



EUROPEAN COMMISSION
DG Competition

Case M.8658 - UTC / ROCKWELL COLLINS

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERCER PROCEDURE**

Decision on the implementation of the commitments -
Purchaser approval
Date: 28.9.2018



EUROPEAN COMMISSION

Brussels, 28.9.2018
C(2018) 6448 final

PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Dear Sir/Madam,

Subject: Case M.8658 – UTC / Rockwell Collins
Approval of Safran SA as purchaser of Rockwell Collins, Inc.’s Trimmable Horizontal Stabilizer Actuators, certain pilot control systems and certain special products business following your letter of 27 July 2018 and the Trustee’s opinion of 3 August 2018

I. FACTS AND PROCEDURE

1. By decision adopted on 4 May 2018 (the “Decision”) based on Articles 6(1)(b) and 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹ (the “Merger Regulation”), the Commission declared the concentration by which the undertaking United Technologies Corporation (“UTC”) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Rockwell Collins Incorporated (“Rockwell Collins”) compatible with the internal market subject to certain conditions and obligations (the “Commitments”). UTC and Rockwell Collins are hereinafter referred to as the “Parties”.
2. In particular, the Commitments provide that in order to address serious doubts related to the Parties’ activities in Trimmable Horizontal Stabilizer Actuators (“THSA”), and

¹ OJ L 24, 29.01.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union (“TFEU”) has introduced certain changes such as the replacement of “Community” by “Union” and “common market” by “internal market”. The terminology of the TFEU will be used throughout this decision

certain pilot control systems ("PCS"), more specifically in Rudder Brake Pedal Units ("RBPS") and Throttle Quadrant Assemblies ("TQA"), the Parties would divest Rockwell Collins' THSA, PCS and special products ("SP") businesses ("Divestment Business" or the "THSA/PCS/SP Final Commitments").

3. The Divestment Business includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular (i) all tangible and intangible assets (including intellectual property rights); (ii) all licenses, permits and authorizations issued by any governmental organisation for the benefit of the Divestment Business; (iii) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and (iv) the personnel.
4. The Divestment Business and the related activities of Rockwell Collins are located in several locations across several countries.
5. By letter of 27 July 2018, the Parties proposed Safran SA, acting through its wholly-owned subsidiary Safran USA Inc., ("Safran") for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Purchase Agreement (the "Agreement").
6. On 3 August 2018, ING Bank N.V. (the "Trustee") submitted an assessment of Safran's suitability as a purchaser and in particular has indicated that Safran fulfils the criteria of the purchaser requirements in Section D of the THSA/PCS/SP Final Commitments attached to the Decision as Annex 2. In this assessment, the Trustee also indicated that, on the basis of the Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

(a) Suitability criteria for the purchaser

7. Pursuant to paragraph 17 of the THSA/PCS/SP Final Commitments, the Commission has to verify that the purchaser fulfils the purchaser criteria and that the Divestment Business is being sold in a manner consistent with the Commitments.
8. According to paragraph 16 of the THSA/PCS/SP Final Commitments, in its assessment of the proposed purchaser, the Commission should verify in particular that:
 - a. The purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings² (this being assessed having regard to the situation following the divestiture);
 - b. The purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

² Pursuant to paragraph 1 of the THSA/PCS/SP Final Commitments, Affiliated Undertakings are undertakings controlled by the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Consolidated Jurisdictional Notice").

- c. The purchaser shall have an existing presence in the aerospace industry, and shall have existing relationships with major aircraft manufacturers;
- d. The acquisition of the Divestment Business by the purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(b) Presentation of the Purchaser

9. Founded in 1905, Safran is an international high-technology group active worldwide in aerospace, aircraft equipment and defence. In FY2017, Safran had revenues of around EUR 16 billion worldwide. Safran is active in more than 60 countries and currently comprises three core business divisions: aircraft equipment, aerospace propulsion and defence. In addition, in February 2018, Safran closed its acquisition of Zodiac Aerospace, a French group active in aerosafety, aircraft systems, seats and cabins. In FY2016-2017, Zodiac Aerospace had revenues of around EUR 5 billion worldwide.
10. Safran mostly supplies complete components or systems (such as engines, electrical systems, wiring systems, landing gears, nacelles, seats or interiors) mainly to aircraft or helicopter manufacturers and airlines. Safran also supplies parts, components and sub-components of a given equipment or system to aircraft manufacturers, equipment or system suppliers, integrators and distributors.

