EUROPEAN COMMISSION

Brussels, 20.3.2019
C(2019) 2317 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: **Case M.8948 — Spirit/Asco**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 30 January 2019**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Spirit AeroSystems Holdings, Inc. ("Spirit") would acquire within the meaning of Article 3(1)(b) of the Merger Regulation 100% of the shares of S.R.I.F. NV, which is the holding company of Asco Industries NV, Asco Management NV and Immobilière Asco NV (together, "Asco").[3] Spirit and Asco are collectively referred to as the "Parties".

(2) The concentration had already been notified to the Commission on 17 September 2018, but was subsequently withdrawn on 25 October 2018.

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). 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.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in the Official Journal of the European Union No C 49, 7.2.2019, p. 21.

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

1. THE PARTIES

(3) Spirit is a Tier 1 supplier who designs, manufactures and sells aerostructures for commercial and military aircraft. The company is based in the US and its shares are listed on the New York Stock Exchange. Spirit employs ca. 15 500 employees worldwide with a turnover amounting to approximately EUR 6 181 million in 2017, approximately EUR 1 118 million of which were achieved in the EU.

(4) Asco is a Tier 2 specialist in the machining treatment and assembly of hard metal, steel and aluminium alloys, and to a lesser extent, composites. Asco sells components and sub-components for the aerostructures of commercial and military aircraft to OEMs, Tier 1 suppliers and equipment suppliers. The company is based in Belgium and has approximately 1 450 employees. Its annual turnover amounted to approximately EUR 378 million in 2017, approximately EUR […] of which were achieved in the EU.

(5) Asco is a shareholder of two joint ventures supplying Airbus:

(a) **Flabel**, formed in 1999, is a joint venture (JV) between Asco, Sonaca, Sabca and Esterline Belgium. The JV acts as a *commissionaire* (that is in its own name but for the account of its members) through which its parent companies participate in the development and production of flap systems and subcomponents thereof for the Airbus A400M military transport aircraft. Flap systems (or trailing edge assemblies) are wing aerostructures, attached to the rear part of an aircraft wing in order to increase the lift of the wing at a given airspeed during take-off and landing.

(b) **Belairbus**, formed in 1979, is a joint venture between Asco, Sonaca and BMT Eurair. The JV acts as a *commissionaire* through which its parent companies participate in the development, production and sale of slat systems for all the main commercial Airbus aircraft. Slat systems (or leading edge assemblies) are wing aerostructures, attached to the front part of an aircraft wing (the “fixed leading edge”) in order to increase the lift of the wing at a given airspeed during take-off and landing.

2. THE OPERATION AND CONCENTRATION

(6) The Parties have entered into a binding Agreement for the Sale and Purchase of the shares ("SPA") of S.R.I.F. NV on 1 May 2018. Pursuant to this SPA, Spirit will acquire the entirety of the share capital of S.R.I.F. NV, the holding company of the companies constituting Asco, for a consideration of approximately EUR 556 million ("the Transaction").

(7) Upon completion of the Transaction, Spirit will own 100% of the shares and voting rights in Asco and thus acquire sole control of Asco within the meaning of Article 3(1)(b) of the Merger Regulation.

(8) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(9) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million[4]. Each of them has an EU-wide turnover in excess of EUR 250 million, but each does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

4. OVERVIEW OF AEROSTRUCTURES

(10) The Transaction concerns the design, engineering, manufacturing and assembly of aerostructures. Aerostructures are components or subsystems of the airframe of an aircraft and generally include the wings, fuselage (or aircraft's main body) structures, empennages (or tail structure at the rear of an aircraft to provide stability during the flight), nacelles (enclosures on the outside of an aircraft, often attached to the wing, used for housing engines) and other fabricated parts.

(11) The aerostructures industry, with a total estimated value of USD 60.7 billion in 2017,[5] is highly fragmented in terms of size and geography, and it is a growing sector. There are a significant number of aerostructure suppliers worldwide.[6]

(12) OEMs, such as Airbus and Boeing, account for a significant proportion of aerostructure production, with their in-house production accounting for approximately [30-40]% of the total aerostructures market in 2017.[7] Whilst Airbus and Boeing account for almost [60-70]% of all large aircraft and [90-100]% of all large commercial aircraft manufactured worldwide in 2017, there are other major aircraft OEMs, such as Bombardier, Embraer, Gulfstream and Dassault.[8]

(13) OEMs source aerostructures from independent Tier 1 and Tier 2 suppliers, as well as from other aircraft OEMs[9]. Tier 1 suppliers generally have integration capabilities and provide whole systems and equipment, while Tier 2 suppliers mainly supply components or sub-components to Tier 1 suppliers. However, OEMs may also procure aerostructure components or sub-components directly from Tier 2 suppliers as part of their purchasing strategy[10]. There is also a current trend towards insourcing aerostructures, with OEMs investing more in in-house manufacturing facilities.[11] Nevertheless, the aerostructures market is seen as highly attractive, with a number of new entrants in recent years, including suppliers from Malaysia, China, Taiwan, Indonesia, Thailand, North Africa, India and South Korea.[12]

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4 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

5 Form CO, paragraph 61; see Counterpoint Aerostructures 2018, page 11.

6 Form CO, paragraph 61; according to Counterpoint Aerostructures 2018, page 15, there are 168 aerostructures suppliers.

7 Form CO, paragraph 61; see Counterpoint Aerostructures 2018, page 98.

8 Form CO, paragraph 61.

9 For example, Airbus's subsidiaries Stelia and Premium Aerotec, and Boeing's subsidiary Boeing Australia, manufacture and sell aerostructures to other OEMs in competition with independent aerostructure suppliers (Form CO, paragraph 65).

10 For example, [a significant proportion] of Asco's 2017 turnover was from direct sales to OEMs (Form CO, paragraph 67, see also paragraph 76).

11 Form CO, paragraph 65; see Counterpoint Aerostructures 2018, page 13.

12 Form CO, paragraph 66.

5. RELEVANT MARKETS

(14) Spirit is a Tier 1 supplier of aerostructures. Asco is a Tier 2 supplier of components for wing aerostructures, landing gear components and other structural aerostructure components. Asco manufactures and supplies aerostructure components that can be used as an input for (or be sold together with) Spirit's products. Accordingly, the Transaction gives rise to the following vertical links which, in some cases and depending on the OEM customer's purchasing strategy, may also appear conglomerate rather than vertical.[13]

(15) *First*, Spirit is active in the design, manufacture and assembly of slats and leading edge assemblies (the latter are referred to as "slat systems"). Asco is active upstream from that activity, in the design and manufacture of slat supports and wing structural components.

(16) *Second*, Spirit is active in the design and manufacture of trailing edge assemblies. Asco is active upstream from that activity, in the design and manufacture of flap supports and wing structural components.

(17) *Third,* Spirit is active in the design and manufacture of the centre section and nose section of the fuselage. Asco is active upstream from that activity, in the design and manufacture of fuselage structural components, including window frames.

(18) *Fourth*, Spirit is active in the design and manufacture of thrust reversers and pylons. Asco is active upstream from that activity, in the design and manufacture of engine structural components.

5.1. Relevant product market definition

(19) In some previous decisions, the Commission considered that aerostructures can be defined as the metal fabrication aspects of aircraft production, intended to produce products such as wings, fuselages or nacelles. Aerostructures encompass a wide range of products, from final aircraft building to minor components (for example, brackets and cables) through major units (for example, wings and fuselage parts)[14]. In these cases, the Commission defined the overall market for aerostructures and considered that it was not necessary to further segment the market at the level of individual products (such as wing aerostructures, empennage and other nacelle structures) because no competition concerns would arise under any plausible market definition.[15]

(20) In other earlier cases[16], the Commission adopted a component-by-component approach regarding the manufacturing and sale of components for an aircraft, defining a separate market for nacelle components such as thrust reversers. In

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13 For example, when sourcing a slat system, an OEM customer can opt to source the entire system from a Tier 1 supplier like Spirit, who sources some of the components such as the slat supports from Tier 2 suppliers like Asco. In such a case, the relationship is purely vertical. However, the OEM customer may also choose to source the various parts of the system, such as the slat and the slat support, and carry out the integration in-house. In that case, the relationship between the various components of the slat system can be seen as rather conglomerate in nature.

14 M.1438 – *British Aerospace/GEC Marconi*, recital 13; M.4561 – *GE/Smiths Aerospace*, recital 7.

15 See case M.1438 – *British Aerospace/GEC Marconi*, recital 13.

16 Cases M.2168 – *Snecma/Hurel-Dubois*, recital 8; M.6410 – *UTC/ Goodrich*, recital 117.

Safran/Zodiac Aerospace, the Commission also defined a separate relevant product market for individual sub-components of thrust reversers.[17]

(21) The Parties take the view that there is a single relevant market for all aerostructures or, more narrowly, for all wing aerostructures, irrespective of the type of aircraft, mainly because of supply-side substitutability.[18] The Parties submit that at a component level there is little or no demand-side substitutability (for example, a slat support cannot be substituted for a flap support) and there is little or no demand-side substitution between different aircraft platforms for the same component.[19] However, the Parties argue that, from the supply-side perspective, a component-by-component product market definition would not be appropriate because the design and manufacturing capabilities of aerostructure suppliers allow for easy switching between different aerostructures and their components.[20]

(22) The results of the market investigation confirm that there is no demand-side substitution for the components of wing aerostructures. As regards supply-side substitution, the results of the market investigation are not conclusive. On the one hand, some respondents submitted that aerostructure suppliers have a general expertise that would allow them to manufacture various products, since "*what the aerostructure supplier brings to the table is the manufacturing know-how.*"[21] On the other hand, market participants also indicated that suppliers tend to specialise, for example, in certain wing aerostructure components.[22] As one respondent to the market investigation submitted: "*In general a slat track or flap track provider is primarily a machining and metal treating center. I would expect such a supplier to remain primarily concerned with complex machining which would be a fairly limited subset of the overall wing structure*."[23]

(23) The results of the market investigation did not support the view of the Parties that manufacturing expertise is easily and immediately transferrable to manufacture different wing aerostructure components. For example, some market participants indicated that there are many players (independent suppliers and OEMs with in-house manufacturing capabilities) that could supply hard metal machining parts[24]. However, as regards certain machining components, others indicated that: "*Slat supports (i.e. slat tracks) are mainly manufactured from hard metal and therefore require specific machining capabilities that are difficult to replicate. The same applies to other types of wing aerostructure components which also require very specific capabilities (e.g. composite, assembly, etc.).*"[25] In relation to slats, another component of wing aerostructures, the market participants explained that suppliers

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17 See case M.8425 – *Safran/Zodiac Aerospace*, recital 116.

18 Form CO, paragraphs 11-12.

19 Form CO, paragraph 128.

20 Form CO, paragraph 123

21 Minutes of a call of 21 September 2018 with a market participant; see also minutes of a call of 11 July 2018 with another market participant and non-confidential response to questionnaire 1, question A.B.1.1.: save for more complex parts such as the wing skins, *"the manufacturer of Slat Supports could manufacture other major components of a wing".*

22 See, for example, minutes of a call of 17 September 2018 with a market participant and of a call of 21 September 2018 with another market participant.

23 Non-confidential response to questionnaire 1, question A.B.1.1.

24 See, for example, minutes of a call of 17 September 2018 with a market participant and minutes of a call of 2 August 2018 with a market participant.

