



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: 10.08.2018



EUROPEAN COMMISSION

Brussels, 10.08.2018
C(2018) 5539 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Diehl Group as purchaser of the Oxygen Divestment
Programs following your letter of 27 June 2018 and the Trustee's opinion
of 4 July 2018 and 23 July 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 provided that in order to address serious doubts related to the combination of Rockwell Collins' existing business in aircraft oxygen

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.

systems and the research projects of UTC in aircraft oxygen systems, the Parties would divest UTC's activities in the research and development of aircraft oxygen generation systems, consisting of [...] (the "Divestment Programs" or the "Oxygen Final Commitments"). The Divestment Programs include all [...].

3. By letter of 27 June 2018, the Parties proposed Diehl Group ("Diehl" or "the Proposed Purchaser") for approval by the Commission as purchaser of the Divestment Programs and submitted the Asset Sale Agreement ("the Agreement") between UTC's subsidiary Goodrich Lighting Systems GmbH and Diehl. The Agreement was signed on [...].
4. On 4 July and 23 July 2018, ING, the Monitoring Trustee in charge of monitoring compliance with the Commitments (the "Trustee"), submitted an assessment of Diehl's suitability as a purchaser and, in particular, indicated that Diehl fulfils the purchaser criteria set out in Section D of the Oxygen Final Commitments. In this assessment, the Trustee also indicated that, on the basis of the Agreement, the Divestment Programs would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

(a) Suitability criteria for the Purchaser

5. Pursuant to paragraph 17 of the Oxygen Final Commitments, the Commission has to verify that the Purchaser fulfils the purchaser criteria and that the Divestment Programs are being sold in a manner consistent with the Commitments.
6. According to paragraph 17 of the Oxygen Final Commitments, in its assessment of the Proposed Purchaser, the Commission should verify in particular that:
 - a. The Purchaser is independent of and unconnected to UTC and RockwellCollins and its affiliated undertakings.
 - b. The Purchaser has the financial resources, proven expertise and incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors and, in particular, to continue to commit resources as UTC would otherwise have done to progress the Divestment Programs.
 - c. 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

7. Diehl is a German company with a worldwide presence in many areas of industry. Diehl employs around 17,000 people and generated a turnover of EUR 3.7 billion in 2017. Diehl is organized into five corporate divisions: Diehl Metall, Diehl Controls, Diehl Defence, Diehl Metering, and Diehl Aviation.
8. Diehl Aviation is a supplier to the major international aircraft manufacturers in the fields of avionics and cabin equipment, including cabin lighting, galleys, lavatories,

monuments, sanitary solutions, fire prevention, water supply, and air conditioning. Diehl Aviation employs over 5,000 people and generated a turnover in 2017 of EUR 1.5 billion

(c) Independence from the Parties

9. There are no ownership links between Diehl and the Parties. The Trustee has not found any evidence of material dependency between the Parties and Diehl whether in terms of equity/corporate links or commercial agreements. The economic links between the Parties and Diehl relate primarily to minor ordinary course trading activities that are customary in the aerospace industry. These are acceptable given that they are immaterial in terms of magnitude.
10. Based on the information provided by the Trustee, the Commission thus considers that the Proposed Purchaser is independent from and unconnected to the Parties.

(d) Financial resources, proven expertise and incentive to maintain and develop the Divested Programs as a viable and active competitor and, in particular, to continue to commit resources as UTC would otherwise have done to progress the Divestment Programs

