
Acquisition by AMS NV of BAe Sytems (Combat and Radar Systems) Limited

Undertakings given to the Secretary of State for Trade and Industry by AMS N.V., a company incorporated in The Netherlands whose registered office is at Fred.Roeskestraat 123 1076 EE Amsterdam (AMS)

PURSUANT TO SECTION 75G(1) OF THE FAIR TRADING ACT 1973

WHEREAS:

- (A) BAE SYSTEMS plc has transferred its wholly owned subsidiary CaRS to AMSL, a Subsidiary of AMS, a company jointly controlled by BAE SYSTEMS and Finmeccanica SpA ("Finmeccanica");
- (B) AMS has indicated that it expects CaRS to be merged into AMSL;
- (C) It appears to the Secretary of State that as a consequence of these arrangements, there is a merger situation qualifying for investigation;
- (D) The Director:
 - (a) has made a recommendation to the Secretary of State that a reference to the Competition Commission should be made; and
 - (b) has under Section 75G(1)(c) of the Act given advice to the Secretary of State specifying particular effects adverse to the public interest which in his opinion the merger situation qualifying for investigation may have or might be expected to have; and
- (E) The Secretary of State considers the undertakings given below by AMS are appropriate to remedy or prevent the effects adverse to the public interest specified in the advice given by the Director and thereby remove the necessity for any reference to the Competition Commission to be made.

AMS therefore gives to the Secretary of State the following undertakings for the purpose of remedying or preventing the effects adverse to the public interest specified in the advice given by the Director.

INTERPRETATION

1. In these undertakings:-

- 1.1 where reference is made to any company then in the event of any merger, joint venture or acquisition or internal re-organisation, such reference shall be interpreted as applying to the equivalent or successor organisation in the new structure;
- 1.2 except where the context does not allow, the singular shall include the plural and the plural shall include the singular;
- 1.3 reference to a clause shall be a reference to a clause within these undertakings;
- 1.4 "**AMSL**" means Alenia Marconi Systems Limited;
- 1.5 "**CaRS**" means BAE SYSTEMS (Combat and Radar Systems) Limited;
- 1.6 "**Classified**" means material that requires protection in the interests of national security and is so designated by the application of a national security classification;
- 1.7 "**Completion Date**" means the date upon which the transfer of CaRS to AMSL was completed;
- 1.8 "**Compliance Officer**" means the person appointed by AMS in accordance with clause 2.9;
- 1.9 the Ministry of Defence is a "**Customer**" when it is either an immediate buyer from AMSL or CaRS or the ultimate user of products or services that may have been procured by another for Ministry of Defence use;
- 1.10 "**the Director**" means the Director General of Fair Trading;
- 1.11 "**Effective Date**" means the date of these undertakings;
- 1.12 "**EMPAR Programme**" means the EMPAR radar programme;
- 1.13 "**EMPAR Team**" means the officers and employees of AMS and its Subsidiaries, that are present or former members of the group working on the EMPAR Programme;
- 1.14 "**EMPAR Team Associate**" means any person not an officer or an employee of AMS or its Subsidiaries, for example sub-contractors, consultants and external advisers, who work or have worked on the EMPAR Programme;
- 1.15 "**Military Programmes**" means any Classified, defence-related programmes in relation to which any of AMSL or its Subsidiaries (or, prior to the Completion Date, CaRS) enters into or has entered into contracts or obtains or has obtained any Classified information with the intention of entering into or deciding whether to enter into contracts;
- 1.16 "**Ministry of Defence**" means the United Kingdom Secretary of State for Defence;
- 1.17 "**SAMPSON Programme**" means the SAMPSON radar programme;
- 1.18 "**SAMPSON Programme Material**" means any Classified material relating to the SAMPSON Programme including, but not limited to proposals, technology, ideas, costs, suppliers, designs, sketches, preliminary drawings, plans, test results, specifications, pricing, technical interface material or other data;