25 Non-confidential response to questionnaire 1, question A.B.1.1.

of slats are typically capable also to provide other wing movable components (for example, flaps and ailerons),[26] but not necessarily *"to be able to do all or nearly all of the wing structure"*.[27] In particular, some slats manufacturers may have broader capabilities; while others may not be able to supply primary structure components for wings such as fixed trailing edge and fixed leading edge (the non-movable part of the wing).[28]

(24) Furthermore, for products to belong to the same product market, suppliers must be able to switch production to the relevant products and market them in the short term without incurring significant additional costs. The results of the market investigation indicate that this may not be the case for specific wing aerostructure components. As a respondent to the market investigation explained: "*To extend these [slat supports manufacturing] capabilities to other wing aerostructure components, a long-term development plan and significant investments would be required from an aerostructure manufacturer."*[29] In addition, a company currently not active in hard metal machining parts such as slat supports indicated that the entry into this segment would not be immediate, as it would take some time and investment to produce these components.[30]

(25) In light of the results of the market investigation, the Commission considers that there are many types of wing structural components and that switching suppliers may not be as easy and immediate as the Parties claim, at least not across all types of aerostructures. The market investigation indicates that the level of supply-side substitution differs depending on the type of component. For example, as already noted in recital (23), certain components require specific capabilities and expertise (for example, slat supports and other complex machining parts), on the one hand; while on the other hand, the same group of suppliers could generally supply all movable wing aerostructure parts. In addition, respondents to the market investigation have indicated that different suppliers are active in design and production of slat supports and other machining parts, on the one hand, and, for example, slat systems, on the other hand.[31]

(26) For the purposes of this decision, the Commission considers that it is appropriate to assess the effects of the concentration not only in relation to the overall aerostructures market, including the wing aerostructures market, but also to distinguish between the different types of wing aerostructures and possibly between the different components of each type of wing aerostructure. For example, the Commission considers that a slat system or leading edge assembly may need to be distinguished from a flap system or trailing edge assembly, as well as within a slat system, the slat may need to be distinguished from the slat support.[32] In

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26 Non-confidential response to questionnaire 1, question A.B.2.1.

27 Non-confidential response to questionnaire 1, question A.B.2.1.

28 Non-confidential response to questionnaire 1, question A.B.2.1.

29 Non-confidential response to questionnaire 1, question A.B.1.1., see also non-confidential response to questionnaire 1, question A.B.2.1.

30 Minutes of a call of 12 July 2018 with a market participant.

31 Minutes of a call of 21 September 2018 with a market participant and a call of 11 July 2018 with another market participant, see also recitals (64) and (84).

32 The market investigation did not provide indications that further segmentation, for example, on the basis of the type of aircraft, would be warranted. Therefore, the distinction between military and civil or regional aircraft is not discussed.

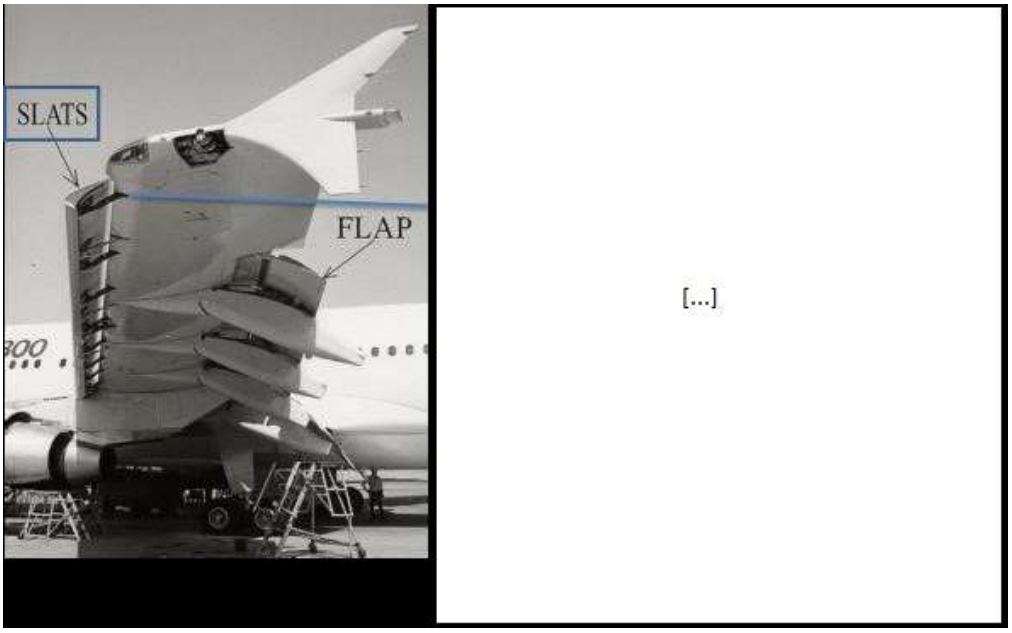
particular, the Commission will consider the following likely affected markets within the overall market for aerostructures.

5.1.1. Market for the design, manufacture and supply of slat systems

(27) Slat systems (or leading edge assemblies) are wing aerostructures. Slat systems comprise slats, which are supported by slat supports. Slats are high-lift devices that are attached through the slat supports to the front part of an aircraft wing (the "fixed leading edge") in order to increase the lift of the wing at a given airspeed during take-off and landing.

(28) The Commission has considered whether within slat systems, separate relevant markets may exist for slat supports, on the one hand, and slats, on the other. However, as this distinction would not have a material impact on the outcome of the competitive assessment, the Commission leaves the relevant market definition for slat systems open.

Figure 1 – Slats and slat supports



Source: Form CO.

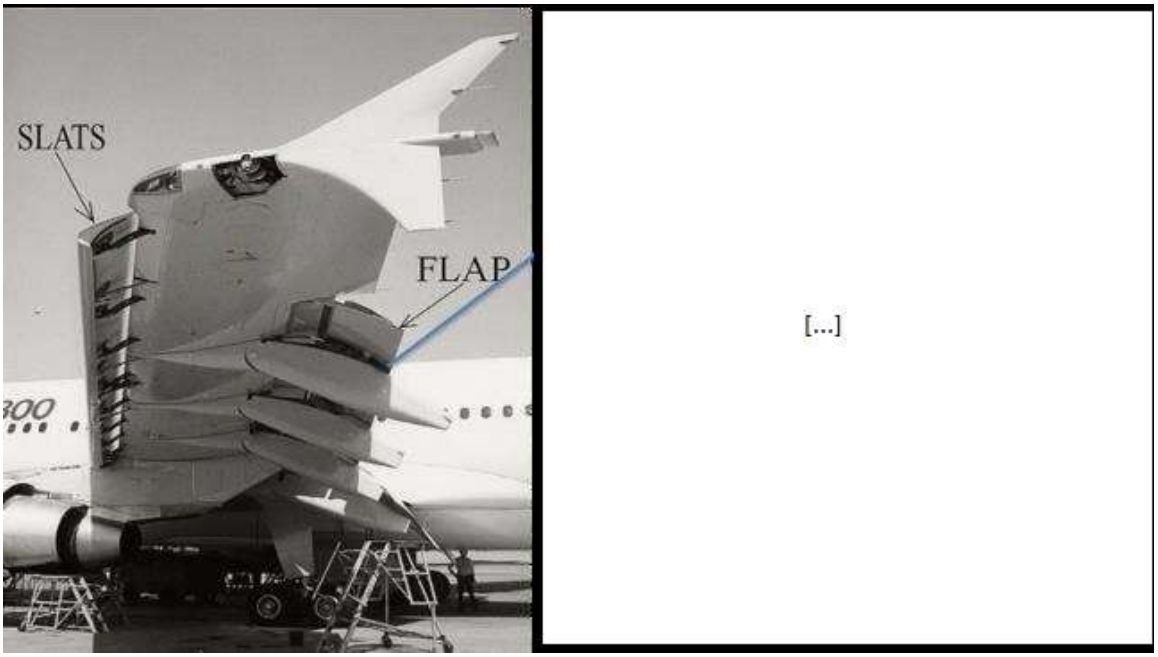
5.1.2. Other affected markets

(29) The Commission has also analysed the effects of the concentration on the following vertically affected markets. Given that potentially relevant vertically affected markets would only arise at component level, the Commission has analysed the following markets on a component-by-component basis (Sections 6.1.2 to 6.1.4). However, as no competition concerns arise even at such a narrow level, for the purposes of this decision, the Commission considers that the precise market definition for these products may be left open.

(30) *Flap systems* (or trailing edge assemblies) are wing aerostructures. They comprise flaps, supported by flap supports, and other primary and secondary flight control surfaces (such as ailerons and spoilers). Flap systems are high lift devices attached

to the rear part of an aircraft wing (the "fixed trailing edge") in order to increase the lift of the wing at a given airspeed during take-off and landing.

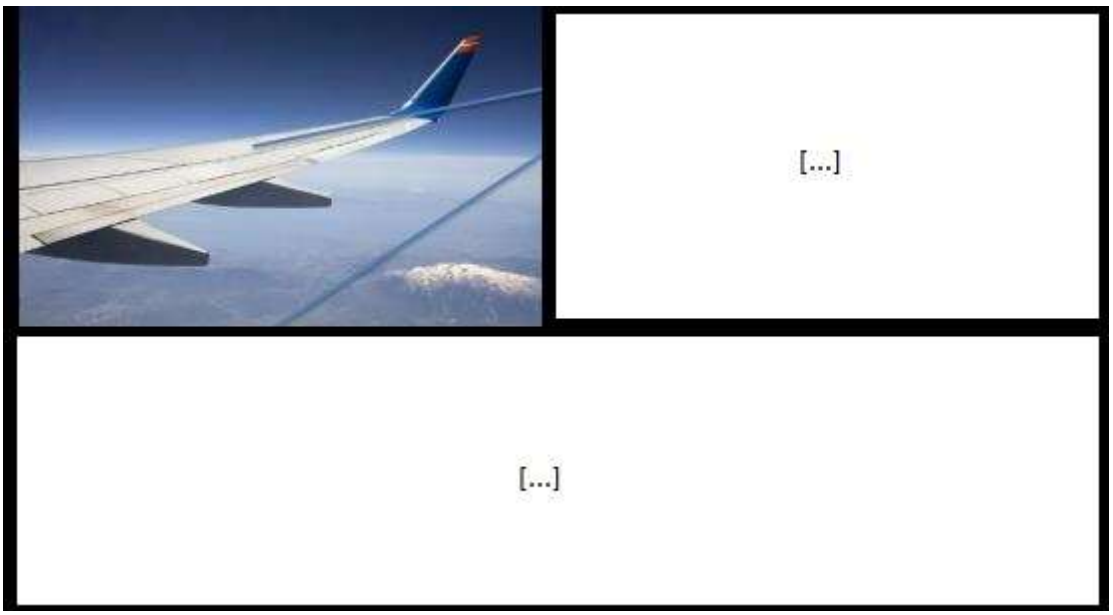
Figure 2 – Flaps and flap supports



Source: Form CO.

(31) *Design and manufacture of wing structural components*. Structural wing components are internal structures of fixed wings, such as spars, stringers, ribs, formers and bulkheads.

Figure 3 - Wing structural components



Source: Form CO.

(32) *Design and manufacture of the fuselage systems.* The fuselage is the aircraft's main body section, to which all other main components attach, such as the wings,

vertical and horizontal stabilisers. Fuselage systems may include nose section, forward section, centre section, aft section (section at the back) and tail sections.

(33) *Design and manufacture of fuselage structural components.* Fuselage construction uses structural components such as beams, frame assemblies, and bulkheads to give shape to the fuselage.

(34) *Design and manufacture of thrust reversers.* The thrust reverser is a component of engine nacelles. It is located next to the engine and helps the aircraft slow down on the ground by reversing the airflow to produce a retarding backward force. In past decisions, the Commission identified separate product markets for each of the main components of the nacelle, including thrust reversers.[33]

(35) *Design and manufacture of pylons.* Pylons are rigid structures used to hold the aircraft engine in place under (or, more rarely, over) an aircraft wing, with minimum interference with the airflow over and under the aircraft wing that is needed for lift and control of the aircraft.

(36) *Design and manufacture of engine structural components.* Structural engine components, such as engine mounts, serve as the interface attachment between the fuselage and/or fixed wing of the aircraft and the engine. Engine mounts are also used in the nacelle, the surrounding structure of the engine.

5.2. Geographic market definition

(37) In line with the Commission's decisional practice, the Parties submit that the geographic market for aircraft components, including aerostructures, is worldwide. The Parties submit that they tender on a global basis and compete with suppliers from throughout the world. Prices are quoted on a worldwide basis and do not differ according to a geographic region. Customers purchase civil aircraft components on a worldwide basis. There are significant trade flows for aircraft components across the world and transport costs do not play a significant role.

(38) In its previous decisions[34], the Commission found that markets for various aircraft systems and components were worldwide for reasons consistent with those put forward by the Parties. The market investigation in the present case has broadly confirmed that the markets for aerostructures and components are also worldwide in scope.[35]

6. COMPETITIVE ASSESSMENT

6.1. Non-horizontal non-coordinated effects

(39) Asco manufactures aerostructure components which, depending on the relevant customer's purchasing strategy, can be sold either as an input for aerostructures sold by Spirit (in which case there is a vertical link between them); or in combination with other aerostructure components sold by Spirit (in which case the

33 Cases M.6410 – *UTC/Goodrich*, recital 117; M.8425 –*Safran/ Zodiac Aerospace*, recitals 107.

34 Cases M.6410 – *UTC/Goodrich*, recital 119; M.6844 – *GE/Avio*, recital 64; M.8425 – *Safran/Zodiac Aerospace*, recital 298.

