procurement rules applied by each type of customers, as well as their differing needs for the various types of satellites (i.e. EO, science, or navigation), the conditions of competition for the sales of satellites to these three types of customers are not homogenous. Therefore, it is necessary to distinguish separate product markets depending on the customer type.

13. The activities of the parties overlap as regards sales of civil institutional satellites to European spaces agencies ("the European market for civil institutional satellites") and national space agencies of non-EU countries ("the export market for institutional satellites").

14. The European market for civil institutional satellites consists of sales to supra-national space agencies such as the European Space Agency (ESA) and the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT). While Astrium is actively competing with bids for ESA or EUMETSAT contracts, SSTL has been involved as a prime mission contractor in an ESA program only once and this was due to exceptional circumstances.[4] As explained below, the precise product market definition can be left open as it does not affect the conclusions of the competitive assessment.

15. The export market for "institutional" (i.e. EO, science, or navigation) satellites includes the sales of satellites, typically to national governments and space agencies around the world, for which no national preferences or specific public procurement rules based on geography apply. This market essentially consists of the sale of EO satellites (satellites designed to allow the observation of the Earth from orbit, which are used for purposes such as mapmaking, meteorology and environmental monitoring). It should be noted that although these types of satellites are mainly sold to institutional customers, there is, within this market, a nascent segment for the sale of EO satellites to commercial customers, including a few EEA customers.

16. The market could possibly be segmented by the size of the satellites, or whether the satellites are sold to commercial customers. However, in the present case the precise definition of the worldwide export market can be left open, since the proposed transaction will not give rise to serious doubts as to its compatibility with the common market.

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4 In the context of the test phase for the Galileo programme, SSTL was selected as prime contractor for the GIOVE-A satellite. […].

17. Communication satellites sold to commercial customers: Since SSTL has no sales related to communication satellites, it is not necessary to further define the relevant market for these satellites.

Geographic market

18. With respect to the relevant geographic market, the Commission has in previous decisions found that the geographic dimension of the satellite markets depends on the nature of the customers.[5]

19. Regarding the institutional markets, the Commission has distinguished between European/ESA and national space programs:

> - The market for institutional satellites based on European/ESA programmes has been considered EEA-wide in scope, inter alia due to the specific procurement policy of ESA ("*juste retour*"[6]).
>
> - The market for national institutional programs has been considered national in scope where a domestic supplier exists, since national space agencies generally have strong preferences for national suppliers.

20. The notifying party submits that the geographic scope of the export market is worldwide, as customers are not constrained by specific public procurement rules based on geography or national preferences and can therefore procure from any competitive supplier worldwide.

21. During the course of the market investigation, third parties argued that the export market was not completely worldwide in scope due to geopolitical considerations. For instance, US-based companies are subject to the U.S. Export Administration Regulations ("EAR") and US International Traffic in Arms Regulations ("ITAR"), which exclude US prime contractors from supplying satellites to operators in black-listed countries. The EAR are intended to regulate dual-use technologies and make the export of certain US subsystems and equipment subject to a licence. The ITAR also make the export of certain US subsystems and equipment subject to a licence or forbid the export of certain subsystems and equipment depending on the end-use country. Third parties therefore raised the argument that due to such geopolitical considerations, the US market and US competitors should not be considered part of the export market. However, in a previous decision, the Commission found that the impact of the ITAR export restrictions should not be overestimated, as it appears possible to obtain an export license, exceptions to and exemptions from the ITAR are possible, and the list of black-listed countries evolves over time.[7]

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5 See Commission decision of 04.04.2007, Case No. COMP/M.4403 – Thales/Finmeccanica/Alcatel Alenia Space & Telespazio.

6 According to the "*juste retour*" principle, the share of business awarded to manufacturers in each Member State is roughly equal to the financial contribution from that Member State.

