

**MERGER BETWEEN BRITISH AEROSPACE PLC AND THE
MARCONI ELECTRONIC SYSTEMS BUSINESS OF THE GENERAL
ELECTRIC COMPANY PLC**

**UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR
TRADE AND INDUSTRY BY BAE SYSTEMS PLC TO SUPERSEDE
THE UNDERTAKINGS GIVEN BY BRITISH AEROSPACE PLC
PURSUANT TO S75G(1) OF THE FAIR TRADING ACT 1973**

WHEREAS:

- (a) On 27 April 1999 British Aerospace plc (subsequently re-named BAE SYSTEMS plc) ('BAE SYSTEMS') agreed with The General Electric Company plc ('GEC') the proposed merger ('the merger') of GEC's defence electronics business Marconi Electronic Systems with BAE SYSTEMS;
- (b) The merger came within the jurisdiction of Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings ('the EC Merger Regulation');
- (c) Article 296 (ex Article 223) of the EC Treaty permits any Member State to take such measures as it considers necessary to protect its essential security interests which are connected with the production of or trade in arms, munitions and war material;
- (d) BAE SYSTEMS was requested, under the former Article 223(1)(b) of the EC Treaty, not to notify the military aspects of the merger to the European Commission under the EC Merger Regulation;
- (e) The military aspects of the merger were consequently considered by Her Majesty's Government under national merger control law;
- (f) The Secretary of State had at the relevant time power under section 75(1) of the Fair Trading Act 1973 to make a merger reference to the Competition Commission and, under section 75G(1), to accept undertakings as an alternative to making such a reference;

(g) The Secretary of State had requested that the then Director General of Fair Trading seek undertakings from BAE SYSTEMS in order to remedy or prevent the adverse effects of the merger;

(h) On 28 March 2000, the Secretary of State accepted the undertakings given by BAE SYSTEMS in order to remedy or prevent the adverse effects of the merger;

(i) On 10 January 2002, the Secretary of State released BAE SYSTEMS from the undertaking relating to the Future Scout and Cavalry System/Tracer;

(j) On 29 September 2005, the Secretary of State accepted variations to the undertakings requested and given by BAE SYSTEMS to permit an extension to the term of appointment of the Compliance Officer in order to facilitate the task of a forthcoming review of other provisions of the undertakings;

(k) The Office of Fair Trading has conducted a review of and consultation on the undertakings.

NOW THEREFORE BAE SYSTEMS hereby gives to the Secretary of State the following undertakings which supersede the undertakings numbered 1, 2, 5, 9, 16 and 17 accepted by the Secretary of State on 28 March 2000 to remedy or prevent the adverse effects of the military aspects of the merger

1 Appointment of Compliance Officer

- 1.1 BAE SYSTEMS shall following consultation with the OFT appoint a competent person (the 'Compliance Officer'), who shall be responsible for facilitating and overseeing the compliance by BAE SYSTEMS with these Undertakings.
- 1.2 The Compliance Officer shall be a person having such skills as the OFT considers are necessary to carry out the duties and tasks in 1.9.
- 1.3 The Compliance Officer shall be reimbursed for his time and expenses by BAE SYSTEMS.
- 1.4 The Compliance Officer shall have direct access to the Chairman of the BAE SYSTEMS Audit Committee in relation to his responsibilities in connection with these Undertakings.
- 1.5 BAE SYSTEMS shall publish and upon request inform any person of the identity and contact details of the person from time to time holding the office of Compliance Officer.
- 1.6 The appointment of a person to hold the office of Compliance Officer shall be for a term of three years or a shorter term if the prior written consent (not to be unreasonably withheld) of the OFT is given and either term may be extended with the prior written consent (not to be unreasonably withheld) of the OFT.
- 1.7 On the termination or, following any extension under 1.6, the expiry of the revised date of termination of the term referred to in 1.6, BAE SYSTEMS shall appoint a new person to hold the office of Compliance Officer in accordance with these Undertakings.
- 1.8 BAE SYSTEMS shall not remove a person from the office of Compliance Officer without the written consent (not to be unreasonably withheld) of the OFT and BAE SYSTEMS shall remove a person from such office and appoint a replacement within three months of being requested to do so by the Secretary of State acting on the advice of the OFT.
- 1.9 The duties and tasks assigned to the Compliance Officer shall be:

- 1.9.1 to provide relevant advice and information to BAE SYSTEMS for the purpose of ensuring its compliance with all aspects of these Undertakings;
 - 1.9.2 to oversee compliance by BAE SYSTEMS with all aspects of these Undertakings;
 - 1.9.3 to perform the specific duties and responsibilities set out in these Undertakings;
 - 1.9.4 to investigate any complaint or representation made to him directly, or indirectly pursuant to paragraph 1.10, in respect of any matter arising in relation to or connected with the compliance by BAE SYSTEMS with these Undertakings;
 - 1.9.5 to recommend and advise upon the remedial action to be taken by BAE SYSTEMS to resolve any breach of these Undertakings that he considers any investigation has demonstrated to be necessary or desirable, or failing its resolution to his satisfaction, to refer the matter to the OFT; and
 - 1.9.6 to report to the OFT as required by 1.13 and/or 1.14.
- 1.10 BAE SYSTEMS shall make available to the Compliance Officer without delay a copy of any complaint or representation received by it in respect of any matter arising in relation to or connected with the compliance by BAE SYSTEMS with these Undertakings.
- 1.11 BAE SYSTEMS shall ensure
- 1.11.1 that the Compliance Officer:
 - (i) is provided without delay upon request with such staff, premises, equipment, facilities and other resources (including for the avoidance of doubt external advisers); and
 - (ii) has such unrestricted access to its premises, staff, systems, information, records and documentation (irrespective of the form in which such information, records and documentation is stored)

as, in each case, he might reasonably expect to require for the fulfilment of the duties and tasks assigned to him; and in particular

1.11.2 that the Compliance Officer may conduct unannounced inspections and interviews.

- 1.12 Subject to applicable laws, BAE SYSTEMS's corporate policy shall provide for a range of disciplinary procedures and sanctions in respect of BAE SYSTEMS staff and sanctions in respect of sub-contractors, consultants and external advisers whose actions or omissions are found to give rise to a breach by BAE SYSTEMS of these Undertakings.
- 1.13 The Compliance Officer shall make an annual report to the OFT within three months of the end of each financial year on compliance by BAE SYSTEMS with each of these Undertakings and on the activities of the Compliance Officer during the relevant financial year. The Compliance Officer shall include in his report the information he believes necessary to give a full and fair picture of compliance in the year that is the subject of the report as well as such information as the OFT may from time to time reasonably require.
- 1.14 The Compliance Officer shall make a special report to the OFT if he believes there are matters relating to compliance which should be brought to the OFT's attention, or at the request of the OFT. He shall also include such information as the OFT may from time to time reasonably require for the purpose of monitoring compliance with these Undertakings.
- 1.15 At the same time as the Compliance Officer submits a report to the OFT pursuant to 1.13 or 1.14, he shall submit a copy to BAE SYSTEMS and the MoD with such excisions as are necessary in order to preserve any Confidential Information that it contains and to preserve any other confidentiality that has been requested by a person making representations to him. As soon as is reasonably practicable following each annual report of the Compliance Officer, BAE SYSTEMS shall produce a report as to its compliance during the relevant calendar year with these Undertakings. BAE SYSTEMS shall submit a copy of its report to the OFT and, subject to any excisions as are necessary to preserve any Confidential Information, to the MoD.

1.16 The Compliance Officer shall provide upon request to a person involved in any programme affected by these Undertakings a copy of relevant extracts of his annual report after obtaining the written consent of the OFT and with such excisions as are necessary in order to preserve any Confidential Information that it contains and to preserve any other confidentiality that has been requested by a person making representations to him.

2 Access by Prime Contractors to BAE SYSTEMS In-house Suppliers

- 2.1 BAE SYSTEMS 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 BAE SYSTEMS has available capacity, those resources of BAE SYSTEMS that are required by such a contractor to bid for or perform contracts for the purposes of an MoD programme.
- 2.2 In making available the resources referred to in 2.1, BAE SYSTEMS shall do so on fair and reasonable terms and shall not, in the absence of an objective justification, discriminate between a BAE SYSTEMS Company and a person that is not a member of the BAE SYSTEMS Group or give preference to a BAE SYSTEMS Company whether in relation to the prices charged or quoted or to other terms or conditions applied or to be applied, services or support levels, standards of performance or otherwise.
- 2.3 For the avoidance of doubt, the provisions of 2.1 and 2.2 shall not apply so as to require BAE SYSTEMS to make available to a team competing for an MoD programme ('the requesting team') the resources which BAE SYSTEMS has in compliance with general competition laws contracted to provide to another team competing for the same MoD programme ('the original team'), save that where the original team is to include another BAE SYSTEMS Company, BAE SYSTEMS shall request prior consent in writing (not to be unreasonably withheld) from the OFT before BAE SYSTEMS enters into such a contract.

3 Preservation and Maintenance of Programme Records

Joint Strike Fighter

3.1 Terms used in 3.2 and 3.3 shall have the following meaning:

'**BAE SYSTEMS subcontractor teams**' means the BAE SYSTEMS subcontractor teams within the Boeing JSF Team and Lockheed Martin JSF Team;

'**Boeing JSF Team**' means the Boeing prime contractor and all of its subcontractors supporting the JSF Program;

'**JSF Program**' means the Joint Strike Fighter Program;

'**Lockheed Martin JSF Team**' means the Lockheed Martin prime contractor and all of its subcontractors supporting the JSF Program.

3.2 BAE SYSTEMS, including all the BAE SYSTEMS subcontractor teams, shall preserve and maintain all JSF Program records, including electronic records, relating to the respective subcontractor teams, including business plans, competitive proposals, correspondence with Lockheed Martin and Boeing and records of board meetings and decisions.