35 See, for example, Minutes of a call of 2 August 2018 with a market participant.

link is conglomerate). In this section, the Commission assesses the possible non-coordinated effects resulting from these non-horizontal links, including vertical and conglomerate effects.

6.1.1. Legal framework for competitive assessment of non-horizontal non-coordinated effects

6.1.1.1 Vertical mergers

(40) Vertical mergers involve companies operating at different levels of the same supply chain. Pursuant to the Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Non-Horizontal Merger Guidelines"),[36] vertical mergers do not entail the loss of direct competition between merging firms in the same relevant market and provide scope for efficiencies. However, there are circumstances in which vertical mergers may significantly impede effective competition. This is in particular the case if they give rise to foreclosure.[37]

(41) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure: input foreclosure, where the merger is likely to raise costs of downstream rivals by restricting their access to an important input, and customer foreclosure, where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.[38]

(42) Pursuant to the Non-Horizontal Merger Guidelines, input foreclosure arises where, post-merger, the new entity would be likely to restrict access to its actual or potential rival in the downstream market to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[39]

(43) For input foreclosure to be a concern, the merged entity should have a significant degree of market power in the upstream market. Only when the merged entity has such a significant degree of market power, can it be expected that it will significantly influence the conditions of competition in the upstream market and thus, possibly, the prices and supply conditions in the downstream market.[40]

(44) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market and because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete which in turn, may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This

36 OJ C 265, 18.10.2008, p. 6.
37 Non-Horizontal Merger Guidelines, paragraph 18.
38 Non-Horizontal Merger Guidelines, paragraph 30.
39 Non-Horizontal Merger Guidelines, paragraph 31.
40 Non-Horizontal Merger Guidelines, paragraph 35.

may allow the merged entity profitably to establish higher prices on the downstream market.[41]

(45) For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.[42]

(46) In its assessment, the Commission considers whether it is likely that the merged entity would engage in input or customer foreclosure strategies. In doing so, the Commission in principle analyses the merged entity's ability and incentives to engage in such foreclosure strategies, as well as the possible effects they may have on the relevant markets. Since these factors are intrinsically linked, they are often examined together.[43]

6.1.1.2 Conglomerate mergers

(47) Pursuant to the Non-Horizontal Merger Guidelines, in most circumstances, conglomerate mergers do not lead to any competition problems. However, foreclosure effects may arise when the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices.[44]

(48) The Non-Horizontal Merger Guidelines distinguish between bundling, which usually refers to the way products are offered and priced by the merged entity and tying, usually referring to situations where customers that purchase one good (the tying good) are required to also purchase another good from the producer (the tied good).[45]

(49) While tying and bundling have often no anticompetitive consequences, in certain circumstances such practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the merged entity allowing it to increase prices or deteriorate supply conditions in other ways.[46]

(50) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.[47] In practice, these factors are often examined together as they are closely intertwined.

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41 Non-Horizontal Merger Guidelines, paragraph 58.
42 Non-Horizontal Merger Guidelines, paragraph 61.
43 Non-Horizontal Merger Guidelines, paragraphs 32 and 59.
44 Non-Horizontal Merger Guidelines, paragraph 93.
45 Non-Horizontal Merger Guidelines, paragraph 97.
46 Non-Horizontal Merger Guidelines, paragraph 93.
47 Non-Horizontal Merger Guidelines, paragraphs 111 to 118.

6.1.2. Market shares

(51) Spirit has significant market shares in a number of downstream markets, for which components manufactured by Asco are potential or actual inputs. Table 1 below sets out the vertical links between the supply of these inputs upstream and the corresponding downstream markets, together with the Parties' market shares in the relevant markets:

Table 1: Asco's upstream market shares and Spirit's downstream market shares, 2017

Upstream market (components manufactured by Asco)		**Downstream market (components/products manufactured by Spirit)**	
Component	**Market share[48]**	**Component/Product**	**Market share**
Slat supports	[90-100]%	Fixed leading edge assembly	[80-90]%
		Slats	[40-50]%
Flap supports	[10-20]%	Fixed trailing edge assembly	[50-60]%
Structural components for the fuselage	[0-5]%	Fuselage nose section	[40-50]%
		Fuselage centre section	[30-40]%
Structural components for the engine	[0-5]%	Nacelles thrust reversers	[30-40]%
		Pylons	[40-50]%

Source: Parties estimates, Form CO.

(52) Asco's upstream market shares are low to moderate in all of these upstream markets, including the market for wing structural components[49], except for the market for slat supports. In the market for slat supports Asco had a significant market share of nearly [90-100]% in 2017. According to the Parties' estimates, due to the loss of a significant contract to a new competitor, Kencoa, in 2018, Asco's market share in slat supports is expected to decrease to an estimated [60-70]% in 2019.[50] However, even at [60-70]%, Asco would still have a significant market share on the upstream market for slat supports.

(53) Apart from slat supports, the Parties have confirmed that Asco's market shares for all other individual structural components which it manufactures do not exceed 20% on the basis of any plausible (including the narrowest possible) market definition.[51]

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48 These markets shares are in terms of sales value, with the exception of structural components for the engine, which is provided in terms of number of shipsets. A shipset typically refers to the total number of components of a particular type that are required for one aircraft, meaning that each aircraft typically contains one shipset of a given type of component. The market size in the Parties' calculations is given by the total number of shipsets of a given type of component, which in turn is given by the total number of aircraft containing this type of component (Annex 16 to the Form CO).

49 Form CO, paragraph 274, Table 6.18: Asco's market share in value in 2017 was below 5% ([0-5]%).

50 Form CO, paragraphs 173-174.

51 Parties' Response to RFI 10. According to the Parties' estimates, Asco's market shares for specific components remain below 5%, with the exception of certain wing structural components (i) inspar ribs & doors and (ii) main landing gear attachments, for which Asco's market shares remain below 15%, and (iii) straps, for which Asco's market share remains below 10%. The Parties are also unable to estimate market shares for certain specific structural components, of which Asco manufactures only a very limited amount and for which the Parties do not have detailed market

(54) The following non-horizontal non-coordinated effects may potentially arise and will be assessed by the Commission in turn:

(a) in respect of both input foreclosure (where Asco manufactures products upstream, which are an actual or a potential input for the downstream markets) and customer foreclosure (where Spirit has a significant market share on the downstream markets, for which Asco supplies structural components), namely:

(1) upstream supply of slat supports to downstream markets for (a) slats and (b) slat systems (or "fixed leading edge assembly");

(2) upstream supply of flap supports to downstream markets for flap systems (or “fixed trailing edge assembly”);

(3) upstream supply of structural components for the fuselage (according to all plausible market definitions) to downstream markets for (a) fuselage nose section and (b) fuselage centre section; and

(4) upstream supply of structural components for the engine (according to all plausible market definitions) to downstream markets for (a) nacelles thrust reversers and (b) pylons.

(b) in respect of foreclosure due to tying or bundling.

6.1.3. Potential input foreclosure

6.1.3.1 The Notifying Party's view

(55) The Notifying Party submits that the Transaction will not lead to input foreclosure for the following reasons. First, Asco's products are not a necessary input for Tier 1 suppliers, because these products can be purchased separately by OEMs. Second, for existing contracts, Asco's contractual obligations prevent input foreclosure, since the volumes and prices are set by contracts between Asco and its customers. Third, for future contracts, the merged entity will not be able to foreclose competing Tier 1 suppliers because (i) the merged entity does not possess market power in the upstream market, (ii) OEMs and Tier 1 suppliers can switch easily to a number of alternative upstream suppliers, and (iii) given the significant market power of OEMs, OEMs and Tier 1 suppliers could work around to overcome any attempted foreclosure strategy, *e.g.* by switching to an alternative supplier.[52]

(56) The Notifying Party further submits that even if the merged entity were to pursue a successful input foreclosure strategy, competing Tier 1 suppliers would not be marginalised on the market.[53]

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information. The Parties, however, submit that Asco's market share is well below 20% for these specific components: (i) machined parts, (ii) stringer, (iii) profiles, (iv) beams, (v) inner fittings, (vi) gantry & rear cockpit window, and (vii) wing fittings. No vertical or conglomerate foreclosure concerns arise regarding these possible markets at component level for the same reasons as set out in Sections 6.1.3 - 6.1.5.

52 Form CO, paragraphs 170, 193-230.

53 Form CO, paragraphs 171.

6.1.3.2 The Commission's assessment

(57) As noted in recital (46) above, in its assessment, the Commission considers whether it is likely that the merged entity would engage in input foreclosure strategies, by analysing the merged entity's ability and incentives to engage in such foreclosure strategies, as well as the possible effects these strategies may have on the relevant markets.[54]

(A) Ability to foreclose access to inputs

(58) As noted in Table 1 and in recital (52) above, Asco has a significant market share in the supply of slat supports worldwide ([90-100]% in 2017, which is expected to decrease to [60-70]% in 2019 due to a loss of a significant contract to a competitor). Asco's market shares in all the other components that it manufactures, on any plausible market definition, is below 20%.[55]

(59) Input foreclosure may raise competition problems only if it concerns an important input for the downstream product, for example, if it is a critical component without which the downstream product could not be manufactured or effectively sold on the market, or if the cost of switching to alternative inputs is relatively high.[56]

(60) The results of the market investigation indicate that certain customers do consider the components they procure from Asco as critical. As one OEM customer, describing Asco's products as "*complex machining parts*" explained: "*these are critical parts whose manufacture requires top-end machines and capabilities in the industry with high capex requirements*."[57] This was echoed by a competitor, who explained that Asco's slat supports "*are complicated to machine*" and that "*Asco has built up a good knowledge of the years*".[58] The same competitor, however, does not consider that Asco has "*any unique non-replicable capabilities*", stating that "*Asco is not the only supplier capable of supplying these hard metal machining surfaces*".[59]

(61) This view is shared also by another customer, who explains that "*Asco has good expertise, infrastructures and a reliable supply chain for machining hard metals, which make it a preferred Tier 2 supplier of components such as slat supports for many Tier 1 suppliers. Although Asco has a strong presence in the market and has occupied a sort of "niche" in hard metals, their capabilities can be replicated by other players*".[60]

(62) Nevertheless, since Tier 2 suppliers such as Asco can and do conclude contracts with and supply OEMs directly (for example, [a significant proportion] of Asco's sales value of slat supports in 2017 was from the supply of slat supports to OEMs

54 Non-Horizontal Merger Guidelines, paragraphs 32 and 59.
55 See Table 1, recital (53) and corresponding footnote 51.
56 Non-Horizontal Merger Guidelines, paragraph 34.
57 Minutes of a call with a market participant, 2 August 2018. "Capex" stands for capital expenditure, which is any type of expense that a company capitalises as an investment on its balance sheet, rather than as an expenditure on its income statement.
58 Minutes of a call with a market participant, 21 September 2018.
59 Minutes of a call with a market participant, 21 September 2018.
60 Minutes of a call with a market participant, 12 July 2018.

directly),[61] the components manufactured by Asco do not necessarily represent a necessary or important input for Tier 1 suppliers (despite Asco's high market share in slat supports). This may in part be explained by the fact that, whilst slat supports interface with slats and with the fixed leading edge, slat supports are built directly into the wing at the wing assembly stage at the OEMs' production facilities and not at the time of the manufacture and assembly of the slat or the fixed leading edge.[62]

(63) Furthermore, a number of factors indicate that the merged entity would not be able to foreclose its downstream rivals post-Transaction, even for the supply of slat supports for which Asco currently has a high market share.