7 See Commission decision of 04.04.2007, Case No COMP/4403 – Thales/Finmeccanica/Alcatel Alenia Space & Telespazio.

22. The Parties agree that the geographic scope of the export market may be affected by geopolitical considerations, in particular in China, India, Russia and the United States. Nevertheless, the Parties consider that these countries are to some degree (and increasingly) open to worldwide competition, and that suppliers from these countries are more and more present on the worldwide export market. The Parties have also provided examples of contracts won by SSTL in […] and subcontracts won in […]. Although the number of EO satellites launched or contracted by Chinese, Indian, Russian and US companies outside their home countries within the last 10 years has been limited, American and Russian suppliers have, in some instances, won contracts outside their home markets, while Chinese and Indian suppliers have also started to compete outside their home markets.

23. However, in the present case the precise definition of the scope of the export market can be left open, since the proposed transaction will not give rise serious doubts as to its compatibility with the common market in this area.

B. Satellites – subsystems and equipment level

Product market

24. A satellite essentially consists of a platform and a payload. The platform is the physical structure of the satellite, while the payload governs the main parameters of the platform and is designed to perform the particular tasks for which the satellite is put into orbit. Both the platform and the payload are composed of a number of subsystems and equipment.

25. In previous decisions, the Commission has found that each satellite subsystems and equipments might constitute a distinct product market according to the functions performed by it.[8]

26. Astrium produces and sells a wide range of satellite subsystems and equipment, but also subcontracts a large portion of the equipment used in its satellites to third parties. In contrast, SSTL is a vertically integrated company, which develops subsystems and equipment for use in its own small satellite products. The company makes limited use of external equipment suppliers, preferring instead to procure at raw material level and undertake its own design and manufacture activities. SSTL's subsystems and equipment sales in relation to third party programs are minimal. Most of SSTL's subsystems and equipment are specific to its own satellite designs.

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8 See Commission decision of 04.04.2007, Case No. COMP/M.4403 – Thales/Finmeccanica/Alcatel Alenia Space & Telespazio.

Geographic market

27. In previous decisions, the Commission has considered that the geographic markets for satellite subsystems and equipment follow the definition at the prime contracting level, i.e. EEA-wide for European based (ESA) programs, national for national institutional programs and military programs where national suppliers exist, and worldwide for institutional programs when no specific procurements rules are applied.

C. Satellite observation data

Product market

28. EO satellites in orbit generate satellite observation data ('SOD'), which are used as an input in the production of maps, topographical catalogues or statistics for various applications.[9]

29. The Parties submit that the SOD market should be distinguished from the downstream activity of data processing and other services, whereby raw SOD are used as an input to create value-added products such as maps for agriculture, environment, and telecommunications.

Geographic market

30. The Parties submit that both the data-gathering and data-processing markets should be considered worldwide (or at least supranational) in scope. In particular, the SOD market is worldwide in scope for the following reasons: (i) EO satellites can capture images of any area of the Earth; (ii) suppliers are incorporated and based in different countries and are active on a worldwide basis (Internet-based distribution of images is widespread); (iii) prices for the distribution of data are comparable at a global level.[10]

31. In any event, the precise product and geographic market definitions for SOD gathering and processing may be left open, since the proposed transaction will not create competition problems therein.

V. COMPETITIVE ASSESSMENT

32. The proposed transaction will result in overlaps between the Parties' activities in the export market for EO satellites, the European institutional market, a number of subsystems and equipments and the supply of satellite observation data. However, on the basis of above market definitions, the subsystems and equipment markets will not be horizontally or vertically affected by the transaction.

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[9] The Parties also argue that the market for such data may also include aerial photography images, in particular for high-resolution applications.

[10] See *e.g.* decision of the French Competition Council no 5-D-54 of October 6, 2005. See decisions of the Italian Competition Authority no. 12009 - C5855 Telespazio/GAF of May 15, 2003 and no. 9267 - C4410 Telespazio-Agenzia Spaziale Italiana/E-Geos of February 26, 2001, at para. 11. See also decision of the Italian Competition Authority no. 18562 – C9419 EADS/Spot Image of June 25, 2008, Bolletino no. 25 of August 13, 2008.

A. Satellites - prime level

1. The export market for EO satellites

The position of the Parties

33. According to the Parties, market shares are difficult to estimate in the export market due to a particularly low level of transparency. Since the export market is the core business of SSTL, the market share estimates submitted by the Parties are based on the knowledge of this market gained by SSTL over the years.

