

*Case No IV/M.767 -
Thomson / CSF /
Finmeccanica /
Elettronica*

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/07/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.07.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject : Case No IV/M.767 - Thomson-CSF/Finmeccanica/Elettronica
Notification of 02.07.1996 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 (THOMSON), of 26.66% and subsequently 33.33% of the capital stock of ELETTRONICA, a company currently owned by FINMECCANICA, Mr FRATALOCCHI and Mr BENIGNI.
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 Multimedia is active in the design, development and manufacture of consumer electronic products. Thomson-CSF is active in professional electronics and defence systems.
4. FINMECCANICA is a major diversified technology-based Italian engineering company and is presently active in five core business areas: aerospace, defence systems, energy transportation and automation. FINMECCANICA is controlled by Istituto per la

Ricostruzione Industriale SpA (IRI) but has to be considered as "an economic unit with an independent power of decision" according to Recital 12 of the Merger Regulation⁽¹⁾.

5. Mr Filippo FRATALOCCHI and Mr Enzo BENIGNI are individual shareholders of ELETTRONICA. They do not have any controlling interest in any other company involved in the same field of activity as ELETTRONICA.
6. ELETTRONICA is mainly dedicated to the design and manufacture of electronic warfare systems and equipment. It is also presently active in space electronics, environmental monitoring systems and TV broadcasting equipment.

II. THE OPERATION

7. The parties have agreed that Thomson will hold 26.66% of the capital stock of Elettronica after a first capital increase and 33.33% of the capital stock of Elettronica after a second capital increase. Such second capital increase shall take place after the closing related to the first capital increase. The agreements also include put and call options, the result of which on the structure of control should be analysed if and when these options are exercised.

The proposed concentration is structured in an Agreement among Thomson-CSF, Finmeccanica, Mr Fratalocchi and Mr Benigni which includes a Shareholders Agreement between the same parties and a Coordination Agreement between a wholly owned subsidiary of Thomson-CSF and Elettronica.

III. CONCENTRATION

Joint Control

8. According to the terms of the Agreement, Thomson will have a veto right on the appointment of the Managing Director and of the General Manager who will be jointly proposed by Finmeccanica, Mr Fratalocchi and Mr Benigni⁽²⁾. After the second capital increase, the Senior Financial Manager will be appointed by the General Manager with the agreement of Thomson. Furthermore, important matters dealt with at the Board of Directors or at the Shareholders Assembly are subject to the joint approval of Thomson, Finmeccanica, Mr Fratalocchi and Mr Benigni. Such important matters include the annual approval of strategic plans and budget plans [...] ⁽³⁾. Finally, the Coordination Agreement provides for products rationalization, coordination for procurement policy outside France and Italy and for European programs and general technological, industrial and production coordination and rationalization between Thomson and Elettronica. A Coordination Committee comprising two members appointed by Elettronica and two members appointed by Thomson will decide by unanimity in the abovementioned fields. It follows that Elettronica will be jointly controlled by Finmeccanica, Mr Fratalocchi, Mr Benigni and Thomson.

⁽¹⁾ See Commission Decision of 02.08.1994 in Case N° IV/M.496 - Marconi/Finmeccanica, point 5.

⁽²⁾ The four shareholders have agreed that the current Managing Director will remain in office until the general shareholders assembly which shall approve the 1997 accounts.

⁽³⁾ Deleted, business secret.

Concentrative joint venture

9. Elettronica currently operates as an autonomous economic entity with its own assets, staff, management, intellectual property rights, etc and will continue to do so under the present arrangements. The agreements have no time limit except the Coordination Agreement which has a five year duration.
10. No coordination of competitive behaviour between Thomson, Finmeccanica, Mr Fratolocchi and Mr Benigni will result from this operation. Mr Fratolocchi and Mr Benigni are only present in the field of activity of Elettronica through their stake in this company. Finmeccanica's activities in electronic warfare apart from its stake in Elettronica can be considered as de minimis as they are limited to Elmer, which is jointly owned by Finmeccanica and Marconi and represents [...] ⁽⁴⁾ of the Italian electronic warfare market. Finally, Thomson is not present in electronic warfare in Italy. The operation is therefore a concentration within the meaning of Article 3 of the Merger Regulation.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5 billion ECU. Both Thomson and Finmeccanica have a Community-wide turnover in excess of 250 million ECU. Thomson does not achieve more than two-thirds of its 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