(64) First, a number of alternative suppliers of slat supports and other components manufactured by Asco are available on the market today. These companies are either already supplying or capable of supplying slat supports and these other components. With regard to slat supports specifically, these alternative suppliers include Kencoa ([0-5]% market share in 2017, expected to increase to [20-30]% in 2019),[63] GKN ([0-5]% market share in 2017), Triumph ([0-5]% market share in 2017), Sukhoi ([0-5]% market share in 2017), Comac ([0-5]% market share in 2017), Irkut ([0-5]% market share in 2017), SAMCO ([0-5]% market share in 2017, estimated to be [0-5]% in 2018), PCT Group, Figeac, Saab and Mecachrome (the Parties estimated that other suppliers of account for [0-5]% of the global market share for slat supports in 2017).[64] With Asco's limited market shares in components other than slat supports, the number of actual and potential alternative suppliers of these components is even greater than those listed above. A number of Asco's customers have indicated that they would be able to source the components they currently source from Asco from alternative suppliers.[65]

(65) Furthermore, the majority of customers and competitors that expressed a view in the Commission's investigation do not consider there to be any products that Asco sells for which no alternative or only a limited number of suppliers is available.[66] The vast majority of customers and competitors that expressed a view in the Commission's investigation also consider that large OEMs would be able to sponsor the market entry of a new supplier of slat supports (the component in which Asco had a market share of [90-100]% in 2017).[67]

(66) Second, as noted in recital (52) above, one of Asco's customers has recently switched to an alternative supplier of slat supports (Kencoa) in 2018, which shows that switching suppliers is possible and occurs in practice. Kencoa is a new entrant on this market, as it has not previously sold slat supports.[68]

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61 Form CO, paragraphs 229-232, Table 6.8.

62 Form CO, paragraphs 182-183.

63 As noted in recital (52) above, Kencoa has been recently awarded a contract previously held by Asco.

64 Form CO, paragraph 210; Minutes of a call with a market participant, 21 September 2018; Minutes of a call with a market participant, 11 July 2018; Minutes of a call with a market participant, 20 September 2018; Minutes of a call with a market participant, 13 September 2018.

65 Minutes of a call with a market participant, 2 August 2018; Minutes of a call with a market participant, 13 September 2018.

66 Responses to Q1 – Questionnaire to Customers and Competitors, question B.B.3.

67 Responses to Q1 – Questionnaire to Customers and Competitors, question C.A.3.

68 Form CO, paragraph 132

(67) Third, whilst it may take several months to choose and qualify an alternative supplier, Asco's customers have noted that the current contractual arrangements mean that Asco is bound to continue to supply them for a period of time that is sufficiently long, in their view, for them to either find an alternative supplier or to develop the necessary capabilities in-house if it became necessary.[69] The Commission notes that contracts in this industry tend to be typically of a long duration, often exceeding 5 or 10 years, and sometimes extending to the lifetime of the given platform.

(68) Finally, several Tier 1 suppliers and OEMs have indicated that they would also be capable of or are actively exploring the possibility of manufacturing slat supports in-house and may already do this to a certain extent,[70] including the majority of competitors and customers that expressed a view in the Commission's investigation.[71]

(69) In light of the foregoing, the merged entity would not be able to negatively affect the overall availability of inputs (such as slat supports, flap supports and structural components for the fuselage and the engine) for the downstream market in terms of price or quality even if it did reduce access to its own products upstream, and can therefore not be deemed to have the ability to foreclose its downstream competitors.[72]

(70) For these reasons, the Commission finds that it is unlikely that the merged entity will have the ability to engage in input foreclosure with regard to structural components for the wing, in particular slat supports and flap supports, for the fuselage or for the engine post-Transaction.

(B) Incentive to foreclose access to inputs

(71) In its assessment of the merged entity's incentive to foreclose rivals' access to inputs, the Commission looks at whether the foreclosure would be profitable for the merged entity and the extent to which customers can be diverted away from downstream rivals. The effect is greater where the affected input (in this case structural components for the wing, in particular slat supports and flap supports, for the fuselage and for the engine) represents a significant proportion of downstream rivals' costs or if the affected input represents a critical component of the downstream product.[73]

(72) As noted in recitals (60) to (61) above, whilst Asco is well-known for its expertise and know-how in slat supports, its capability is not considered by market participants to be non-replicable. Further, slat supports, whilst potentially regarded by some market participants as a critical component for the manufacture of slat

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69 Minutes of a call with a market participant, 2 August 2018; Minutes of a call with a market participant, 12 July 2018.

70 Form CO, paragraph 221; Minutes of a call with a market participant, 2 August 2018; Minutes of a call with a market participant, 17 September 2018; Minutes of a call with a market participant, 12 July 2018,; Minutes of a call with a market participant, 20 September 2018; Minutes of a call with a market participant, 11 July 2018.

71 Responses to Q1 – Questionnaire to Customers and Competitors, question C.A.4.

72 Non-Horizontal Merger Guidelines, paragraph 36.

73 Non-Horizontal Merger Guidelines, paragraphs 40-42.

systems for the wings,[74] can also be manufactured by other suppliers. It is therefore questionable whether the merged entity would have the incentive to engage in an input foreclosure strategy in relation to slat supports. As regards components other than slat supports, the merged entity's incentives to engage in an input foreclosure strategy appear even less probable, given Asco's limited market shares for these components.

(73) For existing platforms under currently valid contracts, Asco is already contracted to supply a set number of slat supports for a set price to a number of Tier 1 suppliers and OEMs and it would not seem profitable for the merged entity post-Transaction to cease supplying these other customers or to attempt to make the conditions of supply less favourable.

(74) First, if it were to attempt to do so, the merged entity risks not only exposing itself to potentially very extensive contractual liability and damages law suits, but also losing the contract (and thereby the income stream) to another existing or potential supplier of slat supports. For example, Asco's contracts with Sonaca are [description of Asco's contracts with Sonaca].[75] Asco's contracts with OEMs are [description of Asco's contracts with OEMs].[76]

(75) Second, the trade-off between the profit lost in the upstream market by reducing input sales to competitors and the profit gain from expanding sales downstream[77] is not likely to lead to increased profitability for the merged entity. According to market participants, the market for aerostructures is currently a buyer's market,[78] with few end-customers (OEMs). These OEMs have already concluded contracts with various suppliers for their existing platforms. OEMs typically follow one of two contractual strategies: OEMs either conclude contracts with Tier 1 and Tier 2 suppliers directly, or OEMs conclude contracts with a Tier 1 supplier, who in turn concludes contracts with Tier 2 suppliers that are qualified by the OEM in question.[79] Contracts with Tier 1 suppliers tend to be longer-term than contracts with Tier 2 suppliers (if contracted directly). If the merged entity were to reduce supply of slat supports to its downstream competitors (Tier 1 suppliers), it would not be likely to recoup its lost sales by increasing sales of slats or fixed leading edge assemblies downstream for the following reasons: (i) as described in recitals (64) to (68) the Tier 1 suppliers would be able to find alternative suppliers of slat supports, and (ii) since the contracts between OEMs and Tier 1 suppliers are of a longer-term duration (typically between around 10 years and up to the lifetime of the program), the merged entity would not be able to start supplying slats or fixed leading edge assemblies on the downstream market to the OEM in question in place of the Tier 1 supplier who no longer receives slat supports from the merged entity.

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74 As noted in recital (62), [a significant proportion] of Asco's sales value from the sale of slat supports in 2017 was derived from sales made to OEMs directly.

75 Form CO, paragraph 195.

76 Form CO, paragraphs 193, 196.

77 Non-Horizontal Guidelines, paragraph 40.

78 Minutes of a call with a market participant, 17 September 2018.

79 Minutes of a call with market participant, 11 July 2018; Minutes of a call with a market participant, 2 August 2018.

(76) With regard to future platforms, it also does not seem likely that engaging in an input foreclosure strategy would be profitable for the merged entity. As noted in recital (75) above, OEMs being few on the market with a larger number of Tier 1 and Tier 2 suppliers, as well as with increasing capabilities for manufacturing aerostructures in-house, there is ample competition among Tier 1 and Tier 2 suppliers to become the preferred suppliers on future programmes. It would therefore not appear likely that an attempt by the merged entity to foreclose its Tier 1 rivals' access to slat supports would be profitable.

(C) Overall likely impact on effective competition

(77) The results of the market investigation reveal that a sufficient number of credible downstream competitors who do not depend on the supplies of slat supports from Asco will remain active on the market after the concentration. These downstream competitors should therefore constitute a sufficient constraint on the merged entity and prevent output prices from rising above the pre-concentration levels.

(D) Conclusion on input foreclosure

(78) The Commission also notes that, in the course of the Commission's market investigation, no concerns were raised by any market participants as regards the Transaction's impact on competition in relation to non-coordinated non-horizontal effects as a result of input foreclosure.

(79) In light of the above considerations in Section 6.1.3.2 and based on the results of the market investigation, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards non-coordinated non-horizontal effects as a result of input foreclosure.

6.1.4. Potential customer foreclosure

6.1.4.1 The Notifying Party's view

(80) The Notifying Party submits that the merged entity would not be able to foreclose competing Tier 2 suppliers for the following reasons: (i) the merged entity would not possess market power in the relevant downstream markets, and (ii) there are a number of alternative sources of demand for the Tier 2 suppliers' product.[80]

(81) Moreover, in the Notifying Party's view, even if the merged entity pursued a successful foreclosure strategy, Asco's competitors would not be marginalised on the market.[81]

6.1.4.2 The Commission's assessment

(82) As noted in recital (46) above, in its assessment, the Commission considers whether it is likely that the merged entity would engage in customer foreclosure strategies, by analysing the merged entity's ability and incentives to engage in such

[80] Form CO, paragraph 172.
[81] Form CO, paragraph 172.

foreclosure strategies, as well as the possible effects these strategies may have on the relevant markets.[82]

(A) Ability to foreclose access to downstream markets

(83) When assessing the merged entity's ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, the Commission takes into account whether there are sufficient alternative outlets downstream for upstream competitors to sell their output.[83]

(84) In the present case, a number of alternative outlets are available for Asco's competitors to sell their products to customers other than Spirit, including other Tier 1 suppliers such as:

(a) for slats, Sonaca (with an estimated [50-60]% market share in 2017);[84]

(b) for fixed leading edge assembly, KAL/KAI (with an estimated [5-10]% market share in 2017) and Triumph ([5-10]%),[85] with a number of other players having capabilities to supply leading edge assembly, including GKN, Sonaca, TAI, MHI and KHI;[86]

(c) for fixed trailing edge assembly, GKN (with an estimated [20-30]% market share in 2017), KHI ([10-20]%), Boeing ([5-10]%) and RUAG ([0-5]%);[87]

(d) for the fuselage nose section, Aerolia (with an estimated [50-60]% market share in 2017);[88]

(e) for the fuselage centre section, Premium Aerotec (with an estimated [20-30]% market share in 2017), Leonardo ([10-20]%), MHI ([5-10]%);[89]

(f) for the nacelles thrust reversers, UTAS (with an estimated [40-50]% market share in 2017) and Aircelle ([10-20]%);[90]

(g) for pylons, Tier 1 suppliers supplying Airbus platforms ([50-60]%), to the extent that these are not procured by Airbus directly.[91]

(85) Furthermore, some OEMs contract with Tier 2 suppliers such as Asco directly, since OEMs are increasingly bringing certain elements of assembly in-house[92] and

82 Non-Horizontal Merger Guidelines, paragraphs 32 and 59.
83 Non-Horizontal Merger Guidelines, paragraph 61.
84 Form CO, paragraph 252, Table 6.9.
85 Form CO, paragraph 253, Table 6.10.
86 Form CO, paragraph 253.
87 Form CO, Table 6.11.
88 Form CO, Table 6.13.
89 Form CO, Table 6.14.
90 Form CO, Table 6.15.
91 According to the Parties' estimates, Spirit's market share of [40-50]% in pylons in 2017 is a result of the legacy of Spirit's previous ownership by Boeing: [description of Spirit's Boeing related activities]. For certain product-platform combinations, Spirit does not have visibility on which competing supplier is supplying the product and is therefore not able to provide the competitor's identity or market share (Annex 16 to Form CO).

must therefore also be considered as an alternative outlet for Asco's competitors to sell their products (e.g. Airbus, with estimated [5-10]% market share for the fuselage centre section in 2017). This may especially be the case for slat supports, since, as noted in recital (62) above, slat supports are built into the wing at the wing assembly stage at the OEMs' production facilities and not into the fixed leading edge assembly by a Tier 1 supplier.[93] For example, [a significant proportion] of Asco's sales value of slat supports in 2017 was from the supply of slat supports to OEMs directly.[94]

(86) Furthermore, OEMs can issue requests for proposals to Tier 1 and Tier 2 suppliers independently,[95] meaning that the Tier 2 supplier cannot effectively exercise a choice as to which Tier 1 supplier to supply for the given platform. Even in cases where OEMs have a long-term contract with a Tier 1 supplier which would cover a component supplied by a Tier 2, the Commission's investigation has shown that OEMs can and do maintain a certain degree of competitive pressure on their supply chain, in relation to the platform covered by that contract and also in relation to possible business for future platforms.[96]

(87) With regard to slat supports on the upstream market (where Asco had a market share of [90-100]% in 2017) and fixed leading edge assembly (where Spirit had a market share of [80-90]% in 2017) specifically, the Commission also notes that Spirit's existing high market share ([80-90]%) is likely to decrease.