34. SSTL's investigations of the export market show that the Parties would obtain a combined market share of [5-10]% post-transaction. This figure is based on the satellites launched as the Parties claim to have no visibility on contracts already awarded to competitors, but for which the satellite is yet to be launched (only the launch of the satellite is usually publicised).

35. During the market investigations, concerns were raised regarding the market share Astrium would achieve in the export market post-transaction. These concerns were to a large extent based on the assumption that US-based companies should not be considered true competitors as they are often constrained by geopolitical considerations.

36. According to third parties, the combined market share of the Parties could exceed 50%. These assessments were based on the number of EO satellites launched over the period 2003-2008 and based on a market where Indian, Russian and most US companies had been excluded.

37. However, as mentioned, the Parties have provided examples of contracts won by SSTL in […][11] [12] and subcontracts won in […]. Although the number of EO satellites launched or contracted by Chinese, Indian, Russian and US companies outside their home countries within the last 10 years has been limited, there are examples where American and Russian suppliers have won contracts outside their home markets, while Chinese and Indian suppliers have also started to compete outside their home markets. Such examples include contracts won and bids participated in by US, Chinese and Russian suppliers in Iran, Taiwan, Chile, Columbia, UAE, Kazakhstan and Egypt.

38. Furthermore, given the considerable differences in the value of the contracts in the export market, market shares based on volume (the number of contracts won) may be significantly different.

39. For these reasons, a combined market share exceeding 50% is not consistent with the market data gathered by the Commission.

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11 In […], SSTL has won the following contracts […].

12 In […], SSTL has not been contracted for […], but SSTL has been contracted and launched […]. Further, SSTL is currently in discussions with […].

40. Table 1 shows an alternative assessment of the position of Astrium and SSTL in the export market, excluding US-projects and dual-use projects (projects that also have possible military applications with high resolution imaging). Astrium and SSTL cannot bid for these contracts which are not taken into account (US-projects and dual-use projects) under this alternative assessment. On such a market, which only includes projects for which Astrium and SSTL could have bid, the combined estimated market share of the Parties would reach [20-30]%.

Table 1: Market shares in the export market for EO satellites, 2003-2008 (excluding US projects).

Company	Number of programmes whose satellites were launched between 2003-2008	Estimated price of the programmes (in M$)	Market share in value
Astrium	[…]	[…]	[10-20]%
SSTL	[…]	[…]	[0-5]%
Combined	[…]	[…]	**[20-30]%**
KARI	1	[…]	[20-30]%
IAI	1	[…]	[10-20]%
MDA	1	[…]	[10-20]%
Others	[…]	[…]	[20-30]%
Total	18	[…]	100%

Source: The Parties.

41. However, even if the Parties were to have a significantly higher combined market share, the proposed transaction would still not raise serious doubts in the export market due to the characteristics of the market listed below.

Characteristics of the export market

42. The export market is a rapidly growing market. According to a Euroconsult[13] study, this market is expected to grow from 69 satellites in the period 1996-2006 to 199 satellites in the period 2007-2016, cf. table 2.

43. The increased demand is in particular caused by decreasing development and manufacturing costs for small EO satellite solutions. This segment is relatively easy to enter as compared to larger, more complex and high cost satellites. In recent years, companies such as ISRO[14], IAI[15], MDA[16], SaTreCi[17] have entered the export market for EO satellites.

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[13] Euroconsult is a worldwide reference for research and advice in the satellite industry.

[14] The Indian Space Research Organisation (ISRO) for instance bid against Astrium for the Theos project.

Table 2: The Earth observation market

	1996-2006	2007-2016	INCREASE
Number of satellites	69	199	188%
- of this: emerging markets	10	52	420%

Source: World Satellite-Based Earth Observation - Market Prospects to 2017, 2008 Edition, Euroconsult.

44. Customers in the export market are often space developing or space absent nations that wish to procure an EO satellite. As can be seen from table 2, demand from emerging markets is expected to increase significantly over the next 10 years. Customers in emerging markets have become more sophisticated and are increasingly using open and competitive tender processes.

