

AI Convoy Bidco - Cobham

A report to the Secretary of State for
Business, Energy & Industrial Strategy
on the anticipated acquisition by AI
Convoy Bidco Limited of Cobham Plc

29 October 2019

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1. Executive summary

- 1.1 This report is hereby given in response to the European intervention notice given to the Competition and Markets Authority (**CMA**) by the Secretary of State for Business, Energy & Industrial Strategy (the **Secretary of State**) on 17 September 2019, in exercise of her powers under section 67(2) of the Enterprise Act 2002 (the **Act**) (the **Notice**). This report has been prepared pursuant to Article 4(2)-(5) of the Enterprise Act 2002 (Protection of legitimate interests) Order 2003 (the **Order**).¹
- 1.2 The Notice relates to the proposed acquisition by:
- (a) funds managed by Advent International Corporation (**Advent**); and
 - (b) funds managed by GSO Capital Partners LP, Blackstone Tactical Opportunities Advisors LLC and other managers affiliated with The Blackstone Group Inc (together, the **Blackstone Group**),
- through AI Convoy Bidco Limited (**AI Convoy Bidco**), of the entire issued and to be issued share capital of Cobham Plc (**Cobham**) (the **Transaction**). Advent, the Blackstone Group and Cobham together are referred to as the **Parties** in this report.
- 1.3 The Notice requires the CMA to investigate and report to the Secretary of State in accordance with Article 4 of the Order within the period ending on 29 October 2019.

European relevant merger situation

- 1.4 As required by Article 4(4) of the Order, the CMA sets out its belief that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation as defined in section 68 of the Act.
- 1.5 For the purposes of this report, the CMA believes that it is or may be the case that each of Advent, the Blackstone Group and Cobham is an enterprise; that these enterprises will cease to be distinct as a result of the Transaction; and that the turnover test is met.² Accordingly, arrangements are in progress or in

¹ S.I. 2003/1592.

² Section 23(1)(b) of the Act. The CMA notes that both sections 23(1)(b)(i) of the Act and (ii) are met as Cobham's turnover exceeds £70 million and Cobham is a relevant enterprise as defined in section 23A of the Act.

contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

- 1.6 On 25 October 2019, the European Commission decided that Advent's acquisition of Cobham (the **Relevant Concentration**) falls within the scope of the EC Merger Regulation (the **Merger Regulation**).³ Accordingly, the Transaction results in a relevant merger situation by virtue of which a concentration with a Community dimension has arisen and in relation to which the CMA is prevented from making a reference under section 33 of the Act. The CMA therefore considers that the Transaction gives rise to a European relevant merger situation.⁴

Public interest

- 1.7 As required by Article 4(3)(b) of the Order, the CMA has summarised the representations received about the case which relate to the national security public interest consideration mentioned in the Notice, and which are also relevant to the Secretary of State's decision whether to make a reference to Phase 2.
- 1.8 The Ministry of Defence (**MoD**) and Home Office have also given their views in relation to the national security public interest consideration. In their representations, the MoD and Home Office identified national security concerns arising as a result of the Transaction.
- 1.9 Eight third-parties also sent representations concerning national security directly to the CMA.

Remedies – Undertakings in Lieu

- 1.10 The Secretary of State may either make a reference for a Phase 2 assessment on public interest grounds⁵ or accept undertakings in lieu of such reference⁶ if he or she believes that it is or may be the case that the national security concerns identified may be expected to operate against the public interest.
- 1.11 The CMA understands that the MoD and Home Office have been considering the specific risks identified in relation to national security matters and possible

³ Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

⁴ Pursuant to section 68 of the Act.

⁵ Article 5(3) of the Order.

⁶ Schedule 2 paragraph 3(2) of the Act.

remedies to address those risks. The CMA also understands that the MoD and Home Office will advise the Secretary of State directly in this regard.

2. Legal framework – European intervention notice

- 2.1 Where the European Commission has sole jurisdiction to investigate the competition aspects of a merger,⁷ Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by the Merger Regulation and compatible with the general principles and other provisions of EU law.⁸
- 2.2 In particular, the Act permits intervention by the Secretary of State in relation to a European relevant merger situation where he or she believes that a merger gives rise to a European relevant merger situation and it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger concerned.⁹ Further information on the meaning of European relevant merger situation is set out in part 4 below.
- 2.3 The second paragraph of Article 21(4) of the Merger Regulation states that public security shall be regarded as a legitimate interest. This is reflected in section 58 of the Act which sets out the specified considerations that qualify as public interest considerations for the purposes of the Act. Section 58(1) states that interests of national security are a specified consideration. Section 58(2) states that, for the purposes of section 58(1), national security includes public security, and that public security has the same meaning as in the second paragraph of Article 21(4) of the Merger Regulation.
- 2.4 In such a case where the Secretary of State issues a European intervention notice, Article 4(2) of the Order requires the CMA to give a report to the Secretary of State within such period as he or she may require.¹⁰ The report must contain:
- (a) a decision as to whether the CMA believes that it is or may be the case that a European relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into

⁷ Article 21(3) of the Merger Regulation.

⁸ Article 21(4) of the Merger Regulation.

⁹ Section 67(2) of the Act. As to public interest intervention in cases under the Merger Regulation more generally, see chapter 16, paragraphs 16.16-16.22 of the *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014 (CMA2).

¹⁰ Article 4(2) of the Order.

effect, will result in the creation of a European relevant merger situation;¹¹ and

- (b) a summary of any representations about the case which have been received by the CMA and which relate to any public interest consideration mentioned in the European intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under Article 5 of the Order.¹²

- 2.5 Following receipt of the CMA's report, the Secretary of State may have no national security concerns. However, if he or she believes that it is or may be the case that the national security concerns identified may be expected to operate against the public interest, he or she may make a Phase 2 reference to the CMA on public interest grounds,¹³ or accept undertakings in lieu of such reference.¹⁴ In deciding whether to make a Phase 2 reference, the Secretary of State is required to accept the CMA's decision on the matters listed in paragraph 2.4(a) above.¹⁵

3. Parties and transaction

- 3.1 The Transaction concerns the acquisition by Advent and Blackstone, through AI Convoy Bidco, of the entire issued and to be issued share capital of Cobham.¹⁶
- 3.2 AI Convoy Bidco is a newly incorporated entity.¹⁷ Advent is obtaining an 83.2% indirect interest in AI Convoy Bidco and the Blackstone Group is obtaining a 16.8% interest in AI Convoy Bidco.¹⁸

¹¹ Article 4(4) of the Order. Article 4(3)(a) of the Order also requires the CMA to advise on the considerations relevant to the making of a reference under section 22 or 33 of the Act, which are also relevant to the Secretary of State's decision as to whether to make a reference under Article 5 of the Order. The relevant consideration is whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. This is incorporated into the decision under Article 4(4) of the Order on whether the CMA believes that it is, or may be, the case that a European relevant merger situation has been created. The CMA is not required to advise on whether the creation of a relevant merger situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom (UK) for goods or services.