(88) With regards specifically to the Airbus A320 platform, Spirit is not the sole supplier for fixed leading edge assemblies. Furthermore, Spirit's contract with Airbus stipulates that [description of Spirit's contracts with Airbus].[97]

(89) For these reasons, the Commission finds that it is unlikely that the merged entity will have the ability to engage in customer foreclosure with regard to slat supports, flap supports or structural components for the engine or the fuselage post-Transaction.

(B) Incentive to foreclose access to downstream markets

(90) When assessing the merged entity's incentive to foreclose, the Commission assesses whether foreclosing competitors' access to downstream markets would be profitable. The merged entity faces a trade-off between the possible costs associated with not procuring products from upstream rivals and the possible gains from doing so, for example, because it could allow the merged entity to raise price in the upstream or downstream markets.[98]

(91) The merged entity in the present case is not likely to profit from a customer foreclosure strategy, since it would almost certainly not be able to raise prices in

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92 E.g. Minutes of a call with a market participant, 2 August 2018; Minutes of a call with a market participant, 17 September 2018.

93 Form CO, paragraph 182.

94 Form CO, paragraphs 229-232, Table 6.8.

95 Minutes of a call with a market participant, 11 July 2018.

96 See, for example, recitals (132) et seq.; Form CO paras.247-252.

97 Form CO, paragraph 253.

98 Non-Horizontal Guidelines, paragraph 68.

the downstream markets, where any attempted price increase would be resisted by the OEMs.

(92) Given the oligopsonistic nature of the aerostructures market, with a very small number of OEM customers, the merged entity is not likely to engage in customer foreclosure strategies and any attempt to do so is not likely to be profitable.

(C) Overall likely impact on effective competition

(93) In the absence of ability or incentive to engage in customer foreclosure, it does not appear necessary to assess any possible impact on effective competition in this regard.

(94) In any case, as noted above, whilst Spirit is an important customer, a number of alternative customers for Asco's competitors will remain post-Transaction. Therefore, any attempt by the merged entity to foreclose Asco's competitors' access to customers is not likely to be successful in raising Asco's rivals' costs or decreasing their revenues. Furthermore, as noted above, OEMs exercise a sufficient degree of countervailing buyer power, which further diminishes any likelihood for the merged entity to successfully engage in customer foreclosure.

(D) Conclusion on customer foreclosure

(95) The Commission also notes that, in the course of the Commission's market investigation, no concerns were raised by any market participants as regards the Transaction's impact on competition as regards non-coordinated non-horizontal effects as a result of customer foreclosure.

(96) In light of the above considerations and based on the results of the market investigation, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards non-coordinated non-horizontal effects as a result of customer foreclosure.

6.1.5. Potential foreclosure due to tying or bundling

6.1.5.1 The Notifying Party's view

(97) In addition to the arguments brought in the context of the competitive assessment of potential input foreclosure, the Notifying Party submits that the merged entity will not have the ability or the incentive to make the sale of components currently sold by Asco to Tier 1 customers (and to the OEMs) conditional on them also purchasing products sold by Spirit (or vice versa) through tying and/or bundling in order to foreclose competitors.

(98) First, in the Notifying Party's view, conglomerate effects are not plausible vis-à-vis Tier 1 customers because products sold by Spirit are typically not purchased by other Tier 1 suppliers (instead, these are purchased by OEMs directly).[99]

(99) Second, the Notifying Party argues that the merged entity will not have market power on any of the markets on which the Parties' current market shares are

[99] Form CO, paragraph 279.

above 30% (see Table 1 above), since there is a number of alternative current and potential suppliers for each component or product, and in addition OEMs and Tier 1 suppliers are often able to switch to in-house manufacturing.[100]

(100) Third, the Notifying Party submits that the Transaction does not substantially change the position of Spirit, because Asco's capabilities and components will only be a small addition to Spirit's current portfolio, meaning that the competitive landscape for Tier 1 suppliers will not be impacted as a result of the concentration.[101]

(101) Finally, the Notifying Party submits that bundles are not currently a feature of the market, with there being very few, if any, instances where tying or bundling takes place, either for Tier 1 suppliers or OEMs, which the Notifying Party views as a strong indication that aerostructures suppliers lack the ability and/or incentive to engage in such conduct. The Notifying Party argues that since the concentration would not result in a substantial change in Spirit's market position, the merged entity would not have the ability or the incentive to engage in a tying and/or bundling strategy.[102]

(102) In the Notifying Party's view, Tier 1 suppliers and OEMs would be able to withstand any attempt by the merged entity to engage in a tying and/or bundling strategy, since (i) there is a number of alternative actual and potential aerostructures suppliers and (ii) OEMs possess substantial market power and would be able to not only switch to an alternative supplier, but also to punish the merged entity should it attempt to engage in anticompetitive tying or bundling.[103]

6.1.5.2 The Commission's assessment

(103) As noted in recital (50)(46) above, in its assessment, the Commission considers first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.[104]

(104) As noted in Table 1 and in recital (52) above, Asco has a significant market share in the supply of slat supports worldwide ([90-100]% in 2017, which is expected to decrease to [60-70]% in 2019 due to a loss of a significant contract to a competitor). On the other upstream markets, however, Asco's market shares are limited and do not exceed 20% on all plausible market definitions. Spirit's market shares in the respective downstream markets for which Asco's products are actual or potential inputs are above 30%, including slats, fixed leading edge assembly, fixed trailing edge assembly, fuselage nose section, fuselage centre section, nacelles thrust reversers and pylons.

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100 Form CO, paragraph 285.

101 Form CO, paragraph 286.

102 Form CO, paragraph 287.

103 For example, OEMs could switch away from the merged entity for all components that are readily available from other suppliers or which they can self-supply; Form CO, paragraphs 239, 288-289.

104 Non-Horizontal Merger Guidelines, paragraphs 111 to 118.

(105) However, in light of the considerations in recitals (58) *et seq*. above regarding the merged entity's inability to engage in input foreclosure strategies, in combination with the Notifying Party's arguments set out above in recitals (98)-(102), the Commission has found that the merged entity would also not have the ability to engage in tying or bundling strategies regarding any of the relevant products.

(106) It may be stressed in particular that in spite of its considerable market shares on some potentially relevant components markets (*e.g.* slats and slat supports), any attempt by the merged entity to engage in tying or bundling would likely be frustrated by the merged entity's customers. As the Commission's market investigation has shown, if needed, customers would indeed be able to either switch away their purchases from the merged entity to alternative suppliers or in-source the production of such components.[105]

(107) Finally, in the absence of the ability to engage in tying or bundling strategies, it does not appear necessary to assess in detail the merged entity's potential incentive to do so or the possible effects such a strategy may have on the market.

6.2. Horizontal non-coordinated effects

6.2.1. Legal framework for competitive assessment of horizontal non-coordinated effects

(108) The Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines")[106] distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects. Coordinated effects will be discussed below in Section 6.3.

(109) Non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[107]

(110) The Horizontal Merger Guidelines list a number of factors, which may influence the rise of substantial non-coordinated, effects from a merger, such as: the large market shares of the merging firms; the fact that the merging firms are close competitors; the limited possibilities for customers to switch suppliers; or the fact that the merger would eliminate an important competitive force. That list of factors applies equally if a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of those factors need to be present to make significant non-coordinated effects likely and this is not an exhaustive list.[108]

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105 Minutes of a call with a market participant, 2 August 2018; Minutes of a call with a market participant, 12 July 2018.

106 OJ C 31, 5.2.2004, p. 5.

107 Horizontal Merger Guidelines, paragraph 24.

108 Horizontal Merger Guidelines, paragraph 26.

6.2.2. The Notifying Party's view

(111) According to the Notifying Party, the concentration does not give rise to horizontal non-coordinated effects, as the combined market shares of the Parties remain moderate and the increments are very small.

6.2.3. The Commission's assessment

(112) The Commission has found that the concentration is unlikely to give rise to anticompetitive horizontal non-coordinated effects.

(113) On the basis of a very broad market definition including all types of aerostructures, the concentration would give rise to an affected worldwide market for the design, manufacture and sale of aerostructures (all types), only if the captive sales of OEMs are excluded from the market. The concentration would also give rise to a possibly relevant horizontally affected market for slat systems (if no distinct markets are defined for each of the system's components, in particular slats and slat supports). Importantly, based on a component-by-component market definition, the Parties' activities do not overlap horizontally for any component.

Table 2 - Market shares aerostructures – horizontal overlaps (2017)

Market	Market size (million €)	Spirit	Asco	Combined market share of the Parties
Aerostructures (all types), incl. captive OEM sales	52 251	[10-20]%	[0-5]%	**[10-20]%**
Aerostructures (all types), Tier 1 sales only	30 386	[20-30]%	[0-5]%	**[20-30]%**
Wing aerostructures, incl. captive OEM sales	17 986	[5-10]%	[0-5]%	**[5-10]%**
Wing aerostructures, Tier 1 sales only	11 337	[10-20]%	[0-5]%	**[10-20]%**
Slat systems[109]	511 662	[40-50]%	[0-5]%	**[40-50]%**

Source: Form CO.

(114) As the figures in Table 2 above show, on such a broad market for all aerostructures (excluding the OEMs' captive production of aerostructures), the Parties' combined market share would remain relatively moderate at [20-30]%, with only a small increment of [0-5]% resulting from the concentration. On the narrower possible market for the production and sale of wing aerostructures only, the combined market share of the Parties would be below 20%. Finally, although on the even narrower possible market for the production and sale of slat systems, the combined

[109] Figures presented here include the figures provided by the Parties for slats and for slat supports, together the main components of a slat system.

market share of the Parties would be close to [50-60]%, the increment would be minimal at [0-5]%.

(115) In addition, the broad overall market for all aerostructures and the narrower market for slat systems would be highly differentiated markets, where Spirit and Asco would likely not be close competitors, for instance because:

(a) while Spirit is a Tier 1 supplier of aerostructures, Asco's profile is that of a Tier 2 components supplier who also offers some Tier 1-type solutions;

(b) while Spirit is a large player with a broad portfolio across aerostructures, Asco's main focus is on high-lift device components (slat supports and flap supports);

(c) while Asco's main strength is the production and sale of slat supports, this is a component that is not in Spirit's portfolio at all.

(116) Finally, as mentioned above, the Parties' activities do not overlap at the level of individual components.

(117) Based on the foregoing, the Commission takes the view that the concentration is unlikely to give rise to horizontal non-coordinated effects.

6.3. Horizontal coordinated effects

6.3.1. Legal framework for competitive assessment of horizontal coordinated effects

(118) According to the case law, coordinated effects may arise "as the result of a concentration where, in view of the actual characteristics of the relevant market and of the alteration in its structure that the transaction would entail, the latter would make each member of the dominant oligopoly, as it becomes aware of common interests, consider it possible, economically rational, and hence preferable, to adopt on a lasting basis a common policy on the market with the aim of selling at above competitive prices, without having to enter into an agreement or resort to a concerted practice within the meaning of Article 81 EC."[110]

(119) According to the Horizontal Merger Guidelines, horizontal mergers may significantly impede effective competition (a) by increasing the likelihood that firms are able to coordinate successfully, or (b) by making existing coordination easier, more stable or more effective, either by making the coordination more robust or by permitting firms to coordinate on even higher prices, for example by facilitating the detection of deviation, limiting the ability and incentives of some market players to deviate and allowing more efficient retaliation.[111]

(120) Coordination may take various forms, such as setting prices above the competitive level, limiting production or capacity, or dividing the market, for instance by

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110 T-342/99 *Airtours v Commission*, ECLI:EU:T:2002:146, paragraph 61. See also Horizontal Merger Guidelines, paragraph 39.