45. Although the export market for EO satellites was previously mainly an institutional market, commercial customers are also beginning to appear in this market.[18] For these customers, value, price/performance point plays a large role, and they are therefore more inclined to promote worldwide competition as opposed to favouring indigenous supply for political preference.

46. Another feature of the export market is that it is a bidding market. In previous cases, the Commission has acknowledged that in such markets, market share data are less relevant than the ability of customers to choose alternative suppliers and as a result, may only be a rough indicator of the relative competitive strengths of the various competitors.[19] Customers will not necessarily be inclined to turn to a known supplier, if another supplier makes a more competitive bid. Companies with significant market shares will thus still have to offer competitive prices in order to win contracts in the future.

47. A large number of competitors are present in the market, also outside China, India, Russia and the US (for instance OHB, TAS, IAI, MDA, KARI, NTS and Verhaert,) and in recent years, new entrants to the small EO segment have included several categories of companies: (i) traditional large satellite suppliers, (ii) medium size competitors, (iii) small companies or universities that commercialise low cost solutions. Also, several customers have been able to build their own capability and have now become

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15 Israel Aerospace Industries (IAI) has bid for several EO contracts at prime level, for instance (i) EROS-B, KOMPSAT-2, (iii) Kazakhstan DZZ-1,2 and (iv) GokTurk-1.

16 MacDonald, Dettwiler and Associates Ltd. (MDA) has for instance bid for (i) SciSat-1 and has successfully bid for the RapidEye programme.

17 The Satrec Initiative (SaTreCi) acted as a prime contractor for instance in the RazakSAT programme.

18 According to Euroconsult, one of the factors behind the expected growth in the EO segment is "*the growth of commercial Earth observation through either purely commercial operators, Oublic-Private-partnerships or Dual-Use.*" (World Satellite-Based Earth Observation - Market Prospects to 2017, page 3, 2008 Edition, Euroconsult).

19 See for instance Commission decision of 25.01.2005, Case No COMP/M.3641 – BT/Infonet.

competitors in the export market (for instance Satreci from South Korea). One example which illustrates the degree of competition in this market is the tender for the Chilean EO small satellite. 25 companies were approached by the customer (incl. US-based companies), 15 companies replied to the request for information and 9 companies were down selected.

The Parties are not close competitors

48. SSTL and Astrium are not each others closest competitors, and the two companies rarely compete against each other for contracts in the export market. While SSTL's focus is on the small satellites segment, Astrium has won only […] small satellite contracts and typically focuses on large satellites.

No overlap between the parties' activities on the commercial segment

49. Besides, considering the nascent market for the sale of EO satellites to commercial customers on a worldwide basis, there are no overlaps between the Parties' activities as Astrium is not active on this segment.

Conclusion

50. Given the number of competitors present on the market, the dynamic and rapidly growing nature of the market, the extent of recent entry, it is considered that the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement in the export market for EO satellites.

2. The European market for civil institutional satellites

51. The main customers on this market are ESA and EUMETSAT[20]. ESA acts as the procurement authority for EUMETSAT. Thus from a demand-side perspective the competitive situation does not differ depending on the identity of the customer.

52. The European market for civil institutional satellites is a bidding market, characterized by the specific procurement rules of ESA[21]. As explained above, the most prominent feature of ESA procurement policy is the "*juste retour*" principle according to which the share of business awarded to manufacturers in each Member State is roughly equal to the financial contribution from that Member State.

SSTL's presence on the European market for civil institutional satellites is marginal at the prime level

53. It should be underlined from the outset that, whereas Astrium typically competes with TAS[22] for the bulk of ESA contracts, SSTL's participation in this market has been so far very limited. Considering the European market for civil institutional satellites, the combined market share of the Parties for prime sales would amount to [40-50]% (Astrium: [40-50]%; SSTL: [0-5]%), ahead of TAS ([40-50]%) and other smaller prime contractors

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[20] European Organisation for the Exploitation of Meteorological Satellites

[21] Which also apply to tenders for EUMETSAT.

[22] Thales Alenia Space

(mainly OHB, Verhaert, QinetiQ and Swedish Space Corporation; together: [10-20]%). In fact, up to now, SSTL has been involved as a prime contractor in only one ESA programme (Giove-A), and this happened under unusual circumstances[23]. The entirety of SSTL's prime revenues is derived from the GIOVE-A contract (representing less than […]% of the total market between 2005 and 2007) and SSTL had no prime revenues before 2005. SSTL is therefore currently a minor player on the European market for civil institutional satellites.

