Summary of Commission Decision

of 20 July 2016

declaring a concentration compatible with the internal market and the functioning of the EEA Agreement

(Case M.7724 – ASL/Arianespace)

(notified under document C(2016) 4621)

(Only the English version is authentic)

(2017/C 438/09)

On 20 July 2016 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1]*, and in particular Article 8(1) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html*

I. THE PARTIES AND THE OPERATION

(1) On 8 January 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which ASL, a joint venture jointly controlled by Airbus Group S.E. ('Airbus', the Netherlands) and Safran S.A. ('Safran', France), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Arianespace Participation S.A. and Arianespace S.A. (together, 'Arianespace', France), by way of purchase of the entire shareholding currently held by Centre National d'Etudes Spatiales ('CNES') in Arianespace (the 'Transaction'). Airbus and Safran together, as well as ASL, are designated hereinafter as the 'Parties'.

(2) Arianespace is a company founded in 1980 by CNES, acting as the main shareholder, and by the satellite industry participating in the Ariane programme, namely Airbus, Safran and eleven other European companies representing the ten European countries financing, through their participation in the European Space Agency ('ESA'), the development of the Ariane launcher. This initial shareholding structure has up to present remained mostly unchanged. Arianespace performs launches of satellites and other spacecraft for commercial and institutional clients from the Guiana Space Centre ('CSG') located in Kourou, France. For that purpose, it has been entrusted by ESA with the exclusive right to commercialise the ESA funded launchers Ariane and Vega. Pursuant to agreements signed between Russia, ESA and France, Arianespace also has the exclusive right to operate launch services from the CSG for commercial missions using the Russian Soyuz launcher.

(3) ASL is a company incorporated under French law and jointly controlled by Airbus and Safran (50/50), which combines the activities of its parent companies in the civil and military launchers sector and in satellites sub-systems and equipment. The creation of the ASL group was notified to the Commission on 8 October 2014 under Case M.7353 and authorized, subject to conditions, on 26 November 2014.

(4) Airbus is a company incorporated under Dutch law active in aeronautics, space and defence. It is currently listed on the stock exchanges of Frankfurt, Madrid and Paris. Airbus comprises three main divisions: (i) Airbus Division focusing on the manufacturing of commercial aircraft (68,4 % of the total group's revenue in 2014), (ii) Airbus Helicopters (9,8 % of the total group's revenue); and (iii) Airbus Defence and Space ('Airbus DS') bringing together a wide portfolio of products in the field of defence, security and secure space-based applications (20,9 % of the total group revenue), including sub-systems for launchers (through its Spanish subsidiary Airbus Defence and Space SAU, 'Airbus DS SAU') and satellites. Airbus DS is also active as a satellite operator for telecommunications and Earth-observation satellites.

(5) Safran is a French-based company listed on the Paris stock exchange focusing on three main areas: (i) aerospace propulsion (53 % of the group's total revenues); (ii) aircraft equipment (29 % of the group's total revenues), and (iii) defence and security (18 % of the group's total revenues).

[1] OJ L 24, 29.1.2004, p. 1.

II. **SUMMARY**

(6) The transaction was notified to the Commission on 8 January 2016.

(7) By decision dated 26 February 2016, the Commission found that the Transaction raised serious doubts as to its compatibility with the internal market and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation (the 'Article 6(1)(c) Decision').

(8) The in-depth investigation confirmed the competition concerns preliminarily identified as regards the exchange of sensitive information between Arianespace and Airbus.

(9) The Notifying Party submitted the final commitments ('Final Commitments') on 20 May 2016 that render the Transaction compatible with the internal market.

(10) Therefore, a clearance decision pursuant to Article 8(2) of the Merger Regulation is proposed for adoption.

III. **EXPLANATORY MEMORANDUM**

A. THE RELEVANT PRODUCT MARKETS

1. **Market for launchers exploited by Arianespace**

(11) Arianespace procures launchers from the launcher prime contractors (ASL for Ariane, ELV for Vega and TsSKB for Soyuz). ASL is active as the prime contractor for the Ariane launchers.

