

***Case No IV/M.620 -
THOMSON - CSF /
TENE0 / INDRA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/08/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.08.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.620 - Thomson-CSF/Teneo/Indra

Notification of 19.07.1995 pursuant to Article 4 of Council Regulation No 4064/89

1. The notified operation consists in the acquisition by THOMSON-CSF, a subsidiary of the French company THOMSON SA, of 25% less one share of the capital stock of INDRA SISTEMAS SA (INDRA), a subsidiary of the Spanish public group TENEIO SA.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No.4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. Thomson is a holding company controlled by the French State, with two main subsidiaries. Thomson Consumer Electronics is active in the design, development and manufacture of consumer electronic products. Thomson-CSF is active in professional electronics and defence systems. Its main strengths are in aircraft equipment, communication and command networks, detection systems, missile systems, electronics and information technology.
4. Teneo is a holding company controlled by the Spanish State, with a large number of subsidiaries present in several sectors such as electric power, air transport, aerospace, engineering, professional electronics and aluminium. Through its subsidiary Indra, Teneo is also active in the business of professional electronics through subsidiaries operating in the sectors of defence and dual technologies, consulting and computer services, control and communication, and space electronics. Indra's activities are mainly carried out in Spain.

II. CONCENTRATION

a) Joint control

5. The parties have agreed that Thomson will acquire 25% less one share of the capital stock of Indra and the corresponding voting rights. Such an acquisition will take place through the subscription by Thomson of a capital increase of Indra. The proposed concentration is structured in a Shareholders Agreement between Thomson and Teneo.
6. According to the terms of the shareholders agreement Thomson will have the right to appoint members of the Board of Directors and other corporate bodies in the proportion of its shareholding in Indra. However important matters are subject to the joint approval of both Thomson and Teneo.
7. Such matters include the appointment and removal of Chief Executive Officers, the annual approval of strategic and budget plans, [...] ⁽¹⁾.
8. [...] ⁽²⁾.
9. It follows that Indra will operate, under the joint control of Thomson-CSF and Teneo and that therefore the operation constitutes a joint venture within the meaning of Article 3 of the Merger Regulation.

b) Concentrative joint venture

10. Indra currently operates as an autonomous economic entity and will continue to do so under the present arrangements. The Agreements are for an indefinite period of time.
11. No coordination of competitive behaviour between Teneo and Thomson will result from this operation, since Teneo participates in Indra's field of activities only through Indra. For this reason, the acquisition by Thomson of an interest in Indra will not give rise to coordination of the competitive behaviour between Thomson and Teneo. The operation is therefore a concentration within the meaning of Article 3 of the Merger Regulation.

IV. COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5 000 million ECU (Thomson 11 342 MEcu, Teneo 12 330 MEcu). Both Thomson and Teneo have a Community-wide turnover in excess of 250 million ECU (Thomson 5 229 MEcu, Teneo 10 190 MEcu), but do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPATIBILITY WITH THE COMMON MARKET

13. Indra is present in the following sectors:
 - consulting and computer services,
 - control and communication systems,

⁽¹⁾ Deleted business secret. Confirms joint control under the Merger Regulation.

⁽²⁾ Deleted business secret. Confirms joint control under the Merger Regulation.

- space systems,
- air traffic management systems,
- defence and dual use technologies.

a) Consulting and computer services

14. The Commission has already stated in its Decision of 19.05.1993 in Case N°IV/M336-IBM France/CGI that in the information technology (IT) software and services business a distinction has to be made between the IT services market on the one hand, which includes consultancy services, operational support services and applications and delivery services, and the IT software market on the other hand, which includes the applications software. The IT services market is basically a services market requiring a close and constant relationship between the service provider and the client while the IT software market is a product market in which the product can be sold or licensed to the clients through independent distributors⁽³⁾.
15. Within the IT services market, the Commission did not decide if consultancy services, operational support services and applications and delivery services constituted distinct product markets given the market position of the parties⁽⁴⁾.
16. The Commission, although not deciding definitely, expressed the view that the geographic market for IT services should be national given the need to communicate in the customer's own language and to be present locally, whilst the geographic market for IT software products could be wider as these products can be easily imported/exported and distributed after linguistic and regulatory adaptations.
17. In the present case, Indra is mainly active in the IT services market in Spain. Its market share in this country is less than 5% and insignificant in any other member State. Thomson is only present in Spain in the IT services market through a subsidiary. Its market share is less than 1%. Given the market position of the parties both in the general market for IT services and in any of its segments, there is no need to decide what is the exact delimitation of the IT services market. Therefore, this concentration does not raise competition concerns in the IT services business or in any individual segment covered by the operation.