54. Indeed, as a general rule, SSTL does not qualify as a suitable supplier for the supra-national European agencies such as ESA, since these agencies have procurement policies that cannot be satisfactorily addressed by SSTL's approach of limiting the use of subcontractors. This is evidenced by the fact that SSTL has, as explained above, only been selected as supplier to ESA under very specific circumstances. […]

The Parties are not close competitors

55. Participations in past bids for European institutional satellites show that bids from Astrium have so far not been constrained by the presence of SSTL[24]. In the EO segment, SSTL has never competed as a prime contractor[25]. In the science segment, SSTL is not present, even outside the European institutional satellite market. The navigation segment, consisting essentially of the Galileo programme, is addressed in more detail below, but it can already be noted that Astrium and SSTL competed only for the GIOVE programme under specific circumstances.

56. It can thus be concluded that the Parties have so far met very rarely in tenders for European market for civil institutional satellites. Therefore, they are not close competitors.

Most market players did not expect pre-merger that SSTL could establish itself as a credible competitor of Astrium in the prime segment

57. SSTL's focus on low-cost, small satellites, requiring most of the elements of satellites being manufactured in-house, makes it an ill-suited competitor for the European market for civil institutional satellites as (i) this industrial organization does not fit with ESA's procurement rules and (ii) SSTL's product portfolio/know-how is not in line with ESA's needs, most ESA contracts concerning large, complex satellites. As explained by ESA[26], for SSTL to grow its sales on the ESA markets, the business model of SSTL would need some adaptation.

58. Therefore, with the exception of specific concerns solely related to the "*juste retour*" rule, which is discussed below, the market investigation revealed that SSTL cannot be seen as a potential competitor at the prime level on the European market for civil institutional

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23 See Footnote 4.

24 See para 29 of "Guidelines on assessment of horizontal mergers under the Council Regulation on the control ofconcentrations between undertakings", O.J. C 31/03, 5.2.2004.

25 In one instance […], SSTL competed but only as a subcontractor to […].

26 Reply from ESA of 04.11.2008.

satellites. Accordingly, in ESA's view, SSTL's "recent entry has not changed fundamentally the competitive landscape for ESA programmes"[27].

Concerns pertaining to the "juste retour" principle

59. During the market investigation, several competitors raised concerns regarding the situation in the UK post-transaction. Indeed, according to these competitors, the market share of SSTL is not fully reflective of its actual market power because of the constraint imposed on the contractor selection through the "*juste retour*" rule.

60. Due to the "*juste retour*" rule, UK-based companies must be awarded a percentage of the total value of the contract, in line with the contribution to the program from the UK government (approximately 11% in total). It should be noted that this rule does not apply to the Galileo programme, as a joint initiative of the European Commission and ESA. Some competitors mentioned that only SSTL could be seen as a credible alternative to Astrium UK in the UK.

61. Although the "juste retour" rule might – by its very definition – limit competition in certain circumstances, both at the prime and equipment level, the market investigation revealed that the transaction at hand is unlikely to affect the prevailing competitive conditions.

62. First, at the prime level, based on the history of UK contribution to ESA programmes, it is not foreseeable that a UK prime would be mandatory for some future programme. In the last 10 years there has been only one instance in which an ESA prime contract was awarded to a UK company[28]. In fact, the level of a prime workshare for an ESA contract amounts typically to 30% (much more than average UK contribution); it is therefore exceptional in practice that the UK gets the prime contractor. This prime workshare can sometimes be split between several core team partners, in which case the choice of the partners is not entirely predetermined by geographic return considerations. Besides, the UK contribution is mainly allocated to science programmes, whereas SSTL does not have the know-how and experience to bid for this type of projects. Against this background, it cannot be foreseen that, solely because of the constraints imposed by the "*juste retour*" rule, the potential prime contractors for some ESA programme could be only Astrium UK, SSTL or some other UK-based company. It should be noted that ESA did not express such concern.

