

*Case No IV/M.820 -
British Aerospace /
Lagardère SCA*

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/09/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.09.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.820 - British Aerospace/Lagardère

Notification of 21.08.1996 pursuant to Article 4 of Council Regulation No 4064/89

1. On 21.08.1996 the Commission received a notification relating to the proposed creation by British Aerospace plc (BAe) and Lagardère SCA (Lagardère) of a joint venture in the areas of guided weapons and associated weapons systems.
2. The products that BAe and Lagardère will each contribute to the joint venture are used almost entirely in military applications. Certain of the products currently manufactured by BAe and Lagardère also have non-military applications ("dual use products"). The United Kingdom and France, relying upon Article 223(1)b of the EC Treaty, have instructed the parties not to notify the military aspects of this operation. The notification therefore relates only to the non-military applications of the dual use products of the joint venture.
3. 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

2. BAe operates in two principal business areas: defence and commercial aircraft. Its defence business comprises military aircraft, guided weapons, ordnance (guns and ammunition) and elements of naval systems. Additionally BAe has a property development arm.

3. Lagardère SCA (Lagardère) operates in ten principal business areas, comprising inter alia defence, space systems, telecommunications, automobiles and transit systems and media. The guided missiles activities of Lagardère are undertaken by its wholly owned subsidiary, Matra Défense SA ("Matra Défense").

II. THE CONCENTRATION

4. The joint venture will be jointly controlled by Lagardère and British Aerospace. Parity between the two parties will be ensured by 50-50 voting rights and representation on an equal basis on the board of a Dutch company responsible for the management of the business to be carried out by a French holding company in which BAe and Lagardère will have an equal share.
5. In particular, the proposed operation will involve the merger of the parties' activities in the areas of guided weapons and associated weapons systems in a new holding company, Matra BAe Dynamics S.A.S. ("the Joint Company"). BAe and Lagardère will each have a 50% interest (less 1 share) in the Joint Company which will own 100% of the equity share capital of the UK and French operating companies. The remaining two shares will be held by a management company incorporated under Dutch law, Matra BAe Dynamics B.V., owned 50% by BAe and 50% by Lagardère.
6. Matra BAe Dynamics B.V. will conduct the overall management of the Joint Company in accordance with the strategic business plan and budget as approved by its board, while the national operating companies will be responsible for the day-to-day management of their businesses.
7. The joint venture will be provided with all financial and other resources, including physical assets, staff, and intellectual property, necessary for it to perform all the functions of an autonomous economic entity. It will be established on an indefinite basis.
8. The parent companies will withdraw from the areas of business being contributed to the joint venture⁽¹⁾.
9. It is therefore concluded that the proposed operation will constitute a concentration.

III. COMMUNITY DIMENSION

10. The combined aggregate worldwide turnover of BAe and Lagardère exceeds 5,000 million ECU (BAe = 6.927 million ECU, Lagardère = 8.058 million ECU). The aggregate Community-wide turnover of each of BAe and Lagardère exceeds 250 million ECU (BAe = 2.578 million ECU; Lagardère = 6.117 million ECU). The parties do not achieve more than two thirds of their Community-wide turnover in one and the same Member State. The proposed operation has therefore a Community dimension.

⁽¹⁾ For historical reasons, the parent companies accept only certain limited commitments with respect to the relationship between their remaining businesses and the military business being contributed to the joint venture.

IV. APPLICATION OF ARTICLE 223(1)(b) OF THE EC TREATY

11. As already stated in paragraph 2 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) the EC Treaty, have instructed Bae and Lagardère respectively not to notify information which relates to the military activities of the two companies.
12. The Commission has considered the applicability of Article 223(1)(b) of the EC Treaty 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 are necessary for the protection of the essential interests of their security;
 - there are no spill-over effects from the military applications on the non-military applications of the dual use products of Bae and Lagardère;
 - 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. Furthermore, intermediate consumers in the sector involved would be little affected.
13. Therefore, the Commission is satisfied with the measures taken by the United Kingdom and France and sees no need to invoke Article 225(1). The present decision is restricted to the non-military applications of the dual use products of Bae and Lagardère.

IV. COMPATIBILITY WITH THE COMMON MARKET

14. As stated above, the assessment of this operation is limited to the non-military applications of the dual use products that will be contributed to the joint venture. The parties' activities in relation to these products are highly marginal: the turnover generated by the sale of non-military applications amounted to only ECU 8.1 m in 1995 (Lagardère= ECU 7 m, BAe= ECU 1.1 m), that is less than 1% of the estimated total turnover of the joint venture.
15. The dual use products that the parties will contribute to the joint venture are for: precision optical engineering, including materials processing for optical equipment; manufacture of control units for factory automation robotics; design and manufacturing of space system structures, mechanisms and antennae; environmental and electromagnetic testing for some non-defence customers, mainly in the aerospace industry; electronics and microelectronics applications, including printed circuit board manufacturing and customised electronic circuitry packaging.
16. There is an overlap between the activities of BAe and Lagardère only in the areas of environmental and electromagnetic testing, and of electronics and microelectronics applications (i.e. in the area of customised electronic circuitry packaging). In both areas BAe and Lagardère are small players subject to competition from a range of companies

with similar facilities, skills and expertise. Moreover the overlap of their activities is very small. As a result, the concentration does not create or strengthen a dominant position, as a result of which effective competition would be significantly impeded in the common market or a significant part thereof.

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,

(signed)