¹² Article 4(3)(b) of the Order.

¹³ Article 5 of the Order.

¹⁴ Schedule 2 paragraph 3(2) of the Act.

¹⁵ Article 5(5) of the Order.

¹⁶ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraph 6.

¹⁷ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraph 6.

¹⁸ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraphs 8-9.

- 3.3 Al Convoy Bidco announced its intention to make an offer to acquire the entire issued and to be issued share capital of Cobham (the **Offer**) on 25 July 2019. The Offer values Cobham at approximately £4 billion.¹⁹
- 3.4 The Offer will be implemented by means of a publicly announced English law court-sanctioned scheme of arrangement under Part 26 of the Companies Act 2006. The scheme was approved by Cobham shareholders on 16 September 2019.²⁰ It is still conditional on court approval.
- 3.5 The Transaction is also conditional on it being established that the Secretary of State does not intend to make a Phase 2 reference to the CMA in relation to the Transaction.²¹
- 3.6 The Transaction is further conditional on United States (**US**) and European Commission merger control clearances and on foreign investment approvals in Australia, France, and Finland.²² It received clearance in the US on 17 September 2019, and in Finland on 4 October 2019. Advent's anticipated acquisition of Cobham was notified to the European Commission on 1 October 2019. The European Commission issued a clearance decision on 25 October 2019.
- 3.7 Advent is a private equity investor based in the US. Advent acquires equity stakes in companies and is involved in the management of investment funds.²³
- 3.8 The Blackstone Group is also a private equity investor based in the US. The Blackstone Group invests in one or more instruments across a capital structure alongside a lead majority investor.²⁴
- 3.9 Cobham is a UK publicly listed company that provides a range of products and services in the defence, aerospace and space markets in different countries. Cobham operates across the communications and connectivity, mission systems, advanced electronic systems, and aviation services sectors.²⁵

¹⁹ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraph 6.

²⁰ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraphs 6-7.

²¹ Annex 5.1.1 to the Short Form CO dated 1 October 2019, Announcement of recommended cash offer, dated 25 July 2019, Appendix I, paragraph 2(c).

²² Annex 5.1.1 to the Short Form CO dated 1 October 2019, Announcement of recommended cash offer, dated 25 July 2019, Appendix I, paragraph 2.

²³ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraph 2.

²⁴ The Blackstone Group submission to the CMA, dated 23 September 2019, paragraph 2.

²⁵ Advent and Cobham submission to the CMA, dated 24 October 2019, paragraphs 13-14.

3.10 [REDACTED] 26
[REDACTED] 27

3.11 [REDACTED] 29

3.12 [REDACTED] 30

3.13 [REDACTED] 31

3.14 [REDACTED] 32

3.15 [REDACTED]

²⁶ MoD submission to the CMA, dated 17 October 2019.
²⁷ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraph 21; MoD submission to the CMA, dated 17 October 2019.
²⁸ [REDACTED]
²⁹ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraph 21.
³⁰ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraph 22.
³¹ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraph 22.
³² MoD submission to the CMA, dated 17 October 2019.

[REDACTED]
[REDACTED]³³

3.16

[REDACTED]
[REDACTED]. The MoD submitted that some of the products and services supplied to the MoD by Cobham are, as detailed above, of particular relevance to national security. Cobham is also a trusted sub-contractor, supplying products and services to other companies for whom the MoD is a customer. Some of those supply chains [REDACTED] [REDACTED] are particularly relevant to national security.³⁴

3.17

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁵

3.18 The Home Office considers that:

- (a) Cobham is a key supplier of radio devices to the UK's emergency services and other UK authorities;
- (b) work of the UK emergency services and other government agencies is central to the protection of public safety and national security; and
- (c) this work relies on the availability of functioning radio devices.³⁶

4. Jurisdiction

Legal framework

4.1 This section outlines the legal framework applicable to the CMA's assessment of whether it is or may be the case that a European relevant merger situation has been created or arrangements are in progress or in contemplation which,

³³ MoD submission to the CMA, dated 17 October 2019.

³⁴ MoD submission to the CMA, dated 17 October 2019.

³⁵ Home Office submission to the CMA, dated 27 September 2019.

³⁶ Home Office submission to the CMA, dated 27 September 2019.

if carried into effect, will result in the creation of a European relevant merger situation.

European relevant merger situation

- 4.2 Under section 68 of the Act, a European relevant merger situation means a relevant merger situation:
- (a) which has been created or will be created if arrangements which are in progress or in contemplation are carried into effect;
 - (b) by virtue of which a concentration with a Community dimension (within the meaning of the Merger Regulation), or a part of such a concentration, has arisen or will arise; and
 - (c) in relation to which a reference was prevented from being made under section 22 or 33 (whether or not there would otherwise have been a duty to make such a reference) by virtue of Community law or anything done under or in accordance with it.

Relevant merger situation

- 4.3 The CMA has first assessed whether the Transaction gives rise to a relevant merger situation. In the case of an anticipated transaction, a relevant merger situation has been created when:
- (a) arrangements are in progress or in contemplation which will lead to two or more enterprises³⁷ ceasing to be distinct;³⁸ and
 - (b) either the thresholds under sections 23(1) (the turnover test) or 23(2) (the share of supply test) of the Act are satisfied.

Enterprises ceasing to be distinct

- 4.4 Two enterprises will cease to be distinct if they are brought under common ownership or control.³⁹

³⁷ 'Enterprise' is defined in section 129 of the Act as the activities, or part of the activities, of a business. See also paragraph 3.2.2 of the *Merger Assessment Guidelines*.

³⁸ Section 33(1)(a) of the Act and Section 23 of the Act.

³⁹ Section 26 of the Act.

Turnover thresholds and 'relevant enterprise'

- 4.5 Section 23(1)(b)(ii) of the Act provides that the test is met where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.
- 4.6 On 11 June 2018, the Act was amended to introduce different turnover thresholds for certain mergers. These amendments, set out in section 23(1)(b)(i) of the Act, provide that the turnover test is met where:
- (a) the value of the turnover in the UK of the enterprise being taken over exceeds £1 million; and
 - (b) in the course of enterprises ceasing to be distinct, a person or group of persons has brought a 'relevant enterprise' under the ownership or control of the person or group.
- 4.7 Section 23A of the Act includes a definition of a 'relevant enterprise'. The provisions most applicable to the Transaction are outlined below.