63. Second, also at the prime level, some smaller competitors complained that the transaction could remove SSTL as a suitable prime partner achieving geographic return in the UK, and with specific know-how and experience. This issue arises from the need for these smaller competitors to team up with other companies in consortia to be able to bid for ESA contracts. Accordingly, there would be, under some circumstances, a need to find suitable partners in the UK. However, this concern is unfounded. Indeed, and as detailed above, the "*juste retour*" rule is unlikely to entail a situation in which participation of a UK prime (alone or together with other partners) is mandatory, as the UK geographic return could be achieved on equipments. Furthermore, as explained above, SSTL is a minor player on the European institutional civil satellite market with only one precedent as a prime contractor (Giove-A) and few bids submitted.

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27 Reply from ESA of 04.11.2008.

28 Aeolus programme, with Astrium-UK as prime.

64. Third, at the equipment level, it could be envisaged that, following the transaction, the merged entity would have an incentive to foreclose competing primes in order to prevent them to fulfil the UK geographic return. However, such a strategy is not compatible with the timing of the bids. In the first step, the prime contractor is selected. No firm commitments from suppliers of sub-systems or equipment are needed at this stage. In the second step, sub-contractors are selected by the chosen prime contractor under the supervision of ESA. Given that the prime contractor has already been chosen at this point in time, both Astrium and SSTL would still have a strong incentive to offer equipments or sub-systems to the chosen prime contractors in order to achieve sales.

65. Fourth, the transaction will combine Astrium's strong position at the prime level together with SSTL's equipment activities. However, any concerns of customer foreclosure towards competing equipment suppliers can be dismissed in view of ESA's procurement rules. Indeed, if a company controlled by the prime contractor participates in one of the tenders for sub-systems or equipment, ESA itself appoints and runs a Tender Evaluation Board in which the prime contractor is only authorized to participate as an observer. Therefore, Astrium as a prime would not have the ability to favour in-house suppliers such as SSTL.

66. Consequently, based on the history of UK's contribution to ESA programmes, the proposed concentration is unlikely to change the competitive situation in relation to the UK, under the restrictions imposed on competition by the "*juste retour*" rule, which already prevail pre-merger.

The Galileo FOC[29] bid

67. Several concerns have been raised during the market investigation concerning the upcoming bids in the Galileo FOC program. In this program, two teams are left in the competition: one consisting of TAS/Astrium and another consisting of OHB/SSTL. Specifically, the following issues have been identified: (i) Astrium could get post-merger sensitive information concerning OHB's bid and (ii) SSTL might not remain a viable supplier of OHB for this specific contract. Indeed, OHB could make the bid without SSTL, but the chances of winning the contract would be very low, as experience in the field is more important than the technology itself. SSTL has gained the relevant experience via the launch of the GIOVE-A satellite.

68. To solve these concerns, EADS entered into a Firewall Agreement[30] with SSTL, committing to separate the project Galileo team of SSTL from the one of Astrium. EADS further committed that, post-transaction, […]. Following these agreements between Astrium and SSTL, ESA confirmed[31] that it had no further concerns in relation to the impact of the proposed transaction on the Galileo FOC bid, SSTL "remain[ing] free and independent in all respects that relate to the Galileo FOC space segment".

Conclusion

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[29] Galileo Full Operational Capability: this is the deployment phase of Galileo, consisting of 26 satellites.

[30] "Galileo Firewall Agreement" of 27.11.2008.

[31] Letter of ESA to EADS of 02.12.2008

69. For the above-mentioned reasons, regarding the European market for civil institutional satellites, the proposed concentration does not raise serious doubts as to its compatibility with the common market.

B. Satellites – subsystems and equipment level

70. SSTL has minimal activities in this area. However, some concerns have been expressed during the market investigation concerning one specific type of equipment.

71. One type of satellite component subsystem is a control moment gyroscope ("CMG"), which consists of a spinning, tilting rotor and is used to control the orientation of satellites. CMGs are only used to a very limited extent for the new generation of complex, large, very high-resolution EO satellites (e.g., the WorldView-1 of DigitalGlobe). Other categories of satellites (including most EO satellites) do not need the same level of agility and use wheels (either mechanical or magnetic) to control their orientation. SSTL has never used a CMG for its satellites as a prime contractor and does not plan to do so in the near future; to the knowledge of the Parties, fully-functioning CMGs have never been installed on small satellites.