(c) Independence from the Parties

11. The Trustee submits in particular that there are no ownership or management links between Safran and the Parties. The Trustee has not found any evidence of material dependency between the Parties and Safran in terms of equity/corporate links.
12. With regard to commercial links, Safran sells both to UTC and Rockwell Collins and purchases both from UTC and Rockwell Collins. However, those sales and purchases amounted to [...] of Safran's total sales and costs of goods sold in each of 2015, 2016 and 2017 respectively. The Commission notes that further links with UTC, [...], are not material and unrelated to the activities of the Divestment Business³.
13. Therefore, based on the information provided by the Trustee and the Parties, the Commission considers that Safran is independent from and unconnected to the Parties.

(d) Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

14. The Trustee submits that Safran has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

³ [...], reasoned opinion of the Trustee, p. 122, 123.

15. As regards Safran's financial resources Safran has a market capitalization of roughly EUR 45 billion, and only recently successfully issued a convertible bond in June 2018 and floating rate notes in July 2018 amounting overall to approximately EUR 1.2 billion. It is not expected to have difficulty to finance the acquisition of the Divestment Business and subsequent necessary investments.
16. As regards Safran's proven expertise, Safran has acquired several large companies in the recent past, such as Zodiac Aerospace (2018) or Ariespace (2016 – through ArianeGroup, a 50/50 joint venture with Airbus) and the Trustee maintains that Safran also has proven its integration expertise by providing details on the integration of the GEPS business, which Safran acquired from Goodrich in 2012. Furthermore, Safran is an established international aerospace group with existing – albeit limited – activities in many of the Divestment Business' products.
17. In consideration of the incentive to maintain and develop the Divestment Business, in the Trustee's view the acquisition of the Divestment Business by Safran will enable it to strengthen and develop its existing pilot controls and actuation businesses, and to become a more competitive and credible player in these markets. Particularly, the transaction may lead to synergies in combination with Safran's existing business. Moreover, according to the Trustee, Safran has submitted a detailed business plan with a rather conservative and sustainable approach.
18. In view of the above considerations, the Commission considers that Safran has the financial capabilities, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

(e) Existing presence in the aerospace industry and existing relationships with major aircraft manufacturers

19. The Trustee submits that Safran has an existing presence in the aerospace industry as well as existing relationships with major aircraft manufacturers.
20. Safran's operations are focused on the aerospace and defence industries. Each of Safran's three divisions, as well as the recently acquired Zodiac business, are active in the aerospace industry. Their products include engines, electrical systems, wiring systems, landing gears, nacelles, seats and interiors among others. Safran as well as the recently acquired Zodiac achieve substantial turnover with major aircraft manufacturers, including Airbus and Boeing.
21. In view of the above considerations, the Commission considers that Safran has the required existing presence in the aerospace industry as well as the required existing relationships with major aircraft manufacturers.

(f) Absence of prima facie competition problems and absence of implementation delays

22. Pursuant to paragraph 16(d) of the Commitments, the acquisition of the Divestment Business by the proposed purchaser must neither be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

23. There are no vertical links between Safran and the Divestment Business. As regards horizontal overlaps, according to information submitted by UTC those are limited. Accordingly, they are unlikely to lead to competition concerns:
- a. Safran and the Divestment Business both sell Trimmable Horizontal Stabiliser Actuators, which move the horizontal stabiliser that controls the pitch of the aircraft. On the global market for THSAs,⁴ the Divestment Business holds a market share of [5-10]% ([10-20]% on the merchant market) while Safran holds a market share of less than [0-5]% ([0-5]% on the merchant market). Their combined market share will be limited, at most [10-20]%, and the increment will be marginal. The primary competitors on the merchant market for THSA will be UTC, Parker and Moog. Furthermore, the Commission's investigation into the UTC/Rockwell Collins transaction did not indicate that Safran and the Divestment Business were particularly close competitors in THSAs.
 - b. Safran and the Divestment Business both sell pilot control sticks which control an aircraft's elevators and ailerons. Their activities overlap specifically in centre yokes,⁵ where the Divestment Business has a global market share of [10-20]% ([40-50]% on the merchant market) while Safran has a market share of less than [0-5]% (equally less than [0-5]% on the merchant market). The increment in market share will therefore be marginal in centre yokes. Considering the wider market for pilot control sticks, Safran is similarly a very small supplier. The primary competitors on the merchant market for pilot control sticks will be UTC, BAE and Thales.
 - c. Safran and the Divestment Business both sell RBPS which control the rudder and the brakes on the wheels of an aircraft. On the global market for RBPS,⁶ the Divestment Business holds a market share of [5-10]% ([10-20]% on the merchant market) while Safran holds a market share of less than [0-5]% ([0-5]% on the merchant market). Their combined market share will be limited, at most [10-20]%, and the increment will be marginal. The primary competitors on the merchant market for RBPS are Woodward, Meggitt and UTC.
 - d. Safran and the Divestment Business both sell TQAs which allows the pilot to control the engines' thrust. On the global market for TQAs,⁷ the Divestment Business holds a market share of [20-30]% ([30-40]% on the merchant market) while Safran holds a market share of [0-5]% ([0-5]% on the merchant market). The increment in market share will therefore be marginal in TQAs. The primary competitors on the merchant market will be UTC, Woodward and Lord. Furthermore, the Commission's investigation into the UTC/Rockwell Collins transaction did not indicate that Safran and the Divestment Business were particularly close competitors in TQAs.
 - e. Safran, through Zodiac Aerospace, and the Divestment Business both sell certain small sub-components. On narrowly defined markets for each type of sub-component, the activities of the Divestment Business and Safran lead to combined