Relevant Enterprise

- *Restricted goods*

- 4.8 Under section 23A(1)(a) of the Act, a 'relevant enterprise' means any enterprise carrying out activities which consist in or include 'developing or producing restricted goods.'
- 4.9 'Restricted goods' means 'goods, software or information the export or transfer of which is controlled by virtue of their being specified in the relevant export control legislation'.⁴⁰

- *Relevant export control legislation*

- 4.10 Section 23A(2) of the Act provides that the 'relevant export control legislation' includes Schedules 2 and 3 to the Export Control Order 2008 (the **Military and Dual-Use Lists**).
- 4.11 By way of example, and of relevance to some of the goods developed or produced by Cobham, Schedule 2 of the Military and Dual-Use Lists includes equipment that is both:
- (a) specially designed for military use; and

⁴⁰ Section 23A(2) of the Act.

(b) specially designed for the handling, controlling, activating, powering with one-time operational output, launching, laying, sweeping, discharging, decoying, jamming, detonating, disrupting or detecting any of the “goods” listed in subparagraph (c) below:

(c) bombs, torpedoes, grenades, smoke canisters, rockets, mines, missiles, depth charges, demolition-charges, demolition-devices, demolition-kits, devices that contain “pyrotechnics”, cartridges and simulators (ie, equipment simulating the characteristics of any of these “goods”), specially designed for military use.⁴¹

4.12 Schedule 2 of the Military and Dual-Use Lists also includes pressure refuellers, pressure refuelling equipment, equipment specially designed to facilitate operations in confined areas and ‘ground equipment’, specially designed or modified for “use” with:

(a) combat aircraft;

(b) other “aircraft” and “lighter-than-air vehicles” (eg, military reconnaissance, assault, military training, transporting and airdropping troops or military equipment, logistics support); or

(c) aero-engines.⁴²

With a Community dimension

4.13 Insofar as the CMA finds that a relevant merger situation exists, it must then determine, pursuant to section 68 of the Act, whether that relevant merger situation gives rise to a concentration with a Community dimension and in relation to which it is prevented from making a referral decision by virtue of European Community law (including the Merger Regulation). The CMA notes in particular that the European Commission has sole jurisdiction to review mergers with a Community dimension (ie those mergers which meet the thresholds set out in Article 1 of the Merger Regulation) pursuant to Article 21(3) of the Merger Regulation.

Assessment

4.14 An assessment of the CMA’s jurisdiction in accordance with the legal framework outlined above is provided below.


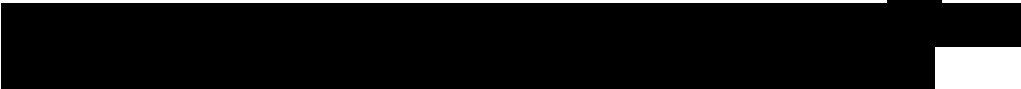

⁴¹ Schedule 2 of the Military and Dual-Use Lists, ML4(b)(1).

⁴² Schedule 2 of the Military and Dual-Use Lists, ML10(f).

Relevant merger situation

Enterprises ceasing to be distinct

The Parties' views

- 4.15 Advent and Cobham submitted that the Transaction will result in the creation of a relevant merger situation, given that funds managed by Advent propose to acquire, through AI Convoy Bidco, 83.2% of the issued and to be issued share capital of Cobham, and thereby acquire control of Cobham.⁴³
- 4.16 The Parties submitted that the Blackstone Group's acquisition of a 16.8% interest in Cobham through AI Convoy Bidco would not meet the 'material influence' threshold under the Act, as the Blackstone Group will not be able to influence the management of the Cobham business or the strategic direction of Cobham. In particular, the Parties submitted that:⁴⁴
- (a) the Blackstone Group's shares in Cobham cannot give rise to material influence as the common equity shares held by the Blackstone Group, amounting to an 16.8% economic interest in Cobham, are all non-voting. Advent will hold all of the voting shares in Cobham and the Blackstone Group will have no votes at shareholder meetings;
 - (b) while the Blackstone Group will have advisory board representation, that fact alone should not be sufficient to confer material influence. 


In addition, they will not sit on the decision-making board of directors;
 - (c) the Blackstone Group will not have veto rights that will allow it to influence Cobham's strategic direction or policy. Rather, the Blackstone Group will have limited and standard veto rights to protect its minority financial investment;
 - (d) while the preference shares will have limited consent rights over typical minority financial investor matters (including in respect of material changes to the nature of the business), this is a standard protection given to lenders in financing transactions irrespective of whether the financing is

⁴³ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraphs 8 and 11.

⁴⁴ Advent's submissions to the CMA dated 23 September 2019, 10 October 2019 and 22 October 2019; and the Blackstone Group's submissions to the CMA dated 24 October 2019.

advanced by way of preference shares or through loan documentation, and it cannot be the intention of the Act to find that lenders acquire material influence by virtue of this standard protection; and

- (e) the CMA's guidance on jurisdiction and procedure in merger cases (CMA2) refers to other possible sources of material influence, none of which are present in this case.

CMA's assessment

- 4.17 As entities which carry on activities for gain or reward, the Parties each constitute an enterprise.
- 4.18 The CMA considered whether the Transaction will lead to each of the Parties ceasing to be distinct.
- 4.19 As noted in paragraph 4.4 above, two enterprises will cease to be distinct if they are brought under common ownership or control.⁴⁵ 'Control' is not limited to the acquisition of outright voting control but may include situations falling short of outright voting control, including the ability to exercise material influence.⁴⁶ In carrying out its assessment, the CMA will focus on 'the acquirer's ability materially to influence policy relevant to the behaviour of the target entity in the marketplace. The policy of the target in this context means the management of its business, and thus includes the strategic direction of a company and its ability to define and achieve its commercial objectives.'⁴⁷
- 4.20 Material influence may be based on the acquirer's ability to influence the target's policy through exercising votes at shareholder's meetings together with any other factors that indicate that the acquiring party exercises an influence disproportionate to its shareholding.⁴⁸ In assessing the influence conferred by shareholding, regard should be had to the distribution and holders of the remaining shareholding, the patterns of attendance and voting at recent shareholder meetings, the existence of any special veto rights and

⁴⁵ Section 26 of the Act.