(12) In this context, the Commission considers the existence of a market for launchers exploited by Arianespace which would be European in scope.

2. **Market for launch services**

(13) Arianespace performs launches of satellites and other spacecraft for institutional and commercial customers. It performs launches both to geostationary transfer orbits ('GTO') and non-GTO. ASL is marginally active in the market of launch services through its joint venture Eurockot, which commercialises the Rockot launcher. The launcher is used for non-GTO launches both for commercial and institutional customers.

(14) In this context, the Commission considers that (i) GTO and (ii) non-GTO missions constitute different markets. Each of these can be further segmented into (i) open launches and (ii) captive launches (civil or military). This corresponds to the following distinct relevant markets: (i) open market for GTO launch services, (ii) open market for non-GTO launch services, (iii) captive market for GTO launch services and (iv) captive market for non-GTO launch services. For the purpose of this Decision, the issue whether the markets for non-GTO launch services can be segmented between LEO and MEO launches can be left open.

(15) As regards the geographic scope, the Commission considers (i) the open markets for launch services (both for GTO and non-GTO launches) to be worldwide in scope; and (ii) the captive markets for launch services (both for GTO and non-GTO launches) to be national or regional in scope.

3. **Market for satellites**

(16) Airbus is active as a satellite manufacturer both in terms of commercial, institutional and military satellites, as well as for constellations.

(17) In this context, the Commission considers the following relevant markets: (i) market for European institutional satellites; (ii) markets for national institutional satellites within the EU; (iii) market for export of institutional satellites; (iv) market for commercial satellites and (v) market for military satellites. For the purpose of this Decision, the issue whether the market for satellites should be further segmented on the basis of the type of orbit (GTO/non-GTO), and whether constellation satellites form a distinct market can be left open.

(18) The Commission considers that (i) the market for commercial satellites is worldwide in scope; (ii) the market for European institutional satellites is European or national depending on the procuring authority; (iii) the market for export of institutional satellites is worldwide in scope; and (iv) the market for military satellites is national in scope.

4. **Market for payload adapters and for payload dispensers**

(19) ASL has been active as a supplier of payload dispensers on Ariane 5 (for the Galileo constellation) and on Soyuz (for the Globalstar constellation). Airbus DS SAU is active as a supplier of payload adapters on Ariane 5.

(20) In this context, the Commission considers that (i) the market for payload adapters and (ii) the market for payload dispensers constitute separate product markets. The exact geographic scope of these markets is left open as being EEA-wide or worldwide.

5. **Market for space insurance services**

(21) Arianespace provides insurance services to its customers through its fully-owned subsidiary 'S3R'.

(22) The Commission considers that the exact scope of the product market for the space insurance services can be left open. Similarly, the exact geographic scope of this market is left open.

6. **Market for satellite operation**

(23) Airbus is active as a satellite operator for (i) Earth observation satellites (in its own name and on behalf of European space agencies) through its Airbus DS Geo-Information Services division (formerly Spot Image and Infoterra) and (ii) military telecommunications (primarily on behalf of the United Kingdom MoD) through its UK subsidiary Paradigm.

(24) The Commission considers that the exact scope of the product market for the satellite operation can be left open. As regards the geographic scope, the Commission considers that these markets are worldwide in scope.

B. COMPETITIVE ASSESSMENT

(25) Airbus and ASL are active in markets that are vertically related or otherwise connected to the activities of Arianespace. In particular, there are links between the activities of Arianespace as a launch services provider and those of: (i) ASL, as the supplier of the Ariane launcher family to Arianespace; (ii) Airbus DS SAU, as a supplier of payload adapters; (iii) Airbus DS SAU and ASL, as suppliers of payload dispensers; (iv) Airbus, as a satellite manufacturer; and (v) Airbus as a satellite operator. There is one additional relationship created by the Transaction, namely between Arianespace's insurance service provider activities and Airbus' activities as (i) satellite manufacturer and (ii) satellite operator.