b) Control and communication systems

18. Control systems are systems able to perform remote sensing, local and central data processing, data display, management aid service support and, occasionally, control over distributed activities. They are used with a high degree of specialization in the transport, energy, water, environment and security sectors.
19. The parties argue that the geographic market for control systems is worldwide. In any case, it is not necessary to decide on this aspect since even on a national scale the operation does not lead to the creation or the strengthening of a dominant position.

⁽³⁾ See in particular points 8 and 9 of the IBM/CGI Decision.

⁽⁴⁾ See point 8, last paragraph of the IBM/CGI Decision.

20. Indra is a small player in control systems with a market share in Spain of less than [...] ⁽⁵⁾. It is not present anywhere else in the European Union. Thomson is marginally active in Spain and its market share is minimal. Therefore, no competition concern is anticipated.
21. The same applies to communication systems given that there is no overlap since Thomson is not present in Spain. Furthermore, the activities of Indra are limited in this field and confined to Spain where significant players such as Alcatel, Nokia, Philips and Marconi are present. At European level, the relatively small overlap does not modify the present structure of the markets.

c) Space systems

22. In the space systems sector neither Thomson nor Indra ⁽⁶⁾ are prime contractors ⁽⁷⁾. This means that they do not hold overall responsibility for a space system project but supply sub-systems, equipment and components to the prime contractors. At such a level, there are even within Europe, in addition to the prime contractors themselves, numerous competitors such as DASA/AEG, Alcatel, Aérospatiale, Alenia, Saab/Ericsson, ANT Nachrichtentechnik, Gilardi and Sextant Avionique/CIR. Furthermore, Indra's activities in this field are very minor with a turnover amounting in 1994 to [...] ⁽⁸⁾ million Ecus which represents [...] ⁽⁹⁾ of the overall European sales in this sector. Given that Thomson's sales represent 3% of the same overall European sales and that Thomson is present through some specific niches in which Indra is not active and given the market position of the parties in the space systems sector and any of its segments, it is not necessary to define more precisely the product markets as the operation will not lead to the creation or the strengthening of a dominant position.

d) Air traffic management systems and equipments

23. Air Traffic Management Systems and Equipment (ATM) provide full coverage of an airspace area to ensure the security of the Civil Air Transport activities.
24. Up to now, the geographic market for ATM systems and equipments has been national, as ATM is linked to national security. Nevertheless recent development in technology and the new public procurement rules in the air transport sector (in particular Council Directive 93/38) could facilitate new entries in the future.
25. ATM systems and equipment form a growing market (growth rate of 5% p.a.) because of the need to modernise air traffic management and in view of the emergence of new technologies. In this context, it should be noted that Thomson is active mainly in France while Indra is active mainly in Spain and that their respective market shares in these two countries are [...] ⁽¹⁰⁾ decreasing. The operation does not materially modify the present structure of national markets since the possibility for other strong competitors and new entrants to expand or enter the market remains basically unchanged. Thomson, with a [...] ⁽¹¹⁾ market share ([...] ⁽¹²⁾ in 1992) is confronted by Alcatel, Capsesa (joint venture

⁽⁵⁾ Deleted business secret. Between 3 and 10%.

⁽⁶⁾ Except for minor programs where Indra acted as prime contractor.

⁽⁷⁾ See Commission Decisions of 23.8.1994 in Case No IV/M.437-Matra Marconi Space/British Aerospace Space Systems and of 5.9.1994 in Case No IV/M.496-Marconi/Finmeccanica.

⁽⁸⁾ Deleted business secret.

