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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.11800 – BAES / LEONARDO / JAIEC / JV**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004 ([1]) and Article 57 of the Agreement on the European Economic Area ([2])

([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').

Dear Sir or Madam,

(1) On 22 April 2025, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which BAE Systems (Holdings) Limited ('BAES', the UK), Japan Aircraft Industrial Enhancement Co. Ltd. ('JAIEC', Japan), and Leonardo S.p.A. ('Leonardo', Italy) will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of a joint venture for the delivery of the Global Combat Air Programme ('JV') (the 'Transaction'). ([3]) BAES, JAIEC, and Leonardo are together hereinafter referred to as the 'Parties'.

1. THE PARTIES

(2) BAES is a global defence, aerospace and security company, headquartered in the UK and listed on the London Stock Exchange. Its principal markets are the US, UK, the Kingdom of Saudi Arabia and Australia. Its business is divided into five divisions: (i) air; (ii) electronic systems; (iii) platforms and services; (iv) maritime; and (v) cyber and intelligence.

(3) JAIEC is controlled by the Society of Japanese Aerospace Companies and respectively headquartered, incorporated and existing under the laws of Japan. JAIEC is a public entity representing the interests of the Japanese aerospace industry with the aim to contribute to the expansion of the Japanese aerospace industry and overall national welfare through production enhancement and trade expansion of aerospace-related products.

(4) Leonardo is an industrial and technological company in the aerospace, defence and security sector, headquartered in Italy. It is listed on the Milan Stock Exchange. Its principal markets are Italy, the US, the UK, Poland and Israel. Its business is divided into six operating sectors: (i) aircraft; (ii) aerostructures; (iii) helicopters; (iv) defence electronics and security; (v) cyber and security solutions and (vi) space.

(5) The Global Combat Air Programme ('GCAP') is the programme by which the Governments of the UK, Japan and Italy (the 'Governments') plan to develop a sixth-generation combat aircraft. The JV will be the prime contractor and lead systems integrator for the aircraft. The aircraft is intended for use by the Governments, with the potential for export sales in the future.

2. THE OPERATION

(6) Each of BAES, JAIEC, and Leonardo will hold respectively 33.3% of shares and voting rights in the JV. Pursuant to the joint venture agreement, all Parties will need to unanimously consent to, and hence be able to block the JV's strategic commercial decisions, such as budget and business plan. No other individual or entity will be able to block strategic commercial decisions in relation to the JV.

([3]) OJ C, C/2025/2473, 29.4.2025.

(7) The JV will have sufficient resources to operate independently on the market, such as personnel, finance, tangible and intangible assets. ([4]) The JV has been set up to play an active role on the market and it will be economically autonomous from an operational perspective. The JV will not have any sale relationships with the Parties. The JV is established for an indefinite duration, and it will operate on a lasting basis. Thus, the JV will be performing on a lasting basis all the functions of an autonomous economic entity.

(8) The Transaction therefore results in acquisition of joint control over the JV by BAES, JAIEC, and Leonardo within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

(9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million ([5]) (BAES: EUR 29 068.5 million in 2023; JAIEC: EUR […] million in its financial year ending on 31 March 2024; and Leonardo: EUR 18 434.4 million in 2023). Two of them have an EU-wide turnover in excess of EUR 250 million (BAES: EUR […] million in 2023; and Leonardo: EUR […] million in 2023). Furthermore, the Parties do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Product market definition

(10) The Commission has previously considered a relevant product market for multi-role combat aircraft, i.e. military fighters which - in terms of their capabilities - are designed for different types of missions and differ from special mission aircraft, such as bombers, tankers, command-and-control aircraft (airborne early warning). ([6]) The Parties agree with this product market definition. ([7])

(11) GCAP's sixth-generation combat aircraft is intended to be capable of performing a range of roles, including air-to-air combat, and conducting missions with other military assets in a coordinated and collaborative manner, and hence have relevant characteristics of multi-role combat aircraft. The Commission considers that for the purposes of this decision the exact definition of the relevant product market can be left open, because the Transaction does not raise serious doubts on the

([4]) For completeness, it should be noted that whilst some personnel of the JV will be seconded from the Parties, the JV will nonetheless have sufficient resources to operate independently on the market in line with the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008, p. 1-48, paragraph 94, and hence perform on a lasting basis all the functions of an autonomous economic entity.

([5]) Turnover calculated in accordance with Article 5 of the Merger Regulation. Audited turnover figures for 2024 are not yet available but there has been no material change that would change the outcome of the assessment.

([6]) M.4288 - *Saab / EMW*, para. 30; M.1745 - *EADS*, para. 175 et seq. Although multi-role aircraft may come with different role, weight class and price bracket, such narrower segments do not tend to form relevant product markets since customers consider a wide range of price options and select combat aircraft after taking into consideration a number of factors, which may make apparently dissimilar products competitors to each other (M.1745 - *EADS*, para. 176).