1. **Competitive assessment: relationship between (i) Arianespace as a launch service provider and (ii) Airbus as satellite manufacturer**

Exchange of sensitive information

(26) In the Article 6(1)(c) Decision, serious doubts were raised about the risk that exchanges of sensitive information between Arianespace and Airbus could harm other satellite manufacturers and other launch services providers.

(27) Further to the in-depth investigation, the Commission has concluded that the Transaction leads to a significant impediment to effective competition as regards exchanges of sensitive information from (i) Arianespace to Airbus in relation to other satellite manufacturers and (ii) Airbus to Arianespace in relation to other launch services providers.

(28) According to the findings of the Commission's investigation, Arianespace has access to sensitive information about satellite manufacturers, namely technical information about mass and schedule, nature of the mission, centre of gravity and orbit requirements, the satellite architectures, etc., as well as commercial information. The current confidentiality clauses (for example non-disclosure provisions) included in contracts between satellite manufacturers and Arianespace are not sufficient to prevent commercially sensitive information from being transmitted from Arianespace to Airbus. Therefore the Commission has concluded that Arianespace would likely have the ability to share sensitive information about other satellite manufacturers with Airbus.

(29) Moreover, the information provided by satellite manufacturers to Arianespace is of such nature that Airbus could gain an advantage over its rivals by having access to that information. The Commission therefore concluded that Arianespace would likely have the incentive to share sensitive information about other satellite manufacturers with Airbus.

(30) In addition, the exchange of sensitive information from Arianespace to Airbus about other satellite manufacturers is likely to have a significant detrimental effect on competition in the markets for satellites. This is because it would result in (i) less competitive tenders, since Airbus would adjust its strategy on the basis of the information about its rivals it has accessed, and (ii) less innovation in the market, since rivals would be less inclined to innovate if Airbus could easily copy their innovations and the gains derived from innovation.

(31) The Commission has further concluded that Airbus has access to sensitive information about launch service providers which includes information about the availability of launch slots and pricing as well as new developments. As in the case of exchange of information from Arianespace to Airbus, the confidentiality clauses do not exclude information to be shared with a parent or affiliate company. Therefore, the Commission has concluded that Airbus would likely have the ability to share sensitive information about other launch services providers with Arianespace.

(32) The Commission also concluded that although Airbus is already present in Arianespace, post-Transaction Airbus will be more likely inclined to pass on information about other launch service providers to Arianespace.

(33) Finally, the Commission concluded that the exchanges of sensitive information from Airbus to Arianespace about other launch service providers is likely to have a significant detrimental effect on competition in the markets for launch services. This is because the access by Arianespace to technical and commercial information regarding other launch service providers may be used to neutralise any technical advantage and could as such result in reduced incentives by competitors to innovate and compete.

Foreclosure of Airbus' rivals in satellite markets

(34) In the Article 6(1)(c) Decision, serious doubts were also raised in relation to the possibility that post-Transaction Arianespace might use its position in the markets for launch services to favour sales of Airbus' satellites and as a result foreclose Airbus' rivals in the markets for satellites by discrimination.

(35) For instance, the Parties could hypothetically offer a discount to customers purchasing Airbus' satellites and Arianespace's launch services together, while increasing the prices for these two components when they are not purchased together. Moreover, Arianespace could hypothetically grant preferential treatment to Airbus when allocating slots (that is to say, if customers commit to buy the satellite from Airbus) and offer less favourable launch slots for non-Airbus' satellites.

(36) Following the in-depth investigation, the Commission concluded that the Transaction does not lead to a significant impediment to effective competition due to the relationship between the Parties' activities in the worldwide open market for GTO launch services and the worldwide market for commercial satellites, as regards foreclosure strategies.

