

*Case No IV/M.697 -
Lockheed Martin / Loral
Corporation*

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/03/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.03.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.697 - Lockheed Martin Corporation / Loral Corporation
Notification of **30.01.1996** pursuant to Article 4 of Council Regulation No 4064/89

- 1 On 30 January 1996 Lockheed Martin Corporation (LMC) (USA) and Loral Corporation (Loral) (USA) notified an operation whereby LMC will acquire sole control of Loral. On 20 February the Commission declared the notification incomplete under Commission Regulation 3384/94 art 4(2)⁽¹⁾. The parties supplied the relevant information on 26 February and the notification became effective within Commission Regulation 3384/94 art 4(2) the same day.
- 2 After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I THE PARTIES

- 3 LMC, itself the product of a merger in 1994 between Lockheed and Martin Marietta, is the largest defence manufacturer in the world. It operates particularly in - aeronautics; space and strategic missiles; electronics; information and technology services; satellite telecommunications; and energy, materials and environment. Loral has extensive defence and electronics businesses and is active in satellite telecommunications. It supplies advanced electronic systems, components and devices in connection with - electronic

⁽¹⁾ On the same day the Commission extended the automatic suspension of the implementation of the operation under Council Regulation (EEC) 4064/89 art 7(2).

combat; training and simulation; tactical weapons; command control, communications and intelligence; systems integration; and communications and space systems.

II THE OPERATION

- 4 LAC Acquisition Corporation (LAC), a wholly owned subsidiary of LMC, will purchase all the outstanding common stock and all associated preferred stock purchase rights in Loral. LAC will merge with and into Loral, Loral being the surviving corporation and a wholly owned subsidiary of LMC.
- 5 Loral will at closing spin off a new entity, Loral Space & Communications Ltd (LSCL) (USA), the assets of which will consist primarily of Loral's satellite-related assets, liabilities and businesses, by distributing the voting stock in LSCL to Loral's pre-merger stockholders. LSCL holds an interest of 32.7 pc together with management rights and significant minority shareholder rights in Space Systems/Loral Inc (USA), a strategic alliance which supplies satellites in competition with LMC. The remaining participants in the strategic alliance are four European aerospace suppliers each holding 12.25 pc - Aérospatiale (France), Alcatel (France), Alenia (Italy) and DASA (Germany) - and Lehman Partnerships 18.3 pc. By an administrative letter dated 10 April 1995 the Commission indicated that the strategic alliance fell within the EC Treaty art 85(1) but that on the information available there was *prima facie* sufficient justification for an exemption to be granted under article 85(3).
- 6 According to the parties the spin-off of LSCL is neither part of the concentration notified nor a separately notifiable concentration. There will however be the following links between LMC and LSCL:

Stockholding: LMC will hold non-voting preferred stock in LSCL, representing about half of LSCL's cash assets and convertible into voting common stock representing 20 pc - the highest single interest - of the total common stock. However, standstill provisions incorporated into the stockholders agreement relating to LSCL impose restrictions upon the power of LMC to influence the conduct of LSCL. In particular LMC cannot increase its shareholding and, even if it converts the preferred stock into common stock, its ability to influence the composition of the board of directors and other decisions of the shareholders meeting will be extremely limited. The standstill provisions last for seven years or until specified earlier events which have the effect that the power of LMC to influence LSCL, even in the absence of those provisions, is eliminated.

Guarantee: LMC will guarantee up to USD 250 million indebtedness of Globalstar LP, a supplier of a satellite-based communications systems in which LSCL has an interest of 33.7 pc.

Technical assistance: LMC will license to LSCL extensive intellectual property rights, some potentially of long duration, and supply to LSCL extensive technical services, some of potentially unlimited duration.

Personal links: Mr Bernard Schwartz, the present chairman and chief executive officer of Loral, will hold limited stock and important offices in both LMC and LSCL. However LMC proposes to exclude him from participating in decisions concerning satellites.