- 1.19 "**SAMPSON Team**" means the officers and employees of AMS and its Subsidiaries, that are present or former members of the group working on the SAMPSON Programme;
- 1.20 "**SAMPSON Team Associate**" means any person not an officer or an employee of AMS or its Subsidiaries, for example sub-contractors, consultants and external advisers, who work or have worked on the SAMPSON Programme;
- 1.21 "**Security Undertakings**" means the undertakings made at clause 2;
- 1.22 "**Subsidiary**" has the meaning given by section 736 of the Companies Act 1985 as amended but additionally a company ("**A**") shall be a subsidiary of another company ("**B**") if **B** has joint control (with one or more other undertakings) of **A**. "Joint control" has the meaning ascribed to it in the European Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (98/C 66/02);
- 1.23 "**Teams**" means the SAMPSON Team and the EMPAR Team;
- 1.24 "**UK Military Capability**" means the capability immediately prior to the Effective Date within AMSL and Subsidiary thereof (including that within CaRS) to carry out Military Programmes and the capability necessary to perform any contracts (including those entered into after the Effective Date) relating to Military Programmes;
- 1.25 "**UK National Security Regulations**" means the regulations in relation to Classified material set out in the Government Manual of Protective Security as amended or supplemented from time to time;

2. **SECURITY UNDERTAKINGS**

AMS undertakes as follows:

Maintenance of strategic capabilities

It will procure that:

- 2.1 Military Programmes shall continue to be managed and controlled, except in so far as the Ministry of Defence has separately agreed otherwise in writing, by a company or companies incorporated within the UK under English law and in relation to which a majority of the company directors are UK nationals.
- 2.2 The boards of directors of AMSL and of CaRS (or their successors) shall contain sufficient UK nationals who are security-cleared to enable security sensitive issues to be resolved at board level should the need arise.
- 2.3 AMSL shall inform the Ministry of Defence in writing and thereafter consult with the Ministry of Defence: (i) at least 3 months prior to substantive alienation of any significant defence related asset of AMSL or CaRS; and (ii) in respect of any proposal for the voluntary winding-up or dissolution of AMSL or CaRS. The Ministry of Defence shall be the sole arbiter in the event of any dispute as to what is to be construed as a significant defence related asset and where AMSL is in any doubt it shall first consult the Ministry of Defence. For the avoidance of doubt, substantive alienation includes disposal to BAE SYSTEMS or Finmeccanica and their Subsidiaries other than AMSL or CaRS.

- 2.4 AMSL shall inform the Ministry of Defence in writing and thereafter consult with the Ministry of Defence as soon as possible and in any event at least 2 months prior to running down or affecting adversely in any material way the UK Military Capability.
- 2.5 AMSL shall ensure continuity of development and/or supply of all goods and services for Military Programmes for which the Ministry of Defence is a Customer subject to the Ministry of Defence acting reasonably and offering to place contracts in the future.

Separation of the SAMPSON Team and EMPAR Team

- 2.6 Until such time as the Secretary of State for Defence confirms to the Director and AMS in writing that the undertakings set out in this clause 2.6 are no longer necessary, AMS shall enforce the separation between the SAMPSON Team and EMPAR Team and in particular shall:
 - 2.6.1 maintain separate physical locations for the Teams;
 - 2.6.2 procure that the Teams do not share any facilities (including IT systems) in a manner that could facilitate the transfer of SAMPSON Programme Material to the EMPAR Team;
 - 2.6.3 procure that no member of the SAMPSON Team or any SAMPSON Team Associate becomes a member of the EMPAR Team or an EMPAR Team Associate or moves to any other position within AMS or its Subsidiaries that would provide the EMPAR Team with access to SAMPSON Programme Material;
 - 2.6.4 procure that there shall be no communication (meaning transmission by any media, including telephone, facsimile, electronic mail and any other means of transmission) between the Teams of any kind with respect to SAMPSON Programme Material;
 - 2.6.5 subject to clause 2.6.6 below, procure that there is no communication of SAMPSON Programme Material by the SAMPSON Team or any SAMPSON Team Associate to a person who is outside of the SAMPSON Team and not a SAMPSON Team Associate, except where the Ministry of Defence has agreed separately in writing;
 - 2.6.6 procure, in so far as it is within its power to do so, that the SAMPSON Team has separate access to any employee of AMS or its Subsidiaries, who are not members of the Teams, or to any consultant or external adviser, who is neither a SAMPSON Team Associate nor an EMPAR Team Associate, but who, in either case, is necessary to support the work of the SAMPSON Team, provided that:
 - (i) prior to the initial communication of SAMPSON Programme Material to any such employee of AMS or its Subsidiaries, consultant or external adviser (as the case may be), AMS shall procure that AMSL shall consult with the Compliance Officer; and
 - (ii) following the initial communication of SAMPSON Programme Material to such employee of AMS or its Subsidiaries, consultant or external adviser (as the case may be), they shall be treated as members of the SAMPSON Team or SAMPSON Team Associate and all

provisions of this undertaking shall apply in respect of them (except 2.6.1 and 2.6.2 above);

