

**Fair Trading Act 1973 Undertakings**

**ACQUISITION OF THE STRATEGIC COMMUNICATIONS BUSINESS OF  
MARCONI PLC BY FINMECCANICA S.p.A..**

**UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND  
INDUSTRY BY**

**FINMECCANICA S.p.A., A COMPANY INCORPORATED IN ITALY WHOSE  
REGISTERED OFFICE IS AT PIAZZA MONTE GRAPPA 4, 00195, ROMA, ITALY  
(NO. 565/32) ("Finmeccanica");**

**PURSUANT TO SECTION 75G(1) OF THE FAIR TRADING ACT 1973**

**WHEREAS:**

- (A) Finmeccanica have acquired all the shares in Marconi Mobile Holdings S.p.A., including Marconi Mobile Holdings Limited ("MMHL") and its UK Defence Subsidiaries, from Marconi plc;
- (B) It appears to the Secretary of State that as a consequence of these arrangements, there is a merger situation qualifying for investigation;
- (C) The Director:
  - (a) has made a recommendation to the Secretary of State that a reference to the Competition Commission should be made; and
  - (b) has under Section 75G(1)(c) of the Act given advice to the Secretary of State specifying particular effects adverse to the public interest which in his opinion the merger situation qualifying for investigation may have or might be expected to have.
- (D) The Secretary of State considers the undertakings given below by Finmeccanica are appropriate to remedy or prevent the effects adverse to the public interest specified in the advice given by the Director and thereby remove the necessity for any reference to the Competition Commission to be made.

**Finmeccanica therefore gives to the Secretary of State the following undertakings for the purpose of remedying or preventing the effects adverse to the public interest specified in the advice given by the Director.**

## INTERPRETATION

1. **In these undertakings:-**
  - 1.1 where reference is made to any company then in the event of any merger, joint venture or acquisition or internal re-organisation or sale either private or to the public, such reference shall be interpreted as applying to the equivalent or successor organisation in the new structure;
  - 1.2 except where the context does not allow, the singular shall include the plural and the plural shall include the singular;
  - 1.3 reference to a clause shall be a reference to a clause within these undertakings;
  - 1.4 “**Act**” means the Fair Trading Act 1973;
  - 1.5 “**Classified**” means requiring protection in the interests of national security and so designated by the application of a national security classification or protective marking;
  - 1.6 “**Compliance Officer**” means a competent person appointed in accordance with clause 2.9;
  - 1.7 the Ministry of Defence is a “**Customer**” when it is either an immediate buyer from MMHL or its UK Defence Subsidiaries or the ultimate user of the products or services that may have been procured by another for the Ministry of Defence;
  - 1.8 “**the Director**” means the Director General of Fair Trading;
  - 1.9 “**Effective Date**” means the date on which these undertakings take effect;
  - 1.10 “**Finmeccanica**” means a company incorporated in Italy whose registered office is at Piazza Monte Grappa 4, 00195, Roma, Italy (no. 565/32);
  - 1.11 “**Military Programmes**” means any defence-related programmes in relation to which MMHL, or any of its UK Defence Subsidiaries, enter into or have entered into contracts or obtain or have obtained any Classified information with the intention of entering into or deciding whether to enter into contracts with the Ministry of Defence;
  - 1.12 “**Ministry of Defence**” means the United Kingdom Secretary of State for Defence;
  - 1.13 “**MMH**” means Marconi Mobile Holdings S.p.A. a company incorporated in Italy whose registered office is at Via A. Negrone 1/A 16153 Genova, Italy, (no. 01294640998);
  - 1.14 “**MMHL**” means Marconi Mobile Holdings Limited a company incorporated in England and Wales (no. 964491) whose registered office is at New Century Park, P O Box 53, Coventry CV3 1HJ;
  - 1.15 “**MSSL**” means Marconi Secure Systems Limited, a company incorporated in England and Wales (no. 3991606) whose registered office is at New Century Park, PO Box 53, Coventry, CV3 1HJ;
  - 1.16 “**Security Undertakings**” means the undertakings made at clause 2;

- 1.17 **“Subsidiary”** has the meaning ascribed to it in Section 736 of the Companies Act 1985 as amended but additionally a company (“**A**”) shall be a subsidiary of another company (“**B**”) if **B** has joint control (with one or more other undertakings) of **A**. “Joint control” has the meaning ascribed to it in the European Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (98/C 66/02);
- 1.18 **“UK Defence Subsidiaries”** means Marconi Mobile Limited (no. 964533), MMSL and Davies Industrial Communications Limited (no.1344574), companies incorporated in England and Wales whose registered offices are at New Century Park, PO Box 53, Coventry, CV3 1HJ;
- 1.19 **“UK Military Capability”** means the capability immediately prior to the Effective Date within MMHL and its UK Defence Subsidiaries to carry out Military Programmes and the capability necessary to perform any contracts (including those entered into after the Effective Date) relating to Military Programmes. The Ministry of Defence shall be the sole arbiter in the event of any dispute as to what is to be construed as UK Military Capability and where Finmeccanica is in any doubt it shall first consult the Ministry of Defence;
- 1.20 **“UK National Security Regulations”** means the regulations in relation to Classified material set out in the Government Manual of Protective Security as amended or supplemented from time to time.

