

BAES Systems-Marconi merger – invitation to comment on a request to vary undertakings

The Competition and Markets Authority (CMA) is currently considering whether to launch a review under section 75J of the Fair Trading Act 1973 of the BAES Systems-Marconi undertakings which were made to remedy the competition and other public interest concerns arising from the merger.

The undertakings were reduced in scope following a review in 2006 by the Office of Fair Trading. They now require that BAE Systems plc (BAES) 'shall not refuse, in the absence of an objective justification, to make available upon request to an actual or potential prime contractor, to the extent that BAES has available capacity, those resources of BAES that are required by such a contractor to bid for or perform contracts for the purposes of a Ministry of Defence (MoD) programme.' Access must be granted on fair, reasonable and non-discriminatory terms but may be denied if that capacity has been booked by another prime contractor (who may, with the CMA's consent, include another BAES company).

The undertakings also require the appointment of a compliance officer to facilitate and oversee compliance with this requirement, including through annual reports to the CMA and the MoD.

These undertakings can be viewed on [BAES's website](#).

BAES, by reason of a change of circumstances, is seeking removal of the undertakings. BAES has requested that the CMA reviews the remaining undertakings it gave following its acquisition of the Marconi electronic systems business (MES) of the General Electric Company plc in 1999.

In March 2000, the Secretary of State for Trade and Industry (now the Secretary of State for Business, Innovation and Skills) (the Secretary of State) accepted undertakings from BAES to address possible adverse effects arising from its acquisition of MES. In February 2007, following a review by the Office of Fair Trading, the Secretary of State released BAES from the majority of those undertakings.

BAES now questions the continued relevance of these undertakings in the light of further changes in the defence sector since the undertakings were last reviewed. In particular, BAES submits that subsequent changes to MoD procurement strategy have further opened the UK defence sector to suppliers across Europe and worldwide. BAES also cites changes to MoD equipment requirements and to its own business.

If a review were to proceed, the CMA would be required to assess whether there had been a change of circumstances since the acceptance of the original undertakings on 28 March 2000.

The CMA is now seeking views on whether it should carry out a review in the light of both the points BAES has made and the CMA's [Prioritisation Principles](#).