2.6.7 provide to the Ministry of Defence a list of all employees within AMS and its Subsidiaries that are within each of the Teams and a list of all SAMPSON Team Associates and a list of all EMPAR Team Associates;

2.6.8 provide an updated copy of the relevant list to the Ministry of Defence whenever there is a change to the Teams, the SAMPSON Team Associates or the EMPAR Team Associates, and as required update each such list as required from time to time by the Ministry of Defence.

Protection of Classified Information

- 2.7 It will procure that, except in so far as the Ministry of Defence has separately agreed otherwise in writing, all matters relating to security within AMS and its Subsidiaries shall be maintained in line with UK National Security Regulations, including the security of work areas subject to special physical ring-fencing and in particular:
- (i) the operational management of the Military Programmes within AMSL and CaRS shall be by UK security cleared personnel with security procedures meeting UK National Security Regulations and any other such requirements as deemed necessary from time to time by the Ministry of Defence;
 - (ii) only approved personnel with appropriate access authority or security clearance shall have access to material classified "Confidential" and above;
 - (iii) no material classified "Confidential" or above, or bearing a national or composite caveat, shall be passed to the boards of directors of Finmeccanica or its Subsidiaries, (other than AMSL and CaRS) without the prior approval of the Ministry of Defence. Transfers by whatever means of Classified information to Finmeccanica or its Subsidiaries based overseas, or to other foreign nationals or to locations outside the UK national jurisdiction shall only be conducted subject to the prior approval of the Ministry of Defence;
 - (iv) no material classified "Confidential" or above or bearing a national or composite caveat and no other Classified information which is owned by a third party or country shall in any circumstances be disclosed to foreign or dual nationals without the prior written approval of the Ministry of Defence.

Compliance

- 2.8 It shall provide the Ministry of Defence with such information as it may from time to time reasonably require to ascertain that it is fulfilling the Security Undertakings. If AMS is unable to comply with any of the Security Undertakings, it shall provide full reasons for the non-compliance within one month of becoming aware of the non-compliance.
- 2.9 As well as a security officer responsible for facilitating and overseeing the compliance with UK National Security Regulations and the Security Undertakings at each of the premises of AMSL and CaRS (as required by UK National Security Regulations), AMS shall as soon as is reasonably practicable following consultation with the Ministry of Defence appoint a competent person (who may

also be the existing security officer), who shall be responsible for providing to the Ministry of Defence:

- (i) an annual report within three months of the end of the year, as well as any other such information as the Ministry of Defence may from time to time require, to verify compliance with the Security Undertakings, including any measures taken or proposed by AMS or AMSL or CaRS so as to ensure compliance with the Security Undertakings and to prevent any breach of them; and
- (ii) full particulars of any failure to comply with the Security Undertakings immediately upon such failure becoming apparent.

2.10 It shall procure that, for the purpose of checking compliance with the Security Undertakings, a representative of the Ministry of Defence shall be entitled to enter and inspect any premises used by AMSL or CaRS which are in any way connected with Military Programmes and inspect any document or thing in any such premises which is concerned with such Military Programmes. Such representative shall be entitled to all such information as he may reasonably require.

Contact Details

2.11 It shall provide the Ministry of Defence with the contact details of the Compliance Officer as soon as he/she has been appointed and with any changes to those details as they occur.

3. PROVISION OF INFORMATION TO THE DIRECTOR

3.1 AMS shall provide the Director such information as he may reasonably require for the purpose of ascertaining that these undertakings are being or have been complied with.

4. DIRECTIONS

4.1 AMS shall comply with such written directions as the Director may from time to time give to take such steps within its competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

Signed for and on behalf of AMS

..... [DIRECTOR]

DATE