12. Elettronica is present in the following sectors:
 - electronic warfare,
 - environmental monitoring equipment,
 - space electronics,
 - TV broadcasting equipment and systems.
13. As regards environmental monitoring equipment, space electronics and TV broadcasting equipment and systems, the competitive impact of the transaction is non-existent or insignificant, either because there is no overlap between the activities of the parties (environmental monitoring equipment) or because Elettronica's activities are very limited (space electronics: turnover amounting to ECU 1.5 million; TV broadcasting equipment and systems: 1% market share at EU level and 3% market share on a worldwide basis). Furthermore Elettronica has undertaken under the Agreement to sell or dispose of its environmental monitoring equipment and TV broadcasting equipment and systems businesses.

⁽⁴⁾ Deleted, business secret. - Read "Only a minimum part of the market concerned".

Electronic warfare

14. Electronic warfare equipment and systems are defence products which involve the use of electromagnetic and directed energy in order to mainly determine, exploit, reduce or prevent hostile use of the electromagnetic spectrum. They enable armies to detect the existence of and identify enemy communications, to analyse their content or direction and to jam them. In previous decisions, the Commission has considered electronic warfare as a separate product market⁽⁵⁾.

General outline for defence products⁽⁶⁾

15. Markets for defence products and services tend to remain national where a domestic supplier exists⁽⁷⁾. However, where there is no domestic supplier, then, subject to other barriers such as export restrictions and national preferences, there is usually international competition between suppliers of defence products and services from different countries⁽⁸⁾. In the present case therefore the affected markets are principally France and Italy. In this context, it should be stressed that Thomson on one hand, and Finmeccanica and Elettronica on the other hand, are operating in different geographic markets. Furthermore, as to the Italian electronic warfare market, there is only a minimum overlap between Elettronica's and Finmeccanica's activities due to the Finmeccanica's joint control of Elmer, whose current market share is about [...] ⁽⁹⁾. Finally, 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⁽¹⁰⁾. 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⁽¹¹⁾. In the present case, it should be noted that the Italian MOD, to which a questionnaire has been sent by the Commission, has not raised on any objection to the operation.

⁽⁵⁾ See Commission Decisions of 5.9.1994 in Case N° IV/M.496- Marconi/Finmeccanica, point 27 and of 22.8.1995 in Case N° IV/M.620- Thomson-CSF/Teneo/Indra, point 32

⁽⁶⁾ See Commission Decision of 22.8.1995 in Case N° IV/M.620- Thomson-CSF/Teneo/Indra, point 26

⁽⁷⁾ 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

⁽⁸⁾ See for instance Commission Decision of 14.4.1993 in Case No IV/M.318-Thomson/Shorts, point 23

⁽⁹⁾ Deleted, business secret. - Read: not significant.

⁽¹⁰⁾ See for instance Commission Decision of 24.3.1995 in Case No IV/M.571-CGI/Dassault, point 19

⁽¹¹⁾ 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

Assessment

16. The present operation does not lead to the strengthening or the creation of a dominant position in the electronic warfare. Before the operation, Thomson was not present in Italy and Elettronica not present in France. In both countries, and despite a high market share especially of Elettronica ([...]⁽¹²⁾ together with Elmer's market share) in Italy, there exists effective competition. In Italy, the electronic warfare programmes have been assigned with reference to the origin of the platform: in this context, competitors of Elettronica include [...]⁽¹³⁾. In France, Thomson has to face [...]⁽¹⁴⁾ and, to a lesser extent, [...]⁽¹⁴⁾. Finally, the combined presence of Thomson and Elettronica does not exceed [...]⁽¹²⁾ in any other Member State except in Spain, where Thomson jointly controls Indra but where Elettronica is only marginally present (turnover of ECU 0.2 million).

VI. CONCLUSION

17. 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,

⁽¹²⁾ Deleted, business secret.

⁽¹³⁾ Deleted, business secret. - Five major firms.

⁽¹⁴⁾ Deleted, business secret. Four major firms together.