⁴⁶ Section 26(3) of the Act and paragraph 4.13 of CMA2.

⁴⁷ Paragraph 4.14 of CMA2.

⁴⁸ In accordance with CMA2, paragraph 4.19, a share of voting rights of over 25% is likely to be seen as conferring the ability materially to influence policy. However, although there is no presumption of material influence below 25%, the CMA may examine any shareholding of 15% or more in order to see whether the holder might be able materially to influence the company's policy in accordance with CMA2, paragraph 4.20. Exceptionally, a shareholding of less than 15% might attract scrutiny where other factors indicating the ability to exercise material influence over policy are present (paragraph 4.20 of CMA2).

any other special provisions in the company's constitution conferring an ability materially to influence its policy.⁴⁹

- 4.21 Material influence may also arise if the acquirer is able to influence the board of the target,⁵⁰ or through other arrangements (such as consultancy or financial arrangements that give material influence over the target's commercial policies).⁵¹
- 4.22 Pursuant to the Transaction, Advent will acquire a 83.2% stake in Cobham and thus a controlling interest in the target.⁵²
- 4.23 As a result of the Transaction, the Blackstone Group will indirectly acquire a 16.8% interest in Cobham. The Blackstone Group's rights derive from holding:
- (a) ordinary shares issued in AI Convoy Topco & Cy S.C.A (**Topco**), the parent company of AI Convoy Bidco pursuant to the Share and Purchase Deed dated 24 July 2019 (the **Shareco Deed**) (the **Ordinary Shares**);⁵³ and
 - (b) preference shares issued in AI Convoy & Cy S.C.A (**Prefco**), also the parent company of AI Convoy Bidco (but a subsidiary of Topco) pursuant to the Share and Purchase Deed dated 24 July 2019 (**Prefco Deed**) (the **Preference Shares**).⁵⁴ (See Annex 1, Figure 1: Corporate Structure of Advent).
- 4.24 These are considered in further detail below.

Rights as Ordinary Shares Holder

- 4.25 So long as the Blackstone Group holds more than 10% of the Ordinary Shares in Cobham:
- (a) it is entitled to appoint a member to the main advisory board of each sector of Topco and its subsidiaries (including Cobham) (Clause 4.1 of the Shareco Deed), which is 'responsible for key strategic decision making for that sector.' However, the director's presence will not be required for the purposes of any board quorum. [REDACTED]

⁴⁹ Paragraph 4.21 of CMA2.

⁵⁰ Paragraph 4.23 of CMA2.

⁵¹ Paragraphs 4.26-4.27 of CMA2.

⁵² Paragraph 4.30 of CMA2.

⁵³ See Shareco Deed, available at http://www.cobhaminvestors.com/recommended_cash_offer.

⁵⁴ See Prefco Deed, available at http://www.cobhaminvestors.com/recommended_cash_offer.

(b) it shall have the benefit of the same information rights as Cobham and Advent in relation to Topco and its subsidiaries (including Cobham) (Clause 4.6 of the Shareco Deed).

4.26 Under Clause 2 of the Shareco Deed, securities will be issued to the Blackstone Group via Topco. These securities hold the same economic rights and are in the same ratios (ie the proportion of different types of share, eg ordinary, preference etc, within the collective shareholding) as those held by Advent, except that they are non-voting (Clause 2.1(a) of the Shareco Deed and Article 5.8 of the articles of association).

4.27 The Blackstone Group gives an irrevocable power of attorney to Advent to exercise rights accruing under its Ordinary Shares under Clauses 7.1-7.2 of the Shareco Deed (including attending and participating any general or other meetings on the Blackstone Group's behalf, and approving, completing or otherwise executing any consents/ agreements etc) provided that the Blackstone Group's rights are not materially disproportionately prejudiced. This power is subject to Clause 14.2 of the Shareco Deed.

4.28 Clauses 14.2 and 14.3 of the Shareco Deed state that prior consent must be sought from the Blackstone Group in relation to any of the following:

- (a) amendment to the articles of association or any other constitutional documents of Topco/Prefco, including their subsidiaries (ie Cobham);
- (b) exercise by Advent of the voting power of attorney;
- (c) steps, actions, events, structures or changes to the capital structure/ constitutional documents which are required for the implementation of the managers' incentivisation plan; for tax restructuring purposes; or
- (d) certain permitted reorganisations, shares issues, acquisitions, disposals, mergers, joint ventures, loans, payments and other transactions

in each case where the action adversely affects the economic rights of the Blackstone Group in a manner disproportionate to their effect on the economic rights held by Advent.

Rights as Preference Shares holder

4.29 Pursuant to the Prefco Deed, the Blackstone Group (only) subscribes to Preference Shares in Prefco (Clause 2 of the Prefco Deed).

4.30 The Preference Shares do not carry voting rights or entitle the holder to nominate any person to the board of directors (Clause 5.1 of the Prefco

Deed). However, the Blackstone Group shall have the reasonable opportunity, upon reasonable request, to consult with management of Prefco and its subsidiaries (including Cobham) regarding Prefco and its subsidiaries' (including Cobham) business, provided that such consultations do not exceed once in any fiscal year and otherwise do not unreasonably interfere with the business and operations of Prefco and its subsidiaries (including Cobham).

4.31 In addition, pursuant to Clause 5.2 of the Prefco Deed, prior written consent must be obtained from the Blackstone Group in relation to certain 'reserved matters.' The reserved matters are set out in Schedule 2 of the Prefco Deed and include:

- (a) payments in relation to its share capital to its shareholders; the redemption/purchase/repurchase of its share capital; the repayment of outstanding amounts under certain loans to any company/entity with (direct/indirect) shares in Prefco unless they are a preference shareholder (ie the Blackstone Group) or an individual not acting in their capacity as an interest-holder;
- (b) the ability to incur or to allow to remain outstanding, certain financial debts except where it is permitted under a specific agreement, is as a result of an agreed shareholder loan, or is a permitted financial debt that does not exceed certain debt ratios;
- (c) the granting of permission to Cobham to engage in business other than the same which is already been specifically agreed; except where the new business would not have a material impact on Topco/Prefco/Cobham; and
- (d) the merger/demerger/consolidation of Cobham with another entity, or to engage in any corporate reorganisation, except where permission has already been agreed.

- *Shareholding*

4.32 The CMA agrees with the Parties that the Blackstone Group's shareholding of 16.83% in Cobham in isolation is unlikely to confer material influence. In particular this shareholding does not confer voting rights.⁵⁵

- *Board representation*

4.33 The CMA recognises that the Blackstone Group's representative will not have a majority on the advisory boards or affect quorum. [REDACTED]

⁵⁵ Subject to the reserved rights discussed below.

