



ANTICIPATED ACQUISITION OF COBHAM PLC BY AI CONVOY BIDCO LTD
NOTICE OF PROPOSED UNDERTAKINGS OFFERED BY THE PARTIES

Views are sought by midnight at the end of Tuesday 17 December 2019 on the attached undertakings which are designed to mitigate public interest concerns in relation to the interests of national security raised by the proposed merger.

Intervention under the Enterprise Act 2002

1. On 17 September 2019, the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) issued a European intervention notice to the Competition and Markets Authority (“CMA”) under section 67(2) of the Enterprise Act 2002 (“the Act”) in relation to the proposed acquisition by AI Convoy Bidco Limited (an indirect subsidiary of funds managed by Advent International Corporation) of the entire issued and to be issued ordinary share capital of Cobham plc (“Cobham”) (“the merger”).
2. On 29 October 2019, the CMA reported to the Secretary of State in accordance with article 4 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (“the Order”). The report set out the CMA’s 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, and summarised the representations it received relating to the national security public interest consideration specified in the intervention notice.
3. The Secretary of State received further written and oral advice directly from the Secretary of State for Defence about the national security implications of the merger.
4. On 5 November, the Secretary of State tabled a Written Ministerial Statement communicating her belief that the decision on how to proceed in the case required further full and proper consideration of the issues. The Secretary of State subsequently met separately the CEO of Cobham and Directors of Advent in order to discuss remaining concerns.
5. In light of the report from the CMA and advice of the Secretary of State for Defence, the Secretary of State considers that she has the power to refer the merger, under article 5(3) of the Order, to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to carry out a more detailed assessment. This is termed a “phase 2 inquiry”.

6. Alternatively, if the Secretary of State would otherwise be minded to refer the merger to a phase 2 inquiry, she may accept undertakings from the parties in lieu of such a reference to mitigate public interest concerns, under paragraph 3 of Schedule 2 to the Order.

Public interest concerns

The Secretary of State considers that the following risks are raised by the merger:

7. **Security of Information.** Several Cobham sites hold sensitive information belonging to Her Majesty's Government ("HMG") which supports the delivery of services for the Ministry of Defence and the emergency services. There is a risk that, as a result of this transaction, personnel without the required clearances could gain access to such information.
8. **Security of Supply.** Cobham supplies products and services which are important to the delivery of HMG outputs. There is a risk that Cobham's new owners could have different priorities and under-invest in, or exit from, key products and services. For the Ministry of Defence this applies to a number of services, including the operational readiness training and assurance services Cobham provides for the Royal Navy and the Royal Air Force.

Proposed undertakings

9. Following discussions with the Ministry of Defence, the parties have offered undertakings designed to mitigate the public interest concerns. These would:
 - a) ensure that existing security arrangements which currently apply to Cobham and protect sensitive HMG information will be continued and strengthened, and that, in addition to existing boards, new Board structures that Advent plan to institute will comply with nationality requirements;
 - b) require Cobham's new owners to honour the terms of existing contracts, notify the Ministry of Defence in advance if there is a material change to Cobham's ability to supply key services, and refrain from withdrawing from any specified service for a set period; and
 - c) require Cobham's new owners to give the Ministry of Defence prior notice of plans to sell the whole, or elements of, Cobham's business in order to inform the exercise of Enterprise Act powers designed to protect national security interests in the context of any future transactions.
10. The Secretary of State considers that the proposed undertakings would mitigate the national security risks identified to an acceptable level and therefore proposes to accept the undertakings instead of making a reference to a phase 2 inquiry.
11. The Secretary of State now publishes the proposed undertakings for consultation, in accordance with paragraph 2 of Schedule 10 to the Act (as applied, with modifications,

by paragraph 2 of Schedule 3 to the Order), and will consider any representations made before making a decision about whether to accept the undertakings.

Consultation responses

12. Views are sought by **midnight at the end of Tuesday 17 December 2019**. Responses should be sent to publicinterestconsultation@beis.gov.uk.

Disclosure, Confidentiality and Data Protection

13. We may publish non-confidential versions of the responses received on the GOV.UK website and may also refer to them in any response to the consultation, or in further publications related to the Secretary of State's decisions. We would be grateful if you would indicate in your response whether you would be content for your response to be published and submit a non-confidential version for publication highlighting any redactions you wish to make. It would also be helpful if you would indicate whether you are content for your name and/or the name of your organisation to be published either alongside your response, or if not, as having responded to the consultation.
14. All responses and personal data will be processed in compliance with the Data Protection Act 2018 and the General Data Protection Regulation. More information on disclosure, confidentiality and data protection is set out in the Privacy Notice associated with this consultation.

Related information

15. All documents published by the Department in relation to the proposed merger are available at: www.gov.uk/government/consultations/proposed-acquisition-ofcobham-plc-by-advent-international-draft-undertakings.

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