11. The Trustee submits that the Proposed Purchaser has sufficient financial resources, proven expertise and incentive to develop the Divestment Programs as a viable and competitive business.
12. According to the Trustee, Diehl has sufficient resources to finance the acquisition and develop the Divestment Business as a viable and active competitor. In its financial year 2017, Diehl had revenues of EUR 3.8 billion (of which EUR 1.5 billion was in aerosystems) and an EBITDA of EUR 359 million. Sales grew at an annual growth rate of [5-10]% from 2013 to 2017, driven by growth of [70-80]% in its Aviation division. EBITDA grew at an annual rate of [5-10]% per year between 2013 and 2017.
13. Diehl spent EUR 307 million on R&D activities in 2017, while the business unit that would acquire the Divestment Programs, [...], currently has a EUR [...] million annual budget for R&D, compared with the expected R&D costs to commercialise the Divestment Programs of EUR [...] million over the course of the next [...] years.
14. Diehl has indicated that it intends to finance the purchase price of the Divestment Programs of USD [...] through [...], and in this respect [...].
15. As regards proven expertise, Diehl has a well-established and growing Aviation division, with a presence across Europe, North America and Asia. Diehl is committed to the development of new products; since 2013, Diehl has spent an average of [5-10]% of sales on R&D projects, [...]. For example, Diehl recently developed a number of products for the Airbus A350 series of aircraft from conception to commercialisation, which underlines its ability to manage development projects. As a result of this cooperation with Airbus, Diehl is a designated tier-one supplier of the company.
16. In addition to its relationship with Airbus, Diehl sells its aviation components to other aircraft manufacturers including Boeing, Bombardier and Embraer, as well as to roughly 200 airlines worldwide. Diehl has a strong record of acquiring and integrating aerospace businesses, including various cabin interior products, crew rest

compartments, air ducts, aircraft kitchen equipment, lavatories and water waste management systems.

17. In terms of incentives, Diehl has a clear incentive to continue investing in the Divestment Programs, based on [...] that the Divestment Programs require. Diehl is eager to acquire the Divestment Programs, as passenger oxygen systems are highly complementary to Diehl's existing portfolio of cabin interior products. [...].
18. The Trustee reviewed Diehl's investment case for the Divestment programs as well as the potential upside for the projects. Diehl's investment case focuses [...].
19. As regards the incentives of Diehl to continue to invest resources as UTC would otherwise have done to progress the Divestment Programs, Diehl has indicated that the product is seen to be complementary to the existing portfolio, since Diehl Aviation is already successfully producing Passenger Service Units (PSU) to several customers in the commercial aviation market [...]. In combination with its existing PSU products Diehl can provide the optimal solution for customers when it comes to the PSU and Passenger Oxygen supply. UTC as well developed the programme for reasons of complementarity to their existing PSU business², which shows, together with the investment case, that Diehl as similar incentives as UTC to bring the project forward.
20. In view of the above considerations, the Commission considers that the proposed Purchaser 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 UTC and other competitors .and, in particular, to continue to commit resources as UTC would otherwise have done to progress the Divestment Programs.

(e) Absence of *prima facie* competition concerns

21. Pursuant to clause 17(c) of the Commitments, the acquisition of the Divestment Business by the 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.
22. The Divestment of the Divestment Programs does not create any competition concerns, as it does not give rise to any horizontal overlaps or vertical relationships. Diehl is not active in the market for aircraft oxygen systems, nor does Diehl have any related business in upstream or downstream markets to oxygen markets. Diehl is active in the neighbouring markets of PSUs and interior lightings but its market share is modest (less than [10-20]% in PSUs and [5-10]% if PSUs are considered together with interior lightings).³ The Trustee does not expect the Divestment Programs to be subject to mandatory pre-closing antitrust filings, as the Divestment Programs [...].
23. 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 Programs by Diehl does not create *prima facie* competition concerns nor does it give rise to a risk that the implementation of the Commitments will be delayed.

² Decision M.8658, paragraph 281.

³ Diehl mainly competes as an interior integrator in they sense that it supplies PSUs and interior lighting as a package for a number of aircraft platforms.

III. ASSESSMENT OF THE TRANSACTION DOCUMENTS

24. The Divestment Transaction will be effected pursuant to the Agreement. The Trustee has not identified any material differences between the terms of sale set out in the Agreement and the Commitments.
25. 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 Programs are being sold in a manner consistent with the Commitments.

IV. CONCLUSION

26. On the basis of the above assessment the Commission approves Diehl as a suitable purchaser of the Divestment Programs for the above-mentioned reasons.
27. On the basis of the Agreement, the Commission further concludes that the Divestment Programs are being sold in a manner consistent with the Commitments.
28. 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.
29. This decision is based on Section D of the Commitments attached to the Commission Decision of 4 May 2018.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General