111 Horizontal Merger Guidelines, paragraph 42.

geographic areas or other customer characteristics, or by allocating contracts in bidding markets.[112]

(121) Coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination. This is the case where coordinating firms have similar views regarding which actions would be considered to be in accordance with the aligned behaviour and which actions would not.[113] The less complex and the more stable the economic environment (for example, oligopolistic markets), the easier it is for the firms to reach a common understanding on the terms of coordination.[114] In addition, firms may find it easier to coordinate if they are relatively symmetric, especially in terms of cost structures, market shares, capacity levels, and levels of vertical integration.[115]

(122) Coordinating firms may also find ways to overcome problems stemming from complex economic environments for example by establishing a small number of reference pricing points, or a fixed relationship between base prices and a number of other prices. Market transparency through publicly available key information or, for example, by information exchanged through structural links between competitors may further facilitate coordination.[116]

(123) According to relevant case law, specific emphasis should be placed on the actual economic mechanism according to which tacit coordination is likely to operate.[117] The mechanism in question must be consistent with the current market conditions and integrate the industry features prone to induce coordinated behaviour. Furthermore, the ways in which the main actors are likely to reach terms of coordination and, in particular, the parameters that lend themselves to being a focal point of coordination, should be assessed. Finally, a specific focus should be given to whether potential coordination is likely to be sustainable.

(124) In general, three features of the market may provide indications as to whether coordination is likely to be sustainable. First, the coordinating firms should be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Second, coordinating firms are more likely to adhere to coordinated behaviour if the incentives not to deviate deter them from departing from the coordinated action. Third, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination or would be too small to effectively counterbalance the effect of potential coordination on the relevant market.[118]

(125) In assessing whether it would be possible to reach terms of coordination and whether the coordination is likely to be sustainable, the Commission takes account

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112 Horizontal Merger Guidelines, paragraph 40.

113 Horizontal Merger Guidelines, paragraph 44.

114 Horizontal Merger Guidelines, paragraph 45.

115 Horizontal Merger Guidelines, paragraph 48.

116 Horizontal Merger Guidelines, paragraph 47.

117 Case *Bertelsmann and Sony Corporation of America v Impala*, ECLI:EU:C:2008:392, paragraph 125.

118 See Case *Airtours v Commission*, cited *ut supra* paragraph 62; and Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala*, cited *ut supra*, paragraph 123. See also Horizontal Merger Guidelines, paragraph 41.

of all the changes that a transaction is likely to bring about. The reduction of the number of players resulting from the concentration may, in itself, be a factor that facilitates coordination. However, other factors that may increase the likelihood or significance of coordinated effects could also be taken into account.[119]

6.3.2. The Notifying Party's view

(126) According to the Notifying Party, there is no risk of Spirit and Sonaca coordinating their pricing behaviour through Belairbus. Spirit has argued in this regard that Belairbus is only a platform for negotiation (not manufacturing) and that its activities are limited to existing contracts that have already been attributed to Belairbus. The Notifying Party has also stressed that Spirit would not have any power over the conditions at which Sonaca sells its slats through Belairbus. The Notifying Party has also emphasized that the overall aerostructures market is highly fragmented and that slats specifically are highly differentiated products, rendering coordination more difficult. The Notifying Party has also insisted on the buyer power of OEMs.

6.3.3. The Commission's assessment

(127) The Commission has found that the concentration may give rise to horizontal coordinated effects regarding slat systems as a whole and slats in particular, as a result of the modification the concentration would bring about in the shareholding structure of the Belairbus joint venture.

(128) As mentioned above in recital (5)(b), Belairbus is a joint venture between Asco, Sonaca and BMT Eurair. It acts as a *commissionaire* through which its parent companies participate in the development, production and sale of slat systems for all the main commercial aircraft platforms of Airbus. When through the concentration Spirit acquires sole control over Asco, in practice it will also take Asco's place as a shareholder in this JV. In this way, Spirit would become Sonaca's partner in Belairbus, while the latter is an entity dedicated to the development and sale of slat systems for Airbus and while Sonaca and Spirit are currently the only two existing suppliers of slats (and/or slat systems) worldwide, as shown in the market share table below:

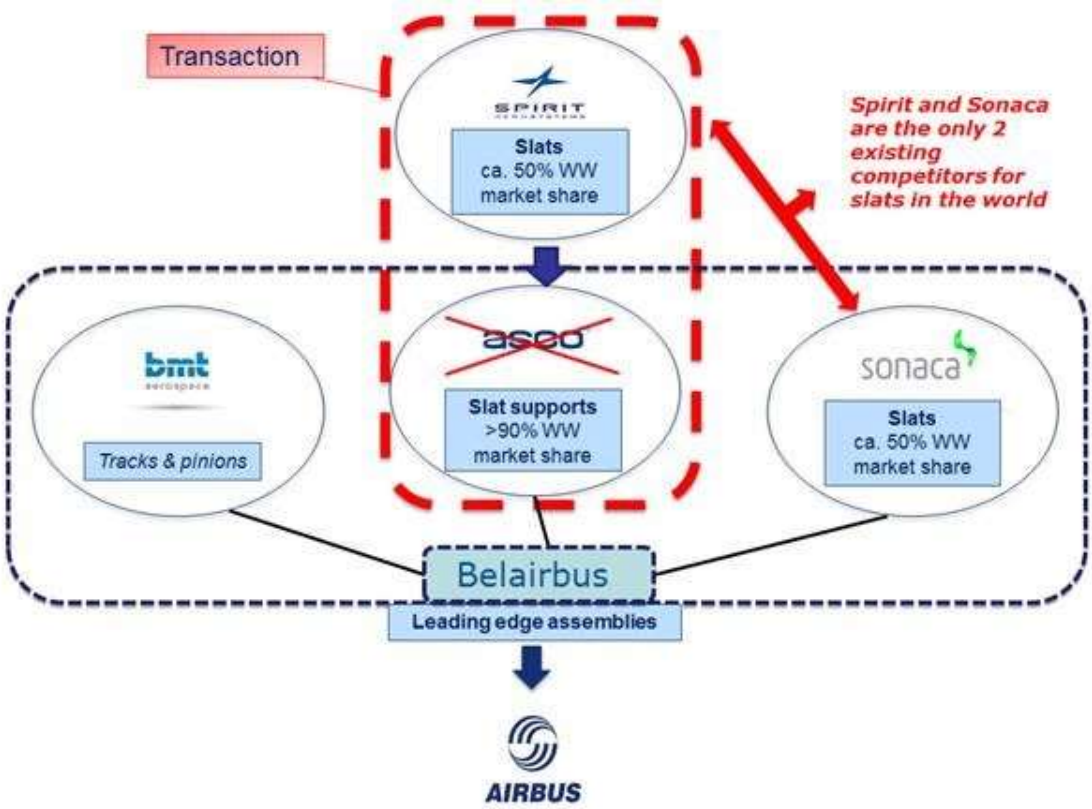
Table 3 - Market shares on the worldwide market for slats (2017)

Supplier	Sales (EUR '000)	Market share
Spirit	[…]	[40-50]%
Sonaca	[…]	[50-60]%
Total	509 849	100%

[119] Horizontal Merger Guidelines, paragraph 42.

(129) The change in the composition of Belairbus which the concentration would bring about is illustrated in the chart below:

Figure 4 - Illustrative chart Belairbus



(130) The Commission's investigation has shown that Spirit and Sonaca becoming partners in Belairbus, in which context they hold sensitive commercial and technical discussions, risks to significantly reduce the level of competition on the worldwide markets for slat systems in general and slats in particular, in several possible ways. Not only would the concentration increase the transparency between the two sole suppliers of slats in the world, Spirit and Sonaca, it would also increase the likelihood that these competitors could coordinate their behaviour. In addition, in some instances, Spirit may be able to weaken its sole competitor, Sonaca, by using Sonaca's commercially sensitive information, to which Spirit would not have gained access absent the concentration.

(131) First, in its investigation, the Commission has learned that the **shareholders in Belairbus work together closely** in the context of the performance of Belairbus's contractual obligations vis-à-vis Airbus. They exchange technical and commercial information between them and need to come to an agreement on the offers Belairbus will make to Airbus. More specifically:

(a) very detailed technical information is exchanged through Belairbus on a regular basis because the three components of a slat system (*i.e.* i) slats, ii) slat supports and iii) racks and pinions) are engineered to operate as an integrated turnkey system for Airbus. Therefore, any issue that may arise during the lifecycle of a Belairbus slat system or any time a Belairbus slat system needs replacing, the shareholders of Belairbus work together;

(b) Airbus regularly requests incremental technical improvements on the slat systems it sources through Belairbus. Each time this happens, the shareholders need to work together to find solutions to propose to Airbus. Technical changes generally also have a direct impact on cost as *"decisions on incremental improvements are"*, from Airbus's point of view, *"business case driven*"[120] and *"a strong interaction between the technical and commercial processes is required*"[121];

(c) from time to time, Airbus also requests price reductions from Belairbus, in the context of "cost-reduction programmes". The Commission understands that each time this happens, given that Belairbus combines the individual price offers formulated by its shareholders, combines them into a single offer to Airbus and negotiates directly with Airbus, the shareholders need to come to an agreement on how to split the cost implications of Airbus's request between them[122], *i.e.* which margin reduction each shareholder is willing to accept.

(132) Second, while the scope of Belairbus's activities is indeed limited to existing contracts (*i.e.* for existing Airbus platforms), the Commission understands that **competition for slat systems and slats in fact takes place not only with regard to new platforms, but also for existing platforms**, each time Airbus seeks to obtain a cost reduction and/or a technical improvement.

(133) In this regard, it is worth noting that [confidential information relating to commercial dealings][123,124]. Thus, Spirit exerts a certain degree of competitive pressure on Belairbus.

(134) Third, Asco and Sonaca cooperate on slat system **contracts for other OEMs** as well, outside the scope of Belairbus, albeit in a less structural manner. Under those contracts as well, Asco provides slat supports (a component which Sonaca currently does not produce itself) and Sonaca slats. These additional instances of cooperation further enhance the interdependency of interests between Sonaca and what would be the merged entity after the concentration.

(135) Fourth, [Commission referring to indications of possible coordination taking place through Asco][125].

(136) Based on the foregoing, the Commission concludes that in this case, the four criteria for the existence of coordinated effects of a concentration may be met:

(a) First, the participation of the two competitors for slats/slat systems for large commercial aircraft in a joint venture in whose framework they discuss sensitive technical and commercial information about bids, may increase the likelihood of reaching terms of coordination;

120 Minutes of two calls with a market participant of 19 and 24 October 2018.
121 Minutes of two calls with a market participant of 19 and 24 October 2018.
122 Minutes of two calls with a market participant of 13 and 17 September 2018.
123 […].
124 […].
125 […].

(b) Second, the significantly increased transparency, at least on the side of Spirit, on the technical and commercial terms of bids for Airbus could enable it to monitor deviations;

(c) Third, Spirit could be in a position to retaliate on Sonaca on a large stream of its business: (i) through Asco, Spirit would become the […] supplier of one of the key components of the slat systems which Belairbus must deliver to Airbus; (ii) given the significance of Airbus as a customer, Belairbus is an important sales channel for Sonaca's slats; (iii) through its shareholding in Belairbus, Spirit would have the possibility to block Belairbus decisions; and (iv) Spirit would be Sonaca's supplier of slat supports on contracts for other OEMs, outside Belairbus;

(d) Fourth, the Commission has not been able to identify any other companies that are currently selling turnkey slat systems such as those, which each of Belairbus (combining the inputs of its shareholders) and Spirit delivers. Therefore, it appears unlikely that outsiders would be in a position to react and challenge possible coordinated behaviour between Spirit and Sonaca.

6.3.4. Conclusion

(137) In conclusion, in view of the reasons set out above in paragraphs (127) through (136) regarding the existence of horizontal coordinated effects, the Commission finds that the concentration raises serious doubts as to its compatibility with the internal market regarding slat systems in general and slats in particular.

7. PROPOSED REMEDIES

(138) In order to render the concentration compatible with the internal market, Spirit has modified the notified concentration by submitting commitments to the Commission. The legal framework applicable to the assessment of proposed commitments is set out below in Section 7.1.

