

BAE SYSTEMS – MERGER UNDERTAKINGS REVIEW

Summary of hearing with the Ministry of Defence held on 22 November 2016

1. The Ministry of Defence (MOD) told us that the undertakings remained a relevant mechanism to ensure that competition remained in the market. The MOD said that through use of the undertakings, other prime contractors had access to key onshore capabilities of BAE Systems and, in its view, without that access, they might be unable to bid for an MOD programme and competition would be limited or curtailed as a result.
2. The MOD told us that BAE Systems was by far the largest single prime contractor and that the MoD considered the undertakings to be an enduring long-term protection of the potential for competition in the context of a supplier that it regarded as having a dominant position in a number of sectors within defence.
3. The MOD gave its interpretation of a prime contract as being a direct contract with the MOD and it also described its view of the relevance of the undertakings and its view of the circumstances when these did or did not apply.

Current MOD procurement

4. The MOD told us that it agreed there had been some changes of circumstances but in its view, BAE Systems remained dominant in a number of defence sectors and while there were currently a number of long-term agreements with BAE Systems, it felt that it was essential to retain the potential to switch to competition at the prime level.
5. The MOD said that such long-term arrangements were subject to value-for-money criteria and that without the undertakings, the prospects of returning to onshore competition were potentially limited. Hence it considered that the incentives to secure value for money were stronger with the undertakings remaining in existence.

Future MOD procurement

6. The MOD said that it wished to keep its future contracting and procurement options open and the undertakings added value to the potential for competition.
7. The MOD discussed the current prime contracting arrangements and potential future changes in approach by the MOD in the following sectors: combat aircraft, maritime, submarines and munitions. The MOD said that the undertakings could have a potential role within future MOD procurement to facilitate the potential for competition and to secure value for money.

Compliance costs

8. The MOD told us that it considered that the compliance costs associated with the undertakings represented good value for money, noting that in its view the MOD was already likely to be paying for the overhead arising from the compliance programme followed by BAE Systems.