[REDACTED]

4.34 However, the CMA notes that the advisory boards will make recommendations to Cobham's operational boards⁵⁶ and are responsible for the key strategic decision making for the relevant sector.⁵⁷ On this basis, the CMA considers that the recommendations of the advisory boards can be expected to exert some influence on their operational counterpart and thus contribute to 'key strategic decision making' within Cobham.

4.35 In addition, while the Blackstone Group submits that the Blackstone Group entities are managers of the investing funds and the Blackstone Group's Board representatives [REDACTED] the CMA understands that the Blackstone Group [REDACTED].⁵⁸ As such, Blackstone has the ability to (and it would be rational for it to) appoint a representative that has a least some relevant industry expertise.

- *Reserved rights*

4.36 The CMA considers that, while certain of the Blackstone Group's reserved rights can be classified as minority shareholder protection matters, eg insolvency proceedings, fundamental changes to the company's existing lines of business and changes to the dividend policy,⁵⁹ some of the rights extend beyond such matters.

4.37 In particular, the CMA refers to the veto right conferred on the Blackstone Group regarding material changes to the nature of the Cobham business. In the absence of any definition of 'material' in this context, the CMA considers on a cautious basis that such a broadly defined right may be sufficient to enable the Blackstone Group to exercise material influence.⁶⁰

- *Right to information*

4.38 The CMA notes that the Blackstone Group 'shall have the benefit of the same information rights as Cobham and Advent in relation to the Cobham group.' The CMA does not expect minority shareholders to be granted such extensive

⁵⁶ Advent's submission to the CMA, dated 8 October 2019.

⁵⁷ Clause 4.1 of the Shareco Deed.

⁵⁸ In its submission dated 8 October 2019, Advent stated that [REDACTED]

⁵⁹ As referred to in *RREEF Fund/Kelda*, 21 June 2010, paragraphs 11-14.

⁶⁰ The CMA notes the difference with *RREEF Fund/Kelda* where the reserved right related to 'fundamental' changes to the nature of the business.

rights to information and thus considers that this provision may also be indicative of its ability to exert material influence, taken together with the other factors considered above.

- *Conclusion on material influence*

- 4.39 The CMA believes that it is or may be the case that, as a result of the Transaction, Advent would acquire a controlling interest and the Blackstone Group would have the ability to materially influence policy relevant to the behaviour of Cobham in the market place as a result of a combination of the following factors:
- (a) its ability to appoint a member to each advisory board;
 - (b) its relevant industry knowledge;
 - (c) its access to Cobham's commercial information; and
 - (d) the scope of its veto rights, which extend beyond pure minority shareholder protections, in particular as they relate to material changes to the nature of Cobham's business.
- 4.40 In view of the acquisition of control by Advent and the Blackstone Group (albeit different levels of control) being effected via a single agreement and being conditional on one another, the CMA has considered the two acquisitions as forming part of one single relevant merger situation.
- 4.41 The CMA therefore believes that arrangements are in progress or in contemplation which will lead to two or more enterprises to cease to be distinct.

Jurisdictional thresholds

- 4.42 The CMA has considered whether the Transaction meets the relevant turnover thresholds: it has considered whether Cobham meets the £70 million threshold (section 23(1)(b)(ii) of the Act), as well as the new £1 million threshold relating to a 'relevant enterprise' (as that term is defined in section 23A of the Act).⁶¹

⁶¹ As this was identified as the relevant threshold in the Notice.

Section 23(1)(b)(ii) threshold

The Parties' views

- 4.43 Advent and Cobham submitted that Cobham's UK turnover was more than £70 million in 2018.⁶²

CMA's assessment

- 4.44 As noted by Advent and Cobham, Cobham's turnover exceeded £70 million in 2018. Accordingly, the CMA considers that the turnover threshold as set out in section 23(1)(b)(ii) of the Act is met.
- 4.45 In light of the findings above, the CMA therefore considers that a relevant merger situation will be created. However, as set out in paragraph 4.42 above, as the Notice considers whether the turnover threshold in section 23(1)(b)(i) of the Act is met, the CMA has gone on to assess whether, in the alternative, the threshold test in section 23(1)(b)(i) of the Act is met.

Section 23(1)(b)(i) threshold

The Parties' views

- 4.46 Cobham submitted that the jurisdictional test under section 23(1)(b)(i) of the Act, which calls for an enterprise being taken over to have UK turnover exceeding £1 million, is met in this case.⁶³
- 4.47 Cobham submitted that it constitutes a 'relevant enterprise' under section 23A of the Act on the basis that its activities consist in or include the development and production of restricted goods, being goods the export or transfer of which is controlled by virtue of their being specified in export control legislation (but not goods which are prohibited from being exported or transferred to one country only). In particular, Cobham submitted that it manufactures a number of goods that are listed on the Military and Dual-Use Lists, for example weapons carriage and release systems, which are rated ML4(b)(1) and ML10(f) on Schedule 2 to the Military and Dual-Use Lists.⁶⁴

⁶² Advent and Cobham submission to the CMA, dated 23 September 2019, paragraph 11.

⁶³ Cobham submission to the CMA, dated 8 and 9 October 2019.

⁶⁴ Cobham submission to the CMA, dated 8 and 9 October 2019.

The MoD's views

- 4.48 The MoD agreed with Cobham's submissions on this point. In particular, the MoD noted that Cobham is engaged in activities involving the development or production of goods specified in the relevant export control legislation and holds information that is capable of use in connection with the development or production of restricted goods.⁶⁵
- 4.49 The MoD noted Cobham's involvement in a number of areas covered by the Military and Dual-Use Lists, including, amongst other items, weapons carriage and release systems.⁶⁶

CMA's assessment

- 4.50 In the course of the enterprises ceasing to be distinct, as set out in paragraph 4.41 above, Advent and the Blackstone Group will bring Cobham, a 'relevant enterprise', under their ownership or control.
- 4.51 The CMA considers that Cobham is a 'relevant enterprise' under section 23A of the Act. Cobham manufactures weapons carriage and release systems, which are rated ML4(b)(1) and ML10(f) on Schedule 2 to the Military and Dual-Use Lists. The CMA therefore considers that it is involved in producing restricted goods.
- 4.52 As set out in paragraph 4.44 above, the enterprise being taken over in the Transaction, Cobham, had turnover exceeding £1 million in 2018.
- 4.53 Consequently, the CMA considers that the alternative threshold test in section 23(1)(b)(i) of the Act is met.

