

BAE SYSTEMS – MERGER UNDERTAKINGS REVIEW

Summary of hearing with BAE Systems held on 8 December 2016

1. BAE Systems told us that it considered that the undertakings should be removed due to four significant reasons:
 - (a) There had been major changes to Ministry of Defence (MOD) procurement since 2006 and also BAE Systems had itself reduced its capacity in certain areas of operation.
 - (b) The undertakings had not been used for the purpose for which they were intended and in its view there was no tangible evidence of where they might be needed in the future.
 - (c) There were substantial safeguards in place to address any residual concerns about the market position of BAE Systems, including MOD procurement processes, the creation of the Single Source Regulations Office (SSRO),¹ widespread scrutiny of defence spending and BAE Systems' ongoing compliance with general competition law.
 - (d) The undertakings were contrary to the government policy of reducing regulation and red tape for businesses.
2. BAE Systems told us that the MOD was now much more likely to go into international competition and it provided examples of such instances. It also noted that the MOD had chosen to procure more contracts non-competitively through long-term partnership arrangements based on strategic reasons such as securing value for money and ensuring a national sovereign capability. BAE Systems said that, based on recent MOD procurement models and preferences, it regarded the prime contractor model used by the MOD to be much less relevant than when the undertakings were last reviewed in 2006; in particular, it was not used for large strategic projects.

¹ The [Single Source Regulations Office](#) regulates the UK government's procurement of 'single source', or non-competitive, military contracts.

Current MOD procurement

3. BAE Systems said that at no time since the last review in 2006 had there been any recourse from the MOD to the use of the undertakings. It also said that it was not aware of any substantive arguments from its competitors for the undertakings to be retained.

Future MOD procurement

4. BAE Systems said that it had not seen any evidence or substantive examples to show how the MOD would apply the undertakings in the future and it would be disproportionate to retain the undertakings for speculative hypothetical scenarios. BAE Systems said that there was an inherent improbability of the undertakings applying. While it might theoretically be possible, BAE Systems said that a combination of factors would have to pertain, which had not been the case since 2000, during which time MOD had found other mechanisms to achieve its commercial aims in all of the sectors in which BAE Systems operated.

Compliance costs

5. BAE Systems said that the access requests it received did not relate to the original intention of the undertakings. It regarded the undertakings being implemented as a remedy to prevent BAE Systems from thwarting competition by stopping another prime contractor from bidding for an MOD contract when they could only do so by using BAE's capabilities. BAE Systems said its compliance approach involved logging all access requests where these related to an MOD contract, even though on most occasions there were several contractors with the capability to supply the MOD. It also noted that this approach had led to high numbers of low-value access requests also requiring full compliance with the undertakings.
6. BAE Systems referred to the annual compliance costs and also to the overall administrative burden imposed. It considered these to be disproportionate, unnecessary, and inconsistent with the government policy of reducing red tape for businesses.