⁽⁹⁾ Deleted business secret. Less than 1%.

⁽¹⁰⁾ Deleted business secret.

⁽¹¹⁾ Deleted business secret. Between 30% and 50%.

between Matra and Cap Gemini Sogeti) and other SSIs. Indra, with a [...] ⁽¹³⁾ market share [...] ⁽¹⁴⁾ in 1993) has to face Page Iberica, while [...] ⁽¹⁵⁾ are considered as serious potential competitors. Therefore, no competition concern is expected.

e) Defence and dual use technologies

General outlines

26. Markets for defence products and services tend to remain national where a domestic supplier exists ⁽¹⁶⁾. However, where there is no domestic supplier, then, subject to other barriers such as export restrictions and national preferences, suppliers of defence products and services compete with each other worldwide ⁽¹⁷⁾. In the present case therefore the affected markets are principally France and Spain. In this context, it should be stressed that the parties to the present concentration are generally operating in different geographic markets. Consequently there is no addition of market share. Furthermore, the operation does not materially modify the present structure of national markets since the possibility for other strong competitors and new entrants to expand or enter the markets remains basically unchanged.

When assessing the market position of a firm in the defence industry, account must be taken of the bargaining power of its main client(s): the ministry of defence (MOD) of the State(s) concerned ⁽¹⁸⁾. In recent years, MODs, which generally formulate the operational requirements and technical specifications of armaments, have been successful in keeping down market prices. As a consequence of the reduction in national defence budgets, there is a tendency for the MODs to require higher technical specifications with lower levels of manpower and lower overall costs and to be reluctant to bear the risks associated with R&D. Finally, the general views of the MOD concerned is also of relevance for the assessment of an operation in the defence industry ⁽¹⁹⁾. In the present case, it should be noted that the French and Spanish MODs, to which a questionnaire has been sent by the Commission, have expressed a positive view on the operation.

The present operation concerns seven distinct product markets.

Simulators

27. As regards military simulators, the parties distinguish between indoor simulators and outdoor simulators. Indoor simulators represent either an aircraft, a tank or a submarine. They embody a small part of the components of the real equipment, but simulate their reactions. They are located in specific rooms. They enable the Armed Forces of all countries to carry out indoor training, reducing the risks and the costs of the training

⁽¹²⁾ Deleted business secret. Between 50% and 70%.

⁽¹³⁾ Deleted business secret. Between 40% and 70%.

⁽¹⁴⁾ Deleted business secret. Between 50% and 80%.

⁽¹⁵⁾ Deleted business secret. Two major electronic European companies.

⁽¹⁶⁾ Notwithstanding a certain movement towards a wider European market as a result of common defence programmes and European alliances. On these questions, see Commission Decision of 2.12.94 in Case No IV/M.527-Thomson CSF/Deutsche Aerospace, point 25.

⁽¹⁷⁾ See for instance Commission Decision of 14.4.1993 in Case No IV/M.318-Thomson/Shorts, point 23.

⁽¹⁸⁾ See for instance Commission Decision of 24.3.1995 in Case No IV/M.571-CGI/Dassault, point 19 .

⁽¹⁹⁾ See for instance the Report of the Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation. April 1994. Office of the Under Secretary of Defense for Acquisition & Technology of the United States.

itself. They are either prototypes or very short manufacturing series. By contrast, outdoor simulators are added to real equipment such as real weapon systems. They incorporate advanced technologies such as laser technologies. They are used for Land Forces operations by certain countries only. They are usually produced in relatively large series. They are much cheaper than indoor simulators. In view of these differences, the Commission agrees with the parties and the French and Spanish Ministries for Defence which have been consulted that indoor and outdoor simulators represent distinct product markets.

As regards civil simulators, a distinction must be made between flight or aircraft simulators and nuclear plants simulators. The latter reproduce the complete control room of the power plant.