## 2. SECURITY UNDERTAKINGS

Finmeccanica undertakes that:

### **Maintenance of strategic capabilities**

- 2.1 Military Programmes shall continue to be managed and controlled, except in so far as the Ministry of Defence has separately agreed otherwise in writing, by a company or companies incorporated within the UK under English law and in relation to which a majority of the company directors are UK security-cleared British citizens.
- 2.2 Notwithstanding clause 2.1, the board of directors of MSSL shall contain only security-cleared British citizens.
- 2.3 Finmeccanica shall provide to the Ministry of Defence copies of the Articles of Association of MMHL and its UK Defence Subsidiaries.
- 2.4 Finmeccanica, MMHL or its UK Defence Subsidiaries shall inform the Ministry of Defence in writing and thereafter consult with the Ministry of Defence at least 6 months prior to:
- (i) disposal or substantive alienation of any significant defence related asset of MMHL or its UK Defence Subsidiaries. The Ministry of Defence shall be the sole arbiter in the event of any dispute as to what is to be construed as a significant defence related asset and where Finmeccanica, MMHL or the relevant UK Defence Subsidiary is in any doubt it shall first consult the Ministry of Defence. For the avoidance of doubt substantive alienation includes disposal to

Finmeccanica or its Subsidiaries, other than MMHL and its UK Defence Subsidiaries;

- (ii) the voluntary winding-up or dissolution of MMHL and its UK Defence Subsidiaries;
- (iii) running down or affecting adversely in any material way the UK Military Capability within MMHL and its UK Defence Subsidiaries.

2.5 MMHL and its UK Defence Subsidiaries shall ensure continuity of development and/or supply of all goods and services for Military Programmes, for which the Ministry of Defence is a Customer, subject to the Ministry of Defence acting reasonably and offering to place contracts in the future.

### **Protection of Classified Information**

2.6 Except in so far as the Ministry of Defence has separately agreed otherwise in writing, all matters relating to Military Programmes and security within MMHL and its UK Defence Subsidiaries shall be maintained in line with UK National Security Regulations, including the security of work areas subject to special physical ring-fencing and in particular:

- (i) the operational management of the Military Programmes within MMHL and its UK Defence Subsidiaries shall be by personnel with the appropriate UK security clearances, with security procedures meeting UK National Security Regulations and any other such requirements as deemed necessary from time to time by the Ministry of Defence;
- (ii) only personnel with appropriate security clearance shall have access to material marked "Confidential" and above;
- (iii) no material marked "Confidential" or above, or to which access is similarly limited, shall be passed to the boards of directors of Finmeccanica, MMH or its Subsidiaries (except MMHL and its UK Defence Subsidiaries) without the prior written approval of the Ministry of Defence. Transfers by whatever means of Classified information to Finmeccanica, MMH or its Subsidiaries (except MMHL and its UK Defence Subsidiaries) or to foreign nationals or to locations outside the UK national jurisdiction shall only be conducted subject to the prior written approval of the Ministry of Defence;
- (iv) no transfer or disclosure by whatever means of material marked "Confidential" or above and no other Classified information which is owned by a third party or country shall in any circumstances be disclosed to foreign or dual nationals, without the prior written approval of the Ministry of Defence.

### **Intellectual Property Rights**

2.7 Finmeccanica shall ensure that MMHL and the UK Defence Subsidiaries are aware of and bound by the rights of the Ministry of Defence at the Effective Date in respect of any intellectual property (including information, data packs,

designs, drawings and software) and no rights in any Ministry of Defence intellectual property shall be passed to Finmeccanica, MMH or its Subsidiaries (other than MMHL and the UK Defence Subsidiaries), without the prior written authorisation of the Ministry of Defence. Finmeccanica shall further ensure that MMHL and the UK Defence Subsidiaries shall continue to respect any levy obligations to the UK Government in effect at the Effective Date.

### **Compliance**

- 2.8 Finmeccanica shall provide the Ministry of Defence with such information as it may from time to time reasonably require to ascertain that Finmeccanica is fulfilling the Security Undertakings. If Finmeccanica is unable to comply with any of the Security Undertakings, it shall provide full reasons for the non-compliance within one month of becoming aware of the non-compliance.
- 2.9 As well as appointing a security officer responsible for facilitating and overseeing the compliance with UK National Security Regulations and the Security Undertakings at the premises of MMHL and its UK Defence Subsidiaries (as required by UK National Security Regulations), Finmeccanica shall, within one month of the Effective Date and following consultation with the Ministry of Defence, appoint the Compliance Officer who shall be responsible for providing to the Ministry of Defence:
- (i) an annual report within three months of the end of the financial year of MMHL, as well as any other such information as the Ministry of Defence may from time to time require, to verify compliance with the Security Undertakings, including any measures taken or proposed by MMHL and its UK Defence Subsidiaries so as to ensure compliance with the Security Undertakings and to prevent any breach of them; and
  - (ii) full particulars of any failure to comply with the Security Undertakings immediately upon such failure becoming apparent.
- 2.10 For the purpose of checking compliance with the Security Undertakings, representatives of the Ministry of Defence shall be entitled to enter and inspect any premises used by MMHL and its UK Defence Subsidiaries which are in any way connected with Military Programmes and inspect any document or thing in any such premises which is concerned with such Military Programmes. Such representative shall be entitled to all such information as they may reasonably require.

### **Contact Details**

- 2.11 Finmeccanica shall provide the Ministry of Defence with the contact details of the Compliance Officer as soon as he/she has been appointed and with any changes to those details as they occur.

## **3. PROVISION OF INFORMATION TO THE DIRECTOR**

3.1 Finmeccanica shall provide the Director such information as he may reasonably require for the purpose of ascertaining that these undertakings are being or have been complied with or otherwise performing any of his functions under section 88 of the Act.

**4. DIRECTIONS**

4.1 Finmeccanica shall comply with such written directions as the Director may from time to time give to take such steps within its competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

Signed for and on behalf of Finmeccanica

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**[DIRECTOR]**

**DATE** .....