Conclusion on whether there is a relevant merger situation

- 4.54 For the reasons listed above, namely that the Transaction will result in each of the Parties ceasing to be distinct and because the Transaction meets the thresholds set out in section 23(1)(b) of the Act, the CMA considers that the Transaction will result in a relevant merger situation if arrangements which are in progress or in contemplation are carried into effect.

⁶⁵ MoD submission to the CMA, dated 17 October 2019.

⁶⁶ The other items referred to by the MoD included components for military radars - rated ML5.b; ground vehicle military communications equipment - rated ML6.a; emergency locator transmitters - rated ML10.a and ML11.a; components for ground vehicle military communications equipment, components for military communications equipment, ground vehicle military communications equipment - rated ML11.a; systems used to detect improvised explosive devices and landmines - rated ML21.c; software enabling equipment to function as military improvised explosive device decoying/detection/disposal/jamming equipment - rated ML21.c; and technology for unmanned air vehicles - rated ML22.a. MoD submission to the CMA, dated 17 October 2019.

European relevant merger situation

Concentration with a Community Dimension

4.55 As the CMA has concluded that there is a relevant merger situation, it must also consider whether as a result of that relevant merger situation, a concentration with a Community dimension or a part of such a concentration, will arise.

The Parties' views

4.56 Advent and Cobham submitted that the Relevant Concentration involves the acquisition of sole control within the meaning of the Merger Regulation, as funds managed by Advent intend to acquire sole control over Cobham.

4.57 Advent and Cobham also submitted that the turnover thresholds in Article 1(2) of the Merger Regulation are met because Advent (together with the companies controlled by it for purposes of the Merger Regulation) and Cobham each have Union-wide turnover of more than €250 million, the combined worldwide turnover of Advent and Cobham exceeds €5,000 million, and it is not the case that each of Advent or Cobham achieved more than two-thirds of its Union-wide turnover in the same Member State.⁶⁷

CMA's assessment

4.58 Advent's anticipated acquisition of Cobham was notified to the European Commission on 1 October 2019. The European Commission concluded it has jurisdiction over the Relevant Concentration and issued a clearance decision on 25 October 2019.

4.59 The CMA considers that the Transaction gives rise to a European relevant merger situation because:

- (a) Advent acquired control over Cobham, within the meaning of Article 3(1)(b) of the Merger Regulation; and
- (b) the turnover thresholds in Article 1(2) of the EU Merger Regulation are met.⁶⁸

⁶⁷ Advent and Cobham submission to the CMA, dated 23 September 2019, paragraph 10.

⁶⁸ Advent (together with the companies controlled by it for purposes of the Merger Regulation) and Cobham each have Union-wide turnover of more than €250 million, the combined worldwide turnover of Advent and Cobham exceeds €5,000 million, and it is not the case that each of Advent or Cobham achieved more than two-thirds of its Union-wide turnover in the same Member State.

Reference prevented by EU law

4.60 The CMA considers that a reference would be prevented from being made in relation to the relevant merger situation under section 33 of the Act by virtue of EU law since the European Commission has exclusive jurisdiction to review the Relevant Concentration.

Conclusion on jurisdiction - European relevant merger situation

4.61 On the basis of the above, the CMA considers that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, in particular:

- (a) each Party is an enterprise;
- (b) the Transaction, if carried out, will result in each of the Parties ceasing to be distinct;
- (c) the turnover threshold as set out in section 23(1)(b)(ii) of the Act is satisfied, or in the alternative, the thresholds as set out in section 23(1)(b)(i) of the Act are satisfied;
- (d) the Transaction will result in a concentration with a Community dimension within the meaning of the Merger Regulation; and
- (e) a reference under section 33 of the Act is prevented from being made by virtue of EU law.

4.62 Therefore, in accordance with section 68 of the Act, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation.

5. Public interest consideration**Summary of interested parties**

- 5.1 Article 4(3)(b) of the Order requires the CMA to provide a summary of representations it has received which relate to the public interest consideration in question, national security, and which are or may be relevant to the Secretary of State's decision as to whether to make a reference for a Phase 2 assessment under Article 5(2) of the Order.
- 5.2 The CMA received representations from the Cobham, the MoD, the Home Office and eight third-parties.

5.3 In accordance with Article 4(3)(b) of the Order, the CMA summarises below the representations made to it in relation to national security matters.

Cobham

- 5.4 On 1 October 2019, Cobham submitted that most key NATO country domiciled defence firms have legal entities in the UK and are significant suppliers to the MoD.
- 5.5 Cobham submitted that the MoD and Home Office have specific mandatory requirements in place for their contractors in order to ensure that classified and sensitive information is adequately protected, including the creation of List X sites as a control mechanism for the handling of sensitive information or assets.
- 5.6 Cobham submitted that these requirements will apply regardless of whether Cobham is owned by a private equity firm or another type of investor, and that the contractual relationship and associated legal framework between the Cobham legal entity supplying the MoD will not change because of a change in the ultimate ownership of the parent entity.
- 5.7 Cobham also submitted that Advent is in any event a US company, and that the US is a key ally of the UK, a member of NATO and the Five Eyes community, and that the UK-US defence and security relationships are extremely close and intertwined, well-developed and built on long-standing trust.
- 5.8 Cobham further submitted that, [REDACTED] Cobham's current supply into defence platforms (typically at tier two or tier three of the supply chain) relies on long interdependent supply chains which cross national borders, and which are dependent on foreign technology, input or know how.⁶⁹
- 5.9 On 4 October 2019, Cobham also made further submissions to the CMA in response to submissions that were disclosed to Cobham by a third-party national newspaper.⁷⁰ The submissions associated with these third-party views are detailed below at paragraph 5.32.
- 5.10 The CMA has shared all Cobham's submissions relating to national security with the MoD and Home Office.

⁶⁹ Cobham submission to the CMA, dated 1 October 2019.

⁷⁰ Cobham submission to the CMA, dated 4 October 2019. See paragraph 5.34 below.