28. The definition of the geographic market for military products in general and, therefore, for military simulators is given at point 26 above. There is no need to define precisely the geographic market for civil simulators given that Indra is not present in this sector. According to the parties, the flight simulators market is worldwide and the nuclear plant simulators market is at least European.
29. In any of the markets as defined at points 27 and 28 above does the operation result in the addition of market shares. Although both parties have occasionally sold in Portugal where no simulators' manufacturer exists, they have never achieved market shares above [...] ⁽²⁰⁾. Furthermore, for the reasons outlined at point 26 above, the Portuguese market could be considered as a market open to competition. For indoor simulators, Thomson is present in France (market shares below [...] ⁽²¹⁾), United Kingdom and Germany while Indra is present in Spain (market shares above [...] ⁽²²⁾) and Portugal. In all these countries there exist active competitors such as Sogitec, DCN and Sagem in France, [...] ⁽²³⁾ in Spain. In addition to this in the other European countries already operate, and must be seen as significant potential competitors in both Spanish and French markets, Saab, Loral Corporation and CAE Industries. The French and Spanish ministries of defence have confirmed their positive view of the operation, including the aspects concerning simulators. In the UK, the defence procurement policy is more liberal. Therefore there will not be creation or strengthening of a dominant position.

Air Command and Control Systems

30. These are systems needed by the government to carry out the defence of its territory. Their principal tasks are: detection and identification, mission controls, communication-essential to real-time reporting to higher level of command and good interoperability with allied forces.
31. The market for Air Command and Control Systems (ACCS) is a growing market because of the need to increase compatibility among systems used by the various NATO Armed Forces, which leads to the renewal of present ACCS. There is no overlap as a result of the concentration as Thomson is present only in France ([...] ⁽²⁴⁾ market share) and Indra

⁽²⁰⁾ Deleted business secret.

⁽²¹⁾ Deleted business secret.

⁽²²⁾ Deleted business secret.

⁽²³⁾ Deleted business secret. One local company.

⁽²⁴⁾ Deleted business secret.

only in Spain [...] ⁽²⁵⁾. In France, Thomson, [...] ⁽²⁶⁾, is faced by powerful competitors such as Alcatel, Sagem and CSEE. In Spain, Indra has increased its market share, but [...] ⁽²⁷⁾ was able to enter the market in 1994 and to gain a [...] ⁽²⁸⁾ market share within one year and there remain effective competitors such as Page Iberica [...] ⁽²⁹⁾ market share) and several small players ([...] ⁽³⁰⁾ market share together). Therefore, a dominant position will not be strengthened or created in this market as a result of the operation.

Electronic Warfare

32. This equipment enables the military to detect the existence of and identify enemy communications, to analyse their content or direction and to jam them ⁽³¹⁾.
33. The electronic warfare (EW) market is not a declining market, the main reason being that EW happened to be a key component on the battlefield during the Gulf War. The life cycle of the product is short. The operation does not result in any overlap in France and the overlap in Spain is minimal. In particular, Thomson's presence in Spain is sporadic and limited to certain very specific installations. Dassault Electronique is an actual competitor in France and in Spain. In addition, Litton is also present in Spain. Alternative suppliers in Europe include Elletronica SpA and GEC. Therefore, the operation will not create or strengthen a dominant position.

Automatic Test Equipment

34. Automatic Test Equipment is designed to test the full electronic onboard equipment and avionics systems of military and civil aircraft.
35. At present, Indra operates only in the military sector in Spain whilst Thomson operates mainly in the military sector and to a small extent in the civil one, both in France. Consequently there is no overlap as a result of the operation. The Spanish market is a very small one [...] ⁽³²⁾ and there exists competition from aeroplane manufacturers such as Harris, Aerospatiale and Mac Donnell Douglas. In France, Aerospatiale and Matra are active competitors of Thomson.

VI. CONCLUSION

36. For the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

⁽²⁵⁾ Deleted business secret.

⁽²⁶⁾ Deleted business secret.

⁽²⁷⁾ Deleted business secret. One major European player.

⁽²⁸⁾ Deleted business secret.

⁽²⁹⁾ Deleted business secret.

⁽³⁰⁾ Deleted business secret.

⁽³¹⁾ See Commission Decision of 5.9.1994 in Case No IV/M.496- Marconi/Finmeccanica, point 27.

⁽³²⁾ Deleted business secret.

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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,