(37) First, the Commission concluded that post-Transaction the Parties would likely not have the ability to successfully foreclose Airbus' rivals in satellites. This is because (i) although Arianespace is the current market leader, credible alternatives exist, such as SpaceX and ILS; (ii) launch service market is a dynamic competitive environment, where entry happens and companies' positions quickly change over time; (iii) satellite operators may be able to partially countervail the Parties' ability to foreclose rival satellite manufacturers; (iv) the characteristics of satellite markets would likely prevent the foreclosure of Airbus' commercial satellites rivals at least in the short term; and (v) effective foreclosure of commercial satellite manufacturers in the long term would be highly speculative.

(38) Second, and as regards the incentive to foreclose satellite rivals, the analysis carried out by the Commission showed that, although there are elements pointing to the existence of some incentives, there are also countervailing factors which may off-set such potential incentives. Therefore, given the likely absence of ability to foreclose, the Commission concluded that the issue whether the Parties would likely have the incentive to foreclose Airbus' rivals in the worldwide market for commercial satellites can be left open.

(39) Third, the Commission analysed the impact on competition of the adoption of a strategy with foreclosure effects in the worst case scenario of a hypothetical foreclosure of one of Airbus' rivals. In this scenario, which is not the most likely one, the Commission concluded anyway that the adoption of such a foreclosure strategy would unlikely have a significant detrimental effect on competition. This is because (i) there are several other players also active in the commercial segment, (ii) in view of the existing spare capacity, satellite manufacturers can easily expand and (iii) satellite operators have some degree of countervailing buyer power.

(40) In addition, the Commission further concluded that the Transaction does not result in a significant impediment to effective competition due to the relationship between the Parties' activities in (i) the worldwide open market for non-GTO launch services and (ii) the market for export of institutional satellites and the hypothetical worldwide market for constellation satellites as regards foreclosure. The Commission also concluded that the Transaction does not result in a significant impediment to effective competition due to the relationship between the Parties' activities in (i) the European and national (within the EU) captive markets for GTO and non-GTO launch services and (ii) the European market for institutional satellites and the national markets for military/institutional satellites as regards foreclosure.

2. **Competitive Assessment: vertical relationship between (i) Arianespace as a launch service provider and (ii) ASL as a supplier of the Ariane launcher family**

(41) In the Article 6(1)(c) Decision, serious doubts were raised about a potential customer foreclosure strategy whereby the Parties would give priority to launches with the Ariane launchers to the detriment of the Vega launchers produced by ELV and commercialised by Arianespace.

(42) Further to the in-depth investigation, the Commission concluded that the Parties would not have the ability and incentive to implement a customer foreclosure strategy against ELV and that, even in the hypothetical case of the adoption of such a strategy, there would not be a significant detrimental effect on competition. In particular, the Commission's findings indicated that the Ariane platform will only rarely be used for the same type of missions as the Vega platform and that even the hypothetical adoption of a customer foreclosure against ELV would not have any effect on the rivals of Arianespace in the markets for launch services. This is because ELV is bound to sell its launcher exclusively to Arianespace and all Arianespace rivals exploit their own launcher.

3. **Competitive assessment: vertical relationship between (i) Arianespace as a launch service provider and (ii) Airbus DS SAU and ASL as suppliers of dispensers and payload adapters**

(43) In the Article 6(1)(c) Decision, serious doubts were raised about a potential customer foreclosure strategy whereby the Parties would choose to source payload dispensers and payload adapters only from ASL or Airbus DS SAU, even if this is not the optimal solution available, to the detriment of Arianespace's existing alternative payload dispenser and payload adapters suppliers.