The MoD

- 5.11 The MoD submitted that it considers that there are two main areas of national security concern arising from the proposed Transaction, namely those arising from:
- (a) the potential for any parties to the Transaction to have access to information, either held on, or passing through, Cobham's systems, which would allow unauthorised persons to understand either the detail of MoD capabilities and activity, or would allow a more strategic picture of capabilities and activity to be built up; and
 - (b) the extent to which the Transaction posed a risk to existing MoD programmes if the merged entity took decisions to exit from, underinvest in, or move off-shore, the associate capability.
- 5.12 The MoD issued information requests to Cobham, Advent, and to selected industry parties, as well as assessing a number of the representations made to the CMA. MoD officials and defence subject matter experts also conducted a site visit to Cobham. Advent provided transaction, financial, and strategy documents which set out the proposed company structure after the Transaction, and the MoD has taken account of these changes to the company structure.
- 5.13 The MoD submitted that in its investigation it sought to establish whether, following the Transaction, insufficient security controls within the new ownership structure could result in unauthorised access to sensitive defence and security data held by Cobham or carried on Cobham's systems. The Government publishes guidance on Industrial Security - Departmental responsibilities;⁷¹ and Security Requirements for list X contractors.⁷² Through Cobham's responses to information requests and from reviewing arrangements on the Cobham facilities site visit, the MoD has assessed the implications of the Transaction on Cobham's continued compliance with that framework.
- 5.14 In assessing the risk to Cobham's current classified information control mechanisms, the MoD noted that Advent has limited experience of owning large defence contractors and of the security culture and procedures that go along with this. The MoD noted that that the proposed structure of the Cobham companies post-Transaction relied on advisory boards, which

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/367514/Security_Requirements_for_List_X_Contractors.pdf

⁷² <https://www.gov.uk/government/publications/industrial-security-departmental-responsibilities>

included members appointed by the Blackstone Group, Advent and industry experts. Given the significant nature of this restructure, the MoD considered that there was a risk that the institutional framework and safeguards required by the Government's security framework may be undermined.

- 5.15 The MoD submitted that further national security concerns focussed on the question of whether, under the ownership of the consortium led by Advent and, in turn, with the potential for strategic direction from the Advent consortium members, certain parts of the Cobham group that provide critical services could cease to operate or be sold or transferred abroad. Such moves could change, to the detriment of UK defence, the contractual or regulatory structures around access to those inputs or require the Government or Cobham's delivery partners to put in place alternatives.
- 5.16 The MoD submitted that it is important to ensure the continuity of supply of specified services and capabilities that are important to the ability of MoD to operate at the present time. It therefore considers it important that any withdrawal of service comes with sufficient notice of termination to allow migration to an alternative supplier and does not represent an overall loss of capability, in terms of skills, handling, and knowledge, to important programmes. Advent's stated intent is to buy, improve and sell. The MoD believes that the advisory boards will have a significant influence over how the investment in Cobham will be realised, again noting that the advisory boards will be a primary source of industry expertise. In light of this, the MoD believes that the acquisition changes the strategic incentives of the Cobham and raises the risk to UK capability.⁷³

The Home Office

- 5.17 The Home Office submitted that the TETRA devices were deemed to be of sufficient interest in terms of national security during the Hytera – Sepura review undertaken in 2017, and that national security continues to be relevant to the proposed Transaction, to:
- (a) protect sensitive information and technology; and
 - (b) maintain UK capabilities in servicing and maintaining radio devices used by emergency services and other agencies in the UK.
- 5.18 The Home Office submitted that ACS devices [REDACTED] are used by the UK's emergency services and other UK authorities [REDACTED]. [REDACTED] In the Home Office's view, unauthorised

⁷³ MoD submission to the CMA, dated 17 October 2019.

access to this technology and information or insufficient security controls on access could directly prejudice the operations and security of the emergency services.

- 5.19 The Home Office noted that it is considered not to be an issue if the system is provided and supported by a US / EU country [REDACTED]. Cobham's solution includes participation by its US subsidiaries [REDACTED] providing essential design and hardware manufacture during the development phase of the programme. The system will be maintained and supported through-life by Cobham primarily in its UK facilities.
- 5.20 The Home Office submitted that if [REDACTED].
- 5.21 The Home Office submitted that the impact of not acquiring the new capability through Cobham would be considerable; [REDACTED].
- 5.22 The Home Office submitted that areas of concern arising as a result of the proposed new ownership include physical security in relation to company processes and premises, system security in IT systems, and personnel security in relation to employees and company management. The Home Office therefore considers that it would be necessary under any new ownership arrangements to ensure that such information and technology is protected, [REDACTED].
- 5.23 The Home Office also submitted that the availability and support of the ACS devices is a critical ESN capability [REDACTED]. The Home Office submitted that, given the fact that the emergency services is one of the 13 Critical National Infrastructure sectors and considering the resultant loss of capability which could occur (albeit in a worst-case scenario), the Home Office considers that there are implications for national security here. [REDACTED].

5.24 The Home Office also concurred with MoD's submissions set out at paragraphs 5.11(a), 5.11(b), and 5.16 above, in relation to the emergency services capabilities, and services sponsored by the Home Office.⁷⁵ In particular, the Home Office submitted that the work of the UK emergency services and other government agencies is central to the protection of public safety and national security and relies on availability of functioning radio devices. Cobham is a key supplier of those radio devices.⁷⁶

Other third-parties

5.25 Three third-parties informed the CMA that they did not consider that the Transaction posed any national security concerns.⁷⁷ These parties submitted that there are already security arrangements in place between defence contractors and the UK authorities ensuring that sensitive information remains secure.

5.26 One of these third-parties submitted further that the MoD already has a strict system in place for managing sensitive defence manufacturing sites in the UK, including the safeguarding of data and material, and that these apply regardless of the owner of the contractor company. This third-party noted that this is particularly the case where the owner is a US company, as the US is a UK ally and NATO member. This third-party also noted that these security arrangements currently applied to at least two foreign-owned companies, and that previous national security investigations into UK defence company acquisitions have resulted in these acquisitions being permitted.

5.27 Two of these three third-parties submitted that the MoD's open and competitive approach to procurement has encouraged international companies to invest in the UK and supply to the UK defence sector.

5.28 Five third-parties made submissions raising national security concerns.⁷⁸

5.29 From these five third-parties, one submitted that Advent's bid could jeopardise national security through Cobham falling into foreign hands. Another third-

⁷⁴ Home Office submission to the CMA, dated 27 September 2019.

⁷⁵ MoD submission to the CMA, dated 17 October 2019.

⁷⁶ Home Office submission to the CMA, dated 27 September 2019.

⁷⁷ These three third-parties also raised other wider public interest considerations in support of the Transaction, which were not specified public interested considerations for the purposes of the Act.

⁷⁸ Two of these third-parties also raised other wider public interest considerations in support of the Transaction, which were not specified public interested considerations for the purposes of the Act.

party submitted that Cobham is an important British company serving the RAF and other authorities and the merger should not be allowed.