72. Astrium has developed a state-of-the-art CMG specifically designed for large high-resolution satellites. In 2002, Astrium was chosen, following competition with Alcatel (now TAS), to provide the CMG for the Pleiades high resolution satellite, which is the only European programme that uses a CMG. Outside the EU, Astrium was selected by NEC-Toshiba Space for the provision of CMGs for the Astro G programme, a Japanese scientific mission. Furthermore, Astrium is developing a new CMG for medium size satellites under ESA funding.

73. Astrium faces both actual and potential competition in the CMG market. The US company Honeywell is the world's largest supplier of CMGs, with more than 20 years of experience in the field of accurate CMGs for US Space Defence applications. Despite ITAR rules, Honeywell actively tries to sell its CMG product in Europe. TAS has been the main European competitor of Astrium for the development of a CMG (see above on the Pleiades programme), and is still an active competitor (TAS competed against Astrium in a formal competition managed by CNES for the latest French military space programme) in order to select the best solution for large capacity CMGs. Furthermore, since the CMG concept is well known and CMG development can be based upon existing technologies (such as the ones used on Astrium CMG), newcomers are expected to enter the market in the near future. The most recent example is Advanced Dynamic System (ADS), a Spanish company which has already developed a CMG concept and which has initiated an intense promotion campaign

74. During the course of its investigation, the Commission was informed that SSTL might be in the process of developing a CMG and that consequently the proposed transaction would lead to the elimination of a potential competitor on this market. The Parties confirmed that the University of Surrey currently has an ongoing research program relating to the development of CMGs, and that this program could be covered by intellectual property agreements entered into between SSTL and the University of Surrey. These arrangements could give SSTL privileged access to the results of this research programme. As a consequence of concerns raised during the Commission's investigation, SSTL has waived any rights it may have to this CMG program. This

agreement has been formalised in a letter to the University of Surrey[32]. Accordingly, the acquisition of SSTL by EAFD will not strengthen Astrium's position in the CMG market.

Conclusion

75. For the above-mentioned reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to control moment gyroscopes.

C. Satellite observation data

76. SSTL has a marginal activity in the SOD market, through its subsidiary DMC International Imaging Limited ("DMCii"). The turnover of DMCii has amounted to less than €[…] million in each of the last three years. Astrium is active in the SOD market through its subsidiary Spot Image.

77. On the basis of a worldwide SOD market, Spot Image has a market share of approximately [20-30]%, while SSTL's market share is less than [0-5]%. Alternatively, on the basis of an EEA-wide market basis, the market share of Spot Image would be [30-40]%, while that of SSTL would still remain below [0-5]%. The respective combined market shares would therefore be [20-30]% and [30-40]%, and the increment in shares is de minimis. Furthermore, the Parties will continue to face strong competition on the SOD market, particularly from two American companies, GeoEye and Digital Globe, with worldwide SOD market shares of [30-40]% and [20-30]% respectively.

78. On the downstream SOD processing market, only Astrium is present, through its subsidiary Infoterra (and marginally through Spot Image), which faces strong competition from the two above-mentioned American companies, GeoEye and Digital Globe, as well as European companies such as Telespazio, Fugro, and Blom. Astrium estimates that neither itself nor any of its competitors has a market share exceeding [5-10]% on the basis of a worldwide SOD processing market, whilst, alternatively, on the basis of an EEA-wide SOD processing market, Astrium has about [10-20]%, with its main competitor Telespazio having [5-10]%. In view of the minimal increment brought by SSTL, the transaction does not bring about any change to Astrium's hypothetical ability and incentive to foreclose its downstream competitors. Again, given the fragmented nature of the downstream SOD processing market, the possibility of vertical interdependency and customer foreclosure can be excluded.

Conclusion

79. For the above-mentioned reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to the supply of satellite observation data..

[32] Letter from the parties to the University of Surrey of 17.11.2008.

VI. CONCLUSION

80. 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