(139) Spirit submitted three main sets of commitments. One was submitted on 15 October 2018, before the initial notification was withdrawn (the "First Initial Commitments"). The Commission held a market test to gather the views of market participants on the Initial Commitments (the "first market test") and Spirit was informed of its outcome. The First Initial Commitments are described below in Section 7.4. After withdrawing its first notification and subsequently submitting its second notification, Spirit formally submitted commitments on 27 February 2019 (the "Second Initial Commitments"), which it formally amended on 8 March 2019 (the "Final Commitments"), following a market test during which the views of market participants were gathered and then shared with Spirit (the "second market test").

7.1. Legal framework

(140) The following principles from the Remedies Notice[126] apply where parties to a merger choose to offer commitments in order to restore effective competition.

(141) Where a concentration raises competition concerns in the sense that it could significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, the parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their merger.[127]

(142) The Commission only has power to accept commitments that are capable of rendering the concentration compatible with the internal market in that they will prevent a significant impediment to effective competition in all relevant markets where competition concerns were identified.[128] To that end, the commitments have to eliminate the competition concerns entirely[129] and have to be comprehensive and effective from all points of view.[130]

(143) In assessing whether proposed commitments are likely to eliminate its competition concerns, the Commission considers all relevant factors, including *inter alia* the type, scale and scope of the commitments, judged by reference to the structure and particular characteristics of the market in which those concerns arise, including the position of the parties and other participants on the market.[131] Moreover, commitments must be capable of being implemented effectively within a short period of time.[132]

(144) Where a proposed concentration threatens to significantly impede effective competition, the most effective way to maintain effective competition, apart from prohibition, is to create the conditions for the emergence of a new competitive entity or for the strengthening of existing competitors via divestiture by the merging parties.[133]

(145) While divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps, other structural commitments, such as

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126 Commission's Notice on Remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ("Remedies Notice"), OJ C 267, 22.10.2008, p. 1.

127 Remedies Notice, paragraph 5.

128 Remedies Notice, paragraph 9.

129 Case C-202/06 P *Cementbouw Handel & Industrie v Commission* [2007] ECR 2007 I-12129, paragraph 54: *"it is necessary, when reviewing the proportionality of conditions or obligations which the Commission may, by virtue of Article 8(2) of Regulation No 4064/89, impose on the parties to a concentration, not to determine whether the concentration still has a Community dimension after those conditions or obligations have been complied with, but to be satisfied that those conditions and those obligations* are *proportionate to and would entirely eliminate the competition problem that has been identified"*.

130 Remedies Notice, paragraph 9 and 61.

131 Remedies Notice, paragraph 12.

132 Remedies Notice, paragraph 9.

133 Remedies Notice, paragraph 22.

access remedies, or other non-divestiture remedies may be suitable to resolve concerns if they are equivalent to divestitures in their effects.[134]

7.2. First Initial Commitments

7.2.1. Description of the Initial Commitments

(146) The Initial Commitments, formally submitted on 15 October 2018 before the Parties withdrew and subsequently refiled their notification, were aimed at: transforming Belairbus:

(a) from being the undisclosed agent ("*commissionaire*") of its shareholders to being their disclosed agent ("*mandataire*");

(b) limiting its object to the purposes that can be summarized as:

(1) performing the agreements with Airbus, managing invoicing, order processing (but not negotiating prices) and accounting;

(2) implementing a factoring agreement and other financial agreements;

(3) providing access to the information available within Belairbus to the extent that it does not contain any commercially sensitive information relating to another shareholder;

(4) managing surviving rights and obligations resulting from Belairbus's activities prior to the transformation;

(5) performing any activity necessary for performing the commitments;

(6) excluding the involvement of Belairbus for any future aircraft.

(c) making changes to the corporate bodies and constituent documents of Belairbus so as to:

(1) change the composition of the Belairbus Board of Directors and appoint (an) independent director(s) as representative(s) of Asco (with specific criteria for independence such person(s) would have to meet;

(2) abolish the Belairbus Board of Managers and Account Managers Board, transferring their functions to each of the shareholders of Belairbus;

(3) appoint an independent General Manager of Belairbus;

(4) insert into each agency agreement between Belairbus and each shareholder a confidentiality obligation regarding the information of the other shareholders;

(5) insert an arbitration clause into the agreements bringing about the commitments;

[134] Remedies Notice, paragraph 61.

(d) protecting confidential information of Sonaca that is in the possession of Asco by destroying or returning it […] and, for the future, by putting in place firewalls to prevent any such information from being disclosed to any company of the Spirit group (other than Asco).

7.2.2. Assessment of the First Initial Commitments

(147) In view of assessing the appropriateness of the First Initial Commitments, the Commission carried out a market test, which was launched on 16 October 2018 (the "first market test"). Given the specificities of the possible competition concern identified by the Commission, the first market test focused on the companies involved in the Belairbus configuration.

(148) The unanimous view of the market test respondents was that the First Initial Commitments could not remedy the serious doubts identified by the Commission[135].

(149) Respondents considered that the proposed transformation of Belairbus would be insufficient to remove the competitive concerns raised by the concentration, while at the same time removing the efficiencies gained from operating through Belairbus.

(150) On 25 October 2018, the Notifying Party withdrew its notification.

7.3. Second Initial Commitments

(151) On 30 January 2019, the Notifying Party re-filed its notification.

(152) The Notifying Party formally submitted the Second Initial Commitments on 27 February 2019.

7.3.1. Description of the Second Initial Commitments

(153) The Second Initial Commitments have two main features:

(a) the **disaggregation of Belairbus** into bilateral contractual supply relationships between each of the shareholders in Belairbus, on the one hand, and Airbus, on the other; and

(b) **confidentiality arrangements** preventing Sonaca's commercially sensitive information from flowing back to or being used by Spirit.

(154) As regards the **disaggregation of Belairbus**, the Second Initial Commitments provided that they would become effective on […]:

(a) the Belairbus-Airbus supply agreements would be separated into three bilateral supply agreements, one between Airbus and each of the Belairbus shareholders;

135 Minutes of two calls with a market participant on 19 and 24 October 2018; Minutes of a call with a market participant on 23 October 2018; and Minutes of a call with a market participant on 23 October 2018.

(b) Belairbus's corporate documents would be amended so as to:

(1) limit Belairbus's activities to the management of its rights and obligations under the existing Airbus-Belairbus supply agreements, preventing it from engaging in any activities not strictly necessary for that purpose;

(2) make Belairbus's board of directors its only management body; and

(3) make Spirit/Asco appoint only independent directors to Belairbus's board of directors, with specific independence requirements set out;

(c) the existing supply agreements between Airbus and Belairbus would remain applicable only to rights and obligations (including claims and liabilities) resulting from the (non-) performance of Airbus or Belairbus's obligations under such agreements. More specifically, Belairbus's activities would be limited to:

(1) the processing of orders for goods and services ordered by Airbus […] (including issuing and processing of invoices, but not conducting commercial negotiations). These activities would automatically decrease over time and eventually be discontinued once all the orders placed under the Belairbus-Airbus supply agreements have been processed;

(2) the management of disputes in relation to goods or services ordered under the Belairbus-Airbus supply agreements (for example, in case Airbus claims a breach of a warranty or other liability in relation to a product produced under the Belairbus-Airbus agreements, such claims would still be directed at Belairbus).

(d) These activities would be the only two exceptions to the commitment that the Belairbus-Airbus supply agreements would no longer apply and that Belairbus would conduct no other activity […].

(155) As regards the **confidentiality arrangements** undertaken vis-à-vis the Commission, the Second Initial Commitments provided that Spirit and Asco would use all means necessary, including if necessary, entering into a legally binding agreement with Sonaca, to ensure that commercially sensitive information relating to Sonaca, including but not limited to commercially sensitive technical and pricing information, to which Asco employees have access, or have had access, shall not be: (i) disclosed or made available by Asco to employees of the Spirit Group (other than Asco), or (ii) used by Asco for any purpose other than what is strictly necessary for the performance of what is defined as the "Asco Scope of Work"[136].

(156) The Second Initial Commitments were provided […].

[136] The "Asco Scope of Work" is defined as Asco's scope of work under: i) the existing Belairbus-Airbus supply agreements; ii) the existing supply agreements between Asco and Sonaca in relation to a CSALP Aircraft Programme; iii) the existing supply agreements between Asco and Sonaca in relation to certain Embraer aircraft programmes; and iv) the existing supply agreements between Asco and Sonaca in relation to certain Dassault aircraft programmes.

(157) Finally, the Second Initial Commitments included related commitments, *inter alia* regarding the appointment of a **monitoring trustee** for period of […] following the Commission's decision.

7.3.2. Assessment of the Second Initial Commitments

(158) In view of assessing the appropriateness of the Second Initial Commitments, the Commission carried out the second market test, which was launched on 27 February 2019. Here again, given the specificities of the possible competition concern identified by the Commission, the second market test focused on the companies involved in the Belairbus configuration.

(159) In general, the view of the market test respondents was that the Second Initial Commitments could in principle remedy the serious doubts identified by the Commission, but subject to modification of the Second Initial Commitments so as to address a number of specific issues described below in paragraphs (160) *et seq*[137].

(160) As far as the proposed commitment to disaggregate Belairbus and limit the scope of its activities is concerned, the market respondents took the view that this would effectively contribute to eliminating the competition concern and that the changes to the Belairbus set-up would be implementable in practice.

(161) More specifically, the main concern that had been raised by […] in the first market test was that […], unworkable situations could have arisen in practice. As explained by […], this would happen "*in particular when Airbus would request a commercial or technical modification to which one of the Belairbus shareholders would object. Airbus would then not have been able to negotiate bilaterally with that party, because it would have to go through the Belairbus interface, with the Belairbus partners talking to each other, but not on a bilateral basis with Airbus. Such a set-up with Airbus always having to go through an* […] *artificial interface would have been incompatible with the need for speed in execution in its business, leading to deadlock situations in some cases*"[138]. With the disaggregation of the Belairbus contractual set-up as proposed in the Second Initial Commitments, this concern was removed as Airbus would be able to rely on "*dedicated bilateral contractual relationships between* [it] *and each of the Belairbus members for the future, with Sonaca being in charge of slats and Spirit/Asco of slat supports*".

(162) Regarding the confidentiality arrangements proposed in the Second Initial Commitments however, the market test showed that these needed strengthening.

(163) More specifically, it was put to the Commission that in order for the confidentiality commitment to be fully effective, it would not only have to be legally binding vis-à-vis the Commission, but also enforceable by Sonaca through a bilateral agreement. In addition, the concern was expressed that without specific ring-fencing measures for the future and destruction of any commercially sensitive information of Sonaca that may already be in Asco's possession, the merged entity would continue to have access to it. In addition to the Commission's concern about

137 Minutes of two calls with a market participant on 28 February 2019; Minutes of a call with a market participant on 1 March 2019; and Minutes of a call with a market participant on 5 March 2019.

138 Minutes of a call with a market participant on 28 February 2019.

increased transparency and possible coordination between Spirit and Sonaca, the concern was raised that the merged entity would be able to submit bids in competition with Sonaca's while making use of Sonaca's confidential information[139].

7.4. Final Commitments

(164) In response to the Commission's feedback regarding the outcome of the market test and its preliminary assessment, the Notifying Party submitted the Final Commitments on 8 March 2019.

7.4.1. Description of the Final Commitments

(165) The Final Commitments feature the following improvements and additions to the confidentiality arrangements compared to the Second Initial Commitments, while preserving the remainder of the elements constituting the Second Initial Commitments (described above in paragraphs (153) through (156), including the disaggregation of Belairbus […]):

(a) the Final Commitments provide that Spirit/Asco will use **all means necessary** to ensure that **commercially sensitive information originating from Sonaca** to which Asco employees have access, or have had access, shall:

(1) to the extent it is not required for Asco to perform the Asco Scope of Work, be **destroyed** […][140];

(2) to the extent it is required for Asco to perform the Asco Scope of Work, **not be**:

(a) **disclosed or made available** by Asco to employees of the Spirit Group (other than Asco), or

(b) **used** by Asco for any purpose other than what is strictly necessary for the performance of the Asco Scope of Work; and

(b) in the Final Commitments, the Parties also commit to enter into a legally binding written agreement with Sonaca to give effect to the Parties' commitment to the Commission, and which provides for all disputes under such agreement to be resolved by arbitration;

(c) in addition, […]:

(1) […];

(2) […];

(3) […];

(4) […];

139 Minutes of a call with a market participant on 1 March 2019.

140 […].