(44) Following the in-depth investigation, the Commission concluded that the Parties would not likely be in a position to foreclose access to downstream markets as regards payload dispensers. In particular, the Commission has concluded that the Parties would only be able to adopt a customer foreclosure strategy as regards non-ESA funded dispensers, and would have limited ability to foreclose its rivals in the market for payload dispensers. Moreover, even in the hypothetical scenario of the adoption of a customer foreclosure strategy as regards payload dispensers, this would unlikely have a significant detrimental effect on competition in the markets for launch services due to the small relative size of the price of payload dispensers in the overall cost of launch services.

(45) The Commission equally concluded that the Parties would not likely be in a position to foreclose access to downstream markets as regards payload adapters. In particular, the Commission has concluded that the Parties are not likely to have the ability to foreclose access to downstream markets via a customer foreclosure strategy as regards payload adapters given the restrictions posed by ESA procurement rules and the high relatively costs of development of new payload adapters. Moreover, even in the hypothetical scenario of the adoption of a customer foreclosure strategy as regards payload adapters, this would unlikely have a significant detrimental effect on competition in the markets for launch services due to the small relative size of the price of payload adapters in the overall cost of launch services.

4. **Competitive assessment: relationship between (i) Arianespace as an insurance service provider and (ii-a) Airbus as a satellite operator and (ii-b) Airbus as a satellite manufacturer**

(46) The Commission has concluded that the Transaction does not lead to a significant impediment to effective competition due to the vertical relationship between the Parties' activities in the markets for space insurance services and (i) the markets for satellite operation and (ii) the markets for satellites, either as regards customer foreclosure or input foreclosure.

5. **Competitive Assessment: vertical relationship between (i) Arianespace as a launch service provider and (ii) Airbus as a satellite operator**

(47) The Commission has concluded that the Transaction does not lead to a significant impediment to effective competition due to the vertical relationship between the Parties' activities in the markets for launch services and the markets for satellite operations, either as regards customer foreclosure or input foreclosure.

6. **Conclusion**

(48) The Decision, therefore, concludes that the Transaction leads to a significant impediment to effective competition in the markets for satellites and launch services with regard to the exchanges of sensitive information between Airbus and Arianespace.

C. COMMITMENTS

(49) In order to address the competition concern linked to the potential exchanges of sensitive information between Arianespace and Airbus, the Parties have submitted on 20 May 2016 the Final Commitments described below.

(50) The Final Commitments include provisions regarding (i) firewalls and (ii) employment restrictions both at the level of Airbus, ASL and Arianespace, as well as arbitration in all non-disclosure agreements as regards the implementation of commitments.

(51) The firewall measures are between ASL/Arianespace on the one hand, and Airbus on the other hand, to prevent exchanges of: (a) competitively sensitive information regarding satellite manufacturers competing with Airbus Group; (b) competitively sensitive information regarding launcher and satellite compatibility; and (c) competitively sensitive information relating to the launch services of suppliers of launch services other than Arianespace.

(52) In order to further reinforce the provisions on firewalls described above, the Parties have also submitted a remedy consisting in a prohibition on Airbus' employees to be appointed as Arianespace CEO or board/committee members. Moreover, (i) ASL/Arianespace personnel who have access to sensitive information regarding satellite manufacturers competing with Airbus Group and competitively sensitive information regarding launcher and satellite compatibility are subject to a waiting period of [1-5] years before they can be transferred to Airbus DS Satellites and (ii) Airbus DS Satellites personnel who have access to commercially sensitive information relating to the launch services of suppliers of launch services other than Arianespace are subject to a waiting period of [1-5] years before they can be transferred to ASL/Arianespace.

(53) In its decision, the Commission concludes that the Final Commitments are adequate and sufficient to eliminate the identified significant impediment to effective competition in the markets for satellites and launch services with regard to the exchange of information between Airbus and Arianespace.

IV. **CONCLUSION**

(54) For the reasons mentioned above, the decision concludes that the proposed concentration as modified by the commitments submitted on 20 May 2016 will not significantly impede effective competition in the Internal Market or in a substantial part of it.

(55) Consequently the concentration should be declared compatible with the Internal Market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.