⁴ M.8658 *UTC/Rockwell Collins*, paragraphs 26ff and 203ff.

⁵ M.8658 *UTC/Rockwell Collins*, paragraphs 58ff and 203ff.

⁶ M.8658 *UTC/Rockwell Collins*, paragraphs 55ff and 203ff.

⁷ M.8658 *UTC/Rockwell Collins*, paragraphs 55ff and 203ff.

market shares of less than [40-50]% in waste water drain valves (increment of approximately [10-20]%)⁸ and less than [30-40]% in fuel sticks (increment of less than [0-5]%)⁹. Safran is a small supplier in all of these products. Furthermore, these are commodity hardware products with a high level of supply side substitutability in the case of waste water drain valves or constituting outdated technology no longer used on newer aircraft in the case of fuel sticks respectively. Finally, there are several other competitors active.

24. The acquisition of the Divestment Business by Safran was assessed and approved under antitrust rules by the Administrative Council for Economic Defence in Brazil on 18 September 2018.
25. As regards other regulatory approvals, the acquisition by Safran will be subject to pre-closing approval by the Committee on Foreign Investment in the United States. Safran has always successfully completed such review in the United States in the past years, including for its recent acquisition of Zodiac Aerospace. Safran and the Parties expect that this approval can be obtained within the next three to four months. Furthermore, Safran as purchaser requires approval by the U.S. Department of Justice and the State Administration for Market Regulation of China.
26. On the basis of the above and taking into account the reasoned opinion submitted by the Trustee, the Commission concludes that the acquisition of the Divestment Business by Safran does not create *prima facie* competition concerns nor does it give rise to a risk that the implementation of the Commitments will be delayed.
27. This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by a competent competition authority under applicable merger control rules.

III. ASSESSMENT OF THE TRANSACTION DOCUMENTS

28. The proposed transaction will be effected pursuant to the Agreement dated 20 July 2018 to which are attached nine exhibits and a set of disclosure and other schedules.
29. The Agreement concerns the sale of assets to transfer ownership of the Divestment Business to Safran. There are the following main modifications between the terms of sale set out in the Agreement and the THSA/PCS/SP Final Commitments:
 - a. [...],^{10,11}.
 - b. [...],¹².

⁸ According to information submitted by the Parties, the market size for waste water drain valves is roughly EUR [...] million.

⁹ According to information submitted by the Parties, the market size for fuel sticks is roughly EUR [...] million.

¹⁰ [...].

¹¹ [...].

¹² [...].

- c. [...].
 - d. [...].
30. The Parties and Safran have agreed to provide a number of services to each other on a transitional basis to ensure the transfer of the Divestment Business. [...].
 31. [...].
 32. In the light of the above considerations and taking into account the reasoned opinion submitted by the Trustee, the Commission concludes that the transaction documents are consistent with the Commitments and that, accordingly, the Divestment Business is being sold in a manner consistent with the Commitments.

IV. CONCLUSION

33. On the basis of the above assessment, the Commission approves Safran as a suitable purchaser for the above-mentioned reasons.
34. On the basis of the Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
35. This decision only constitutes approval of the proposed purchaser identified herein and of the Agreement. This decision does not constitute a confirmation that the Parties have complied with their Commitments.
36. This decision is based on Section D of the THSA/PCS/SP Final Commitments attached to the Commission Decision of 4 May 2018.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General