

***Case No IV/M.724 -
GEC / Thomson-CSF
(II)***

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/05/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.05.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.724 - GEC/Thomson-CSF (II)

Notification of 11 April 1996 pursuant to Article 4 of Council Regulation No 4064/89

1. On 11 April 1996 the General Electric Company p.l.c. (GEC) and Thomson SA jointly notified a transaction whereby they will acquire joint control of a newly created company into which they will merge their sonar activities. This notification relates only to non-military activities; the Governments of the United Kingdom and France, relying upon Article 223(1)(b) of the EEC Treaty, have instructed GEC and Thomson respectively not to notify the military activities of the joint venture.
2. After examination of the notification, 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.

I. THE PARTIES, THE OPERATION AND THE CONCENTRATION

3. GEC has activities in the following fields: electronic systems, power systems, telecommunications and information technology, consumer goods, electronic metrology, office equipment and printing, medical equipment, electronic components and industrial apparatus.
4. Thomson has activities in the following fields: professional electronics and defence systems, development and manufacture of consumer electronic products.

5. The proposed merger will bring together GEC and Thomson's capability in sonar systems design, development and production, including airborne sonar and sonar for surface ships and submarines.
6. The joint venture will be formed by a holding company in which Thomson will hold 50.1% and GEC 49.9%. Thomson and GEC will each have three directors on the board of the joint venture. Voting on the board will be by simple majority with no casting vote in the event of deadlock. A number of reserved matters will require either approval on the board by at least one Thomson appointee and one GEC appointee or the unanimous prior consent of the shareholders. These matters will include the approval of annual operating plans and budgets. Accordingly, the joint venture will be jointly controlled by GEC and Thomson.
7. The joint venture will perform all the functions of an autonomous economic entity and will be established on an indefinite basis. All the physical assets, staff and intellectual property necessary for it to carry on its business will be transferred or licensed to it. The joint venture will be active in all phases from research and development through production to marketing and after-sales service.
8. With minor exceptions, the parent companies intend to exit their sonar activities permanently. Given the essential close linkages between all the electronic systems fitted in any naval vessel, there is inevitably a small degree of overlap between the substantial business of the parent companies and the particular sonar activities in which the joint venture will operate. However, since the areas of overlap are insignificant the operation neither has the object nor the effect of coordination of the competitive behaviour between the parent companies or between them and the joint venture.

II. COMMUNITY DIMENSION

9. The combined aggregate worldwide turnover of GEC and Thomson is more than ECU 5000 million. Each of GEC and Thomson has an aggregate Community-wide turnover of more than ECU 250 million. The parties do not both 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.

III. APPLICATION OF ARTICLE 223(1)(b) EC

10. As already stated in paragraph 1 of this decision, the notification received relates only to the non-military activities of the two parent companies as the governments of United Kingdom and France, relying upon Article 223(1)(b) EC, has instructed GEC and Thomson respectively not to notify information which relates to military activities of the two companies.
11. The civil sonar activities of the proposed joint venture are insignificant in relation to the military aspects and currently represent less than [...] ⁽¹⁾, ie. less than [...] ⁽²⁾ of the joint venture's turnover.

⁽¹⁾ Deleted business secret

⁽²⁾ Deleted business secret

12. The Commission has considered the applicability of Article 223(1)(b) EC in the present case. In this context it has noted, on the basis of the information provided by the Governments of the United Kingdom and France, that:
- the part of the concentration which has not been notified only relates to the production of or trade in arms, munitions and war material which are mentioned in the list referred to in Article 223(2) EC;
 - the measures taken by the United Kingdom and France appear to be necessary for the protection of the essential interests of its security;
 - there are no spill-over effects from military activities on non-military activities of GEC and Thomson;
 - the merger will have no significant impact on suppliers and sub-contractors of the undertakings concerned and on Ministries of Defence of other Member States as neither GEC nor Thomson has made any significant sales of relevant products in other Member States. Furthermore, there are no intermediate consumers in the sector involved.
13. Therefore, the Commission has made no observations on the measures taken by the United Kingdom and France and sees no need to invoke Article 225(1). This decision is restricted to the non-military activities of GEC and Thomson.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product and geographic markets

14. It appears that civil applications of sonars include the following activities: ocean science/environment/offshore which includes acoustic instruments intended to monitor and measure sea water and sea bottom characteristics; mercantile marine navigation systems which include acoustic equipment used for navigation and docking on mercantile ships; fishery which includes acoustic instruments for commercial fishing (fish detectors, trawl monitoring equipment, etc.) and for fish-farming (fish counters, protection systems, etc.); and landbased which includes seismic tools for the oil industry, acoustic telemetry, perimeter intruder detection systems and noise control devices.
15. According to the parties, procurement for civil applications of sonar technologies takes place on a worldwide basis. Light civil products are sold mainly through distributors and agents while larger and more expensive equipment is sold more often directly to the customer.
16. However, it is not necessary to define the relevant product and geographic markets since even on the widest and narrowest possible definition of these markets the present concentration does not lead to the creation or strengthening of a dominant position.

B. Assessment

17. In relation to the market value of the civil sonar business, Community-wide or worldwide, GEC and Thomson are only minor players and, in addition, there is only minimal overlap between the parties in these civil applications. Competitors on the civil sonar markets include STN-Atlas Electronik, EDO, Sperry, Simrad and Furuno. Therefore, the merger does not raise any competition concern.

V ANCILLARY RESTRICTIONS

18. The parties have notified as ancillary restrictions Clause 13 of the Joint Venture Agreement and Clause 5.5 and Clause 7 of the Framework Agreement.
19. In Clause 13 of the Joint Venture Agreement each party has agreed not to compete with the business contributed by it to the joint venture for the duration of the joint venture. The parties have further agreed in this Clause to procure their requirements of certain products from the joint venture provided inter alia that the terms and services or goods offered by the joint venture are competitive. This restriction is necessary to avoid the sudden disruption of traditional lines of internal procurement and supply between the joint venture and its parents. The parties argue that the 5 year duration of this clause reflects the need for a start up period for the joint venture. The Commission accepts the need for this start up period but can only consider this clause to be ancillary to the concentration for a period of three years.
20. In Clause 5.5. of the Framework Agreement the parties have agreed to transfer and licence to the joint venture intellectual property and trade marks. Clause 7 of the Framework Agreement concerns a restriction to ensure that the business to be contributed to the joint venture undergo no material change prior to completion.
21. In so far as the above mentioned provisions can be considered as restrictive to competition they aim at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture or they protect the legitimate interests of the parent companies in the identity of their partner in the joint venture. Thus, these provisions can be recognized as integral parts of the operation and hence ancillary.

VI CONCLUSION

22. 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,

(signed)

Karel VAN MIERT