(5) […];

(6) […]

(7) […];

(d) furthermore, the Final Commitments provide for the **Monitoring Trustee remaining in place for** […] from the Commission's decision.

7.4.2. Assessment of the Final Commitments

(166) For the reasons outlined in paragraphs (168) through (169) below, the Commission deems the Final Commitments entered into by the undertakings concerned sufficient to eliminate the serious doubts as to the compatibility of the concentration with the internal market.

(167) As such, the commitments in Sections B and D of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex, in particular in Section C, constitute obligations, as they concern the implementing steps, which are necessary to achieve the modifications sought in a manner compatible with the internal market.

(168) More specifically, through the Final Commitments:

(a) Belairbus will no longer act as a platform for common negotiations or the common development of technical and/or commercial offers;

(b) any flow of commercially sensitive information of Sonaca to Spirit is cut off, in a way that is legally binding and also enforceable by Sonaca itself;

(c) Airbus will be able to rely on and enforce bilateral agreements with each of the shareholders in Belairbus and will as such not be confronted with situations where technical or commercial improvements could be held up by one of the shareholders (in particular Spirit);

(d) Spirit/Asco will in any case no longer have dependent representatives in the sole remaining management body of Belairbus (its board of directors), thus preventing the merged entity from harming the competitiveness of Belairbus's performance;

(e) Spirit's compliance with the Final Commitments will be effectively monitored by a Monitoring Trustee over a period of […]. In addition, through the bilateral confidentiality agreement Spirit will have to enter into with Sonaca, the latter will continue to be able to monitor and if needed enforce Spirit's compliance with its confidentiality commitment for as long as there is any need to do so.

(169) The Commission considers that the Final Commitments thus adequately address the risks of increased transparency and possible coordination, as well as the possible risk of Spirit unduly weakening its competitor Sonaca by relying on the latter's commercially sensitive information which it would not have had access to absent the concentration.

8. CONCLUSION

(170) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Sections B and D of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), Spirit AeroSystems Holdings, Inc. ("***Spirit***") and Asco Industries N.V. ("***Asco***", and together with Spirit, the "***Parties***") hereby enter into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering the acquisition by Spirit, indirectly through a newly formed subsidiary, of 100% of the shares in S.R.I.F NV, which is the holding company of Asco, Asco Management NV and Immobilière Asco NV (the "***Concentration***"), compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004 (the "***Remedies Notice***").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

"Affiliated Undertakings": undertakings controlled by the Parties and/or by the ultimate parents of 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***");

"Airbus": Airbus S.E.;

"Airbus Group": Airbus and any entity that, for the purposes of Article 3(2) of Council Regulation (EC) No. 139/2004, is controlled by Airbus;

"Asco": Asco Industries NV and Asco Management NV;

"Asco Scope of Work": Asco's scope of work under: (i) the Existing Airbus-Belairbus Supply Agreements and the Asco-Airbus Supply Agreements; (ii) the existing supply agreements between Asco and Sonaca in relation to the Relevant […] Aircraft Programme; (iii) the existing supply agreements between Asco and Sonaca in relation to the Relevant […] aircraft programmes; and (iv) the existing supply agreements between Asco and Sonaca in relation to the Relevant […] Aircraft Programmes;

"Asco-Airbus Supply Agreements": the bilateral supply agreements entered into between Airbus and Asco, as described in paragraph 2.1 below;

"Belairbus": Belairbus SA;

"Belairbus Disaggregation": has the meaning given to it in paragraph 2 below;

"BMT Eurair": BMT Eurair NV;

"Closing": the closing of the Concentration;

"Confidential Information": any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain;

"Conflict of Interest": any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Commitments;

"Effective Date": the date of adoption of the Decision;

"Existing Airbus-Belairbus Supply Agreements": the following agreements, as from time to time amended or supplemented:

[…]

"Industrial Parties": Asco, BMT Eurair and Sonaca;

"Monitoring Trustee": one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision;

"Parties": Spirit and Asco;

"Relevant […] Aircraft Programme": the […] aircraft programme;

"**Relevant […] Aircraft Programmes**" means the […] aircraft programmes;

"Relevant […] Aircraft Programmes": the […] aircraft programmes;

"Sonaca": Sonaca SA;

"Sonaca Affiliate": any entity that, for the purposes of Article 3(2) of Council Regulation (EC) No. 139/2004, is controlled by Sonaca;

"**Sonaca Group**": Sonaca and the Sonaca Affiliates;

"**Spirit Affiliate**": any entity that, for the purposes of Article 3(2) of Council Regulation (EC) No. 139/2004, is controlled by Spirit; and

"**Spirit Group**": Spirit and the Spirit Affiliates.

Section B. The disaggregation of Belairbus

Commitment to disaggregate Belairbus

2. The Parties commit to making the following changes to the scope and operation of Belairbus (the "**Belairbus Disaggregation**"), all of which shall take effect on the date of completion of the Concentration:

2.1. separation of the Existing Airbus-Belairbus Supply Agreements so that each Existing Airbus-Belairbus Supply Agreement relating to a given Airbus aircraft type is separated into three bilateral supply agreements, one between Airbus and each Industrial Party, without any further intervention of Belairbus, relating solely to such Industrial Party's scope of work for the relevant aircraft type under the Existing Airbus-Belairbus Supply Agreement relating thereto;

2.2. amendment of Belairbus's constitutive documents so that:

(a) Belairbus's activities are limited to the management of its rights and obligations under the Existing Airbus-Belairbus Supply Agreements;

(b) The only management body of Belairbus is its board of directors; and

(c) The Parties appoint directors to the Belairbus board of directors that:

(i) Are independent of any of Belairbus's shareholders;

(ii) Have not been employed or engaged as a consultant by the Parties during a period of five years preceding their appointment; and

(iii) Do not have a financial interest in the Parties and do not have a spouse, co-habitee or relative (up to the second degree) that has a financial interest in the Parties or whose independence from the Parties reasonably may be doubted.

2.3. In addition, the Parties commit that the activities of Belairbus will, […], be strictly limited to the management and exercise by Belairbus of its rights and continuing obligations under the Existing Airbus-Belairbus Supply Agreements. As a result, the Parties commit that Belairbus, […], will not be involved in any activity that is not strictly necessary for the management of its rights and obligations under the Existing Airbus-Belairbus Supply Agreements. Moreover, the Parties commit that, […], the current supply agreements between Airbus and Belairbus will remain applicable only to rights and obligations (including claims and liabilities) resulting from the (non-)performance of Airbus or Belairbus's obligations under the current supply agreements. The Parties commit that, as from Closing, Belairbus's activities will be limited to the following:

(a) The processing of orders for goods and services ordered by Airbus […]. This requires Belairbus temporarily to remain involved in the processing of goods

and services ordered by Airbus (such as the issuing and processing of invoices) […]. This will not require commercial negotiations with Airbus or between Asco, Sonaca and BMT Eurair. Such orders are governed by the terms and conditions in the current supply agreements between Airbus and Belairbus as they exist […]. This activity will automatically decrease and eventually be discontinued once all the orders placed under the current supply agreements between Airbus and Belairbus have been processed.

(b) The management of disputes in relation to goods or services ordered under the current supply agreements between Airbus and Belairbus. For example, if Airbus claims a breach of a warranty or other liability in relation to a product produced under the current supply agreements with Belairbus, such claim will still be directed at Belairbus.

2.4. Apart from these two exceptions, the Parties commit that the current supply agreements between Airbus and Belairbus will no longer apply, and Belairbus will conduct no other activity […].

Commitment to preserve the confidentiality of Sonaca information

3. The Parties also commit to:

(a) use all means necessary to ensure that commercially sensitive information originating from Sonaca, including but not limited to commercially sensitive technical and pricing information, to which Asco employees have access, or have had access, shall:

(i) to the extent it is not required for Asco to perform the Asco Scope of Work, be destroyed […], provided that Asco may lodge one copy of material that may contain such information with a third party on terms that make it inaccessible to Spirit employees and Asco employees […]

(ii) to the extent it is required for Asco to perform the Asco Scope of Work, not be:

(x) disclosed or made available by Asco to employees of the Spirit Group (other than Asco), or

(y) used by Asco for any purpose other than what is strictly necessary for the performance of the Asco Scope of Work; and

(b) enter into legally binding written agreement with Sonaca to give effect to the Parties' commitment to the Commission in paragraph 3(a), and which provides for all disputes under such agreement to be resolved by arbitration.

4. The measures described in paragraph 3(a) shall include, […]:

(a) […];

(b) […];

(c) […];

(d) […];

(e) […];

(f) […]

(g) […].

Compliance with the Commitments

5. The Parties shall be deemed to have complied with the Commitments if:

(a) (i) Asco has entered into final binding agreements with the other Industrial Parties, Airbus and Belairbus to give effect to the Commitments in paragraph 2 above; (ii) the Parties have taken the measures necessary to comply with paragraph 3 above; and (iii) the Commission has approved such agreements and measures as being consistent with the Commitments;

(b) the Belairbus Disaggregation becomes effective no later […], except for the modification of the new Belairbus Articles of Association, which shall occur no later than […]; and

(c) until such time as Spirit and its Affiliated Undertakings cease to be shareholders of Belairbus, Spirit shall not, and shall procure that its Affiliated Undertakings shall not, do anything that is in conflict with the changes made to Belairbus by the Belairbus Disaggregation.

Section C. Related commitments

Reporting

6. No later than 10 calendar days after the end of each month following the Effective Date, Spirit shall submit to the Commission a written report describing progress made during the prior month in the implementation of the Commitments.

[…]

7. […]:

(a) […];

(b) […]

(c) […].

Section D. Monitoring Trustee

I. Appointment procedure

8. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee.

9. The Monitoring Trustee shall:

(a) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;

(b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(c) neither have nor become exposed to a Conflict of Interest.

10. The Monitoring Trustee shall be remunerated by Spirit in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Parties

11. No later than two weeks after the Effective Date, Spirit shall submit the name or names of one or more natural or legal persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph 9 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and

(b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

12. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Parties shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

13. If all the proposed Monitoring Trustees are rejected, Spirit shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraph 11 of these Commitments.

Monitoring Trustee nominated by the Commission

14. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom the Parties shall appoint, or cause to be appointed, in accordance with a monitoring trustee mandate approved by the Commission.

II. Functions of the Monitoring Trustee

15. The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Spirit, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

16. The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(b) oversee the Parties' compliance with the conditions and obligations attached to the Decision;

(c) provide to the Commission, sending the Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall describe the actions taken by the Parties during the previous month in connection with the Commitments; and

(d) promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments.

III. Duties and obligations of the Parties

17. The Parties shall provide and shall cause their advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties shall provide the Monitoring Trustee upon request with copies of any document. The

Parties shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.

18. The Parties shall indemnify the Monitoring Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Parties for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.

19. At the expense of the Parties, the Monitoring Trustee may appoint advisors (in particular for legal advice), subject to the Parties' approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should the Parties refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard the Parties. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors.

20. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.

21. The Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

22. Until such time as Spirit and its Affiliated Undertakings cease to be shareholders of Belairbus, the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Monitoring Trustee

23. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:

    (a) the Commission may, after hearing the Monitoring Trustee and the Parties, require the Parties to replace the Monitoring Trustee; or

    (b) the Parties may, with the prior approval of the Commission, replace the Monitoring Trustee.

24. If the Monitoring Trustee is removed according to paragraph 23 of these Commitments, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee

is in place to whom the Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 11-14 of these Commitments.

25. Unless removed according to paragraph 23 of these Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee on the date that is […] after the Effective Date unless, upon a reasoned request by Spirit, the Commission decides that the Monitoring Trustee's appointment may terminate sooner. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section E. The review clause

26. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Parties or, in appropriate cases, on its own initiative. Where a Party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

27. The Commission may further, in response to a reasoned request from the Parties showing good cause, waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time, send a non-confidential copy of the report to the Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section F. Entry into force

28. The Commitments shall take effect upon the date of adoption of the Decision.

duly authorised for and on behalf of
Spirit AeroSystems Holdings, Inc.

8 March 2019

duly authorised for and on behalf of
Asco Industries NV

8 March 2019