([7]) Form CO, paragraphs 230-236.

basis of any plausible definition of the relevant product market. For the purposes of this decision, the Commission will carry out its competitive assessment on the basis of the narrowest plausible product market on which GCAP will be active and the parties' activities overlap leading to an affected market (i.e. the market for multi-role combat aircraft). ([8])

4.2. Geographic market definition

(12) The Commission has previously considered the distinction between two main geographic dimensions of the market for multi-role combat aircraft, i.e. (i) national markets for countries with domestic suppliers; and (ii) international export markets for countries without domestic suppliers. ([9]) The Parties agree with this geographic market definition. ([10])

(13) As the Transaction does not give rise to serious doubts under any plausible geographic market definition, it is not necessary to conclude on the exact scope of the geographic market. For the purposes of this decision, the Commission will carry out its competitive assessment on the basis of the narrowest plausible geographic markets, i.e. the national level for countries with domestic suppliers and international export markets (excluding all countries with domestic suppliers and / or supply restrictions) for countries without domestic suppliers. ([11])

5. COMPETITIVE ASSESSMENT

5.1. Introduction

(14) The Transaction gives rise only to one horizontally affected market in relation to multi-role combat aircraft in Italy.

(15) The Transaction also results in horizontal overlaps and vertical links for a number of other markets. However, none of these overlaps or links give rise to affected markets within the meaning of recital 25(g) Annex I to Regulation (EU) 2023/914 ([12]), as they meet the conditions for review under point 5 or benefit from the flexibility clauses of point 8 of the Notice on Simplified Treatment ([13]). Therefore, these overlaps will not be further discussed in this decision.

([8]) If a further segmentation were to be considered between generations of aircraft, GCAP would only be active on the market for sixth-generation multi-role combat aircraft, where BAES, Leonardo and JAIEC are not individually active. It follows that such market would not be horizontally affected. If an alternative segmentation based on the role, weight class and/or price of the aircraft would be considered, this would not change the outcome of the assessment as the Transaction would not give rise to any merger-specific overlap. This is because only Leonardo and BAES would have a market share, due to their pre-existing joint ventures or partnerships which are not merger specific (i.e. Panavia Aircraft GmbH, Eurofighter Jagdflugzeug GmbH and their partnerships in connection with the F-35).

([9]) M.1745 - *EADS*, para. 180.

([10]) Form CO, paragraphs 237-238.

([11]) For completeness, there is no affected market at worldwide level and the parties' combined market share is lower at any broader-than-national level.

([12]) Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023, p. 22.

([13]) Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings 2023/C 160/01, OJ C 160, 5.5.2023, p. 1.

5.2. Legal framework

(16) The Commission's Guidelines on the assessment of horizontal mergers under the Merger Regulation (the 'Horizontal Merger Guidelines') distinguish two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects. ([14])

(17) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one merging party on the other, as a result of which the merged entity would have increased market power without resorting to coordinated behaviour. ([15]) 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. Not all of these factors need to be present to make significant non-coordinated effects likely and the list itself is not an exhaustive list. ([16])

5.3. Multi-role combat aircraft in Italy

(18) In the Parties' view, the overlap between BAES and Leonardo on the market for multi-role combat aircraft in Italy does not give rise to concerns because their products are (and have been in the past) the same and they have never been offered by BAES or Leonardo alone. ([17])

(19) The horizontally affected market in relation to multi-role combat aircraft in Italy is indeed based on pre-existing overlapping activities of BAES and Leonardo (not JAIEC who is not active on these markets and is not a potential competitor) with a combined market share of [20-30]% (BAES: [5-10]% and Leonardo: [10-20]%): ([18]) (i) sales of Tornado by Panavia Aircraft GmbH that is controlled by BAES, Leonardo, and Airbus Defence & Space; (ii) sales of Eurofighter by Eurofighter Jagdflugzeug GmbH that is controlled by BAES, Leonardo, and Airbus Defence & Space; and (iii) sales of F-35 where BAES, and Leonardo collaborate with Lockheed Martin as sub-contractors to deliver parts of each aircraft. In the same vein, as a result of the Transaction, BAES and Leonardo would again supply together within the JV. These pre-existing overlapping activities are not specific to the Transaction, and hence do not give rise to competitive concerns. The concentration will not increase the market power of BAES and Leonardo on these markets compared to the pre-existing situation.

(20) In light of the foregoing, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects in respect of the market for multi-role combat aircraft in Italy.

([14]) Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, p. 5–18. The remainder of this decision focuses on non-coordinated effects.

([15]) Horizontal Merger Guidelines, paragraphs 24 et seq.

([16]) Horizontal Merger Guidelines, paragraphs 27 et seq.

([17]) Form CO, paragraph 434.

([18]) For completeness, there is no affected market at worldwide level and the parties' combined market share is lower at any broader-than-national level.

6. CONCLUSION

(21) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Teresa RIBERA
Executive Vice-President