- 7 The parties claim that without at least some of these links LSCL would have inadequate resources to function as an independent supplier and that the links are counterbalanced by sufficient safeguards to eliminate the possibility of LMC exercising decisive influence over LSCL.
- 8 The Commission has considered links similar to the links set out above in earlier merger cases, in particular IV/M.258 - CCIE/GTE . In the present case it concludes that the links between LMC and LSCL, as qualified by the safeguards, are insufficient to confer upon LMC the possibility of exercising decisive influence on LSCL and thus control of LSCL within Council Regulation (EEC) No. 4064/89 art 3.
- 9 It is however possible that the links between LMC and LSCL will infringe the competition rules of the EC Treaty. The Commission reserves its position in relation to this question.
- 10 The operation notified constitutes a concentration within the meaning of Council Regulation (EEC) No. 4064/89 art 3(1).

III CONCENTRATION OF COMMUNITY DIMENSION

- 11 LMC has a worldwide turnover in excess of ECU 19 billion and a Community-wide turnover in excess of ECU 700 million. Loral has a worldwide turnover in excess of ECU 5 billion and a Community-wide turnover in excess of ECU 520 million. Therefore the parties have a combined aggregate worldwide turnover in excess of ECU 5000 million and each of them has a Community-wide turnover in excess of ECU 250 million. They do not each achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
- 12 The operation therefore has a Community dimension within the meaning of Council Regulation (EEC) No. 4064/89 art 1(2).

IV COMPATIBILITY WITH THE COMMON MARKET

a) Relevant product markets

- 13 The activities of the parties which are the subject of the operation are largely complementary, LMC specialising in aircraft, missiles and space systems, Loral specialising in defence electronics. Both parties supply a wide range of non-satellite products in Europe. But the concentration raises potential competition concerns in relation to only two of those products, neither of them purely defence products - air traffic management services and equipment (ATM) and aviation recorder products.
- 14 ATM was recognised by the Commission in IV/M.620 - Thomson-CSF/Teneo/Indra as a separate product market. ATM provides full coverage of an airspace area to ensure the security of the civil air transport activities.
- 15 Aviation recorder products (black boxes) are instruments carried on aircraft to record events leading to a crash. It is unnecessary to decide whether aviation recorder products constitute a separate product market, since, even if they do, no strengthening of a dominant position will occur as a result of the operation.

b) Geographical reference markets

- 16 In IV/M.620 - Thomson-CSF/Teneo/Indra the Commission considered the geographical market for ATM to be national because of its links with national security. It nevertheless recognised the possible effect of recent developments such as new technology and the new public procurement rules in the air transport sector (in particular Council Directive 93/38). For example, in recent years Loral has been awarded contracts for ATM in the United Kingdom. Since however on the narrower definition (national) or the broader definition (at least the EEA) no competition problem arises in the present case it is unnecessary to define precisely the geographical market.
- 17 The Commission considers the market for equipment for civil aircraft as global as a result of the physical presence of or activities by the same suppliers throughout the world and the worldwide purchasing policy of aircraft manufacturers (IV/M.290 - Sextant/BGT-VDO).

c) Competitive assessment

- 18 For ATM Loral has less than [...] ⁽²⁾ at the EEA level and [...] ⁽³⁾ at the United Kingdom level; but LMC is a very small supplier at a global level and is not active at all in the EEA. The concentration therefore produces no increase in market share at either level. A dominant position in the United Kingdom might however result from the combination of the strong market position of Loral and the substantial resources of LMC. But after completing its enquiries in relation to the United Kingdom market the Commission is satisfied that other equally powerful suppliers operate or are capable of operating in the market and that no dominant position will occur in consequence of the operation.
- 19 For some aviation recorder products Loral has a global market share of up to [...] ⁽⁴⁾. In 1994 LMC ceased the manufacture of these products and terminated all active sales efforts. Apart from fulfilling a small number of existing orders and repairing and supplying spares for products already sold LMC has ceased to be active in this market. Accordingly no addition of market share results from the concentration. Again the Commission is satisfied that no dominant position will result from the operation.

VI CONCLUSION

- 20 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.

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,

⁽²⁾ Deleted for publication : between 10 - 25 pc

⁽³⁾ Deleted for publication : between 40 - 55 pc

⁽⁴⁾ Deleted for publication : between 55 - 70 pc