- 5.30 Another third-party referred specifically to Cobham's UK aviation services business, in particular its [REDACTED]. This third-party submitted that the Transaction risks the maintenance of UK sovereign capabilities and protection of classified technology and information and could reduce the UK's military freedom of action and operational advantage. In particular, it submitted that:
- (a) there is a real prospect, evidenced by Advent's business strategy published under rule 24.2 of the Takeover Code, that Advent will decide to sell Cobham's UK aviation services business to another non-UK entity;
 - (b) Cobham's non-UK ownership could prejudice national security through a reduced focus on UK specific threats and capabilities in order to seek to expand into other markets, or by moving day-to-day management of programmes in support of the MoD overseas; and
 - (c) during the period after the Transaction, where Advent will evaluate the Cobham business, and in the event that Advent does not identify Cobham's UK aviation services business as a core business for growth, there is a real risk that the business's capabilities will be damaged or lost through a lack of required investment and attrition of highly skilled staff.
- 5.31 A fourth third-party made submissions relating to Cobham's air-to-air refuelling business. This third-party submitted that this business is a strategic UK capability, and crucial to the RAF and Royal Navy, whose current and future aircraft fleet are reliant on Cobham's air-to-air refuelling technology.⁷⁹ In particular, this third-party expressed the following concerns:
- (a) due to Advent being a US company, Cobham's air-to-air refuelling business would likely have US export restrictions placed on it, which may conflict with UK interests;
 - (b) there is a serious risk that some or all of Cobham's air-to-air refuelling business would be moved out of the UK, including to the US;

⁷⁹ Part of these submissions touched on this third-party's proposed remedies. As the CMA understands that the MoD and Home Office will advise the Secretary of State directly in relation to remedies, these submissions are not summarised here. However, as set out in paragraph 5.35 below, these submissions were provided to the MoD and Home Office.

(c) without sovereign capability, the UK would not have the ability to control the direction of technology development for its ongoing defence needs, and that this technology may instead be developed to support US needs; and

(d) Advent's status as a private equity investor means that it is not a suitable owner for Cobham's air-to-air refuelling business, because: (i) Advent has no history of owning defence businesses, and has a history of acquiring businesses with an objective of exiting them quickly, and potentially breaking them up; (ii) Advent is unlikely to make the required long-term investments into required technology, equipment, and research and development, in order to support, maintain and upgrade the air-to-air refuelling business.

5.32 A fifth third-party noted that Cobham is the global leader in air-to-air refuelling technology and infrastructure and has market-leading positions in other product sectors, including [REDACTED]. This third-party also highlighted the strategic importance of Cobham's manufacture of antennae, satellite communications and space technology, and [REDACTED].

5.33 This third-party expressed several national security concerns, mainly related to Advent's status as a foreign private equity investor, including the following:

(a) there is a risk that Advent might review Cobham's current activities and either run down, sell off or transfer key defence capabilities abroad. Any transfer of activities abroad could impact the UK's security of supply and timely delivery of advice and systems;

(b) if UK Intellectual Property (IP) were combined with foreign IP, this would potentially lead to the imposition of export controls that hinder the UK's ability to use Cobham technology;

(c) there is a question over the way in which Advent may exercise its [REDACTED].

(d) Advent is not a long-term or strategic investor. As a private equity firm, to fulfil its business model and achieve a return on its investment, Advent is likely to sell off Cobham in whole or in part to unknown bidders, with the

consequence that crucial UK defence capability could end up in foreign hands;

- (e) the uncertainty about Cobham's future ownership puts at risk the maintenance of strategic UK military capabilities, the protection of classified technology and information, and the independence and impartiality of research outputs and freely available advice; and
- (f) as Cobham's capabilities depend on classified technology and information, some of which is available only to UK nationals, leakage of such information to non-UK owners could directly prejudice national security.⁸⁰

5.34 In response to extracts of this third-party's submission that were disclosed to Cobham by a third-party national newspaper, Cobham submitted that:

- (a) UK's indigenous space capability is largely foreign owned, and that the vast majority of Cobham's space capability is already based off shore and selling on the international market;
- (b) ;
- (c) there is no evidence to suggest that any long-term contracts are at risk, or reason to believe that Cobham will not continue to abide by its contractual and legal obligations after a change of ownership; and
- (d) Cobham's research (and any related advice) is related to Cobham products solely. Its research and development in support of other nations is governed and protected on their behalf in the same way.⁸¹

5.35 The CMA shared all the submissions relating to national security expressed above with the with the MoD and Home Office.

MoD advice on party and third-party representations and national security matters

5.36 Separately to representations received by the CMA, the MoD received representations and documentation from Cobham, Advent, and third-parties

⁸⁰ Part of these submissions touched on this third-party's proposed key objectives for remedies, if remedies were to be agreed. As the CMA understands that the MoD and Home Office will advise the Secretary of State directly in relation to remedies, these submissions are not summarised here. However, as set out in paragraph 5.35 above, these submissions were provided to the MoD and Home Office.

⁸¹ Cobham submission to the CMA, dated 4 October 2019.

concerning national security. The CMA has not seen or considered the representations received directly by the MoD.

6. Remedies – Undertakings in lieu

- 6.1 The MoD and the Home Office informed the CMA that they have been considering the specific risks identified in relation to national security matters and possible remedies to address those risks. The CMA understands that the MoD will advise the Secretary of State directly in this regard.
- 6.2 Although the CMA is aware of the general nature of the national security concerns held by the MoD and the Home Office,⁸² the CMA provided no views to the MoD on the substance of any undertakings, were they to be required and offered.
- 6.3 The CMA has no reason to doubt any representations made by the MoD on the appropriateness of any undertakings to remedy or prevent the specific effects adverse to the public interest identified by it and which are briefly described above.

7. Assessment and advice to the Secretary of State

- 7.1 The CMA produces this report to the Secretary of State pursuant to its duty under Article 4(2) of the Order.
- 7.2 This report contains a decision on whether the CMA believes that it is, or may be, the case that a European relevant merger situation has been created.
- 7.3 This report also contains a summary of the representations about the case which it has received (from the MoD, Home Office, and from eight third-parties) which relate to the national security public interest consideration mentioned in the Notice.
- 7.4 This report does not contain advice or recommendations on the public interest consideration under Article 4(5) of the Order

[REDACTED]

[REDACTED]

29 October 2019

⁸² As outlined at paragraphs 5.11 to 5.24 above.

Annex 1

[Redacted]

[Redacted]