3.3 The time period for the preservation and maintenance of the records specified in 3.2 is six years following the execution of the contract for the Engineering and Manufacturing Development phase of the JSF Program and shall expire on 26 October 2007.

Maintenance of Competition in the Astute Training Programme

3.4 The term '**Relevant Team**' used in 3.5 means each of the two competing bid teams for the Astute Training Programme that prior to 29 November 1999 involved British Aerospace Land and Sea Systems Ltd on the one team and the Flagship Training Consortium on the other

(and these teams as may have been subsequently expanded or reorganised) and comprising their respective employees, partners, subcontractors, consultants and external advisers involved in the Astute Training Programme.

- 3.5 BAE SYSTEMS shall preserve and maintain and shall procure that the BAE SYSTEMS elements of each Relevant Team preserve and maintain all Astute Training Programme records, including electronic records, related to the Relevant Teams including, but not limited to, business plans, competitive proposals, correspondence, records of Management Board meetings and decisions in such a manner that they are readily available to the Compliance Officer.
- 3.6 The time period for the preservation and maintenance of the records specified in 3.5 is six years following the execution of the contract for the Astute Training Programme and shall expire on 12 November 2007.

4 General

- 4.1 BAE SYSTEMS shall procure to the extent that it is within its power to do so that each of its Subsidiary Undertakings complies with these Undertakings as if it had given them.
- 4.2 Without prejudice to 4.1, BAE SYSTEMS shall exercise reasonable endeavours to procure that any provision in these Undertakings relating to activities carried on or to be carried on by or through, or by staff of, a BAE SYSTEMS Company that is not a Subsidiary Undertaking is complied with as if the BAE SYSTEMS Company in question had given these Undertakings.
- 4.3 Where in any case to which any of 4.1 or 4.2 applies, BAE SYSTEMS is unable, or anticipates that it may be unable, to ensure compliance by the Subsidiary Undertaking or the BAE SYSTEMS Company in question, BAE SYSTEMS shall, as soon as it is reasonably practicable to do so, inform the Compliance Officer, the OFT and the MoD by notice in writing.
- 4.4 Within three months of the date of the acceptance by the Secretary of State of these Undertakings BAE SYSTEMS shall submit a statement to the OFT and the MoD setting out the practices, procedures and systems which it has adopted in order to ensure compliance with these Undertakings. The statement shall be revised and amended as may be required from time to time by the OFT.
- 4.5 Subject to any express provision to the contrary in these Undertakings, each Undertaking shall continue to have full force and effect until such time as it is varied or superseded by a new undertaking, or BAE SYSTEMS is released from the Undertaking by the Secretary of State acting on the advice of the OFT.
- 4.6 These Undertakings do not in any way preclude or restrict any action that may be taken under the Enterprise Act 2002 or the Competition Act 1998 in respect of a matter relating to the breach or alleged breach of any Undertaking or otherwise.

- 4.7 BAE SYSTEMS shall comply with such written directions as the OFT may from time to time reasonably give to take such steps within its power and to provide to the OFT such information within its possession as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings.
- 4.8 BAE SYSTEMS shall publish these Undertakings as may be varied from time to time on its website in a form that is easily accessible, visible, legible and that is capable of being printed from the website.

5 Interpretation and Definitions

- 5.1 Where reference is made in any Undertaking to BAE SYSTEMS, a particular BAE SYSTEMS Company or officer, then in the event of any merger, joint venture, reorganisation or change of name such Undertaking shall be interpreted as applying to the equivalent or successor organisation or officer in the new structure.
- 5.2 The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 5.3 Subject to 5.2, any question arising as to the interpretation of these Undertakings shall be determined by the OFT.
- 5.4 Terms used in these Undertakings shall have the following meaning:

'the Act' means the Fair Trading Act 1973;

'Affiliate' means a person who satisfies the following condition, namely that any enterprise (as defined in section 63(2) of the Act) that he carries on or were to carry on and any enterprise that BAE SYSTEMS carries on or were to carry on would be regarded as being under common control for the purposes of section 65 of the Act;

'BAE SYSTEMS' means BAE SYSTEMS plc and without prejudice to 5.1, references to BAE SYSTEMS shall be interpreted as being references to British Aerospace plc as it existed after completion of the merger and, where appropriate, to British Aerospace plc as it existed before completion of the merger;

'BAE SYSTEMS Company' means a company that is a member of the BAE SYSTEMS Group;

'BAE SYSTEMS Group' means BAE SYSTEMS and its Affiliates;

'business' has the meaning given by section 137(2) of the Act;

'Confidential Information' means any commercially sensitive or competition-sensitive business or financial information, but does not include any such information that has become generally available to the public otherwise than as a result of a breach of these Undertakings;

'OFT' means the Office of Fair Trading;

'MoD' means the Secretary of State for Defence;

'Secretary of State' means the Secretary of State for Trade and Industry;

'Subsidiary Undertaking' shall be construed in accordance with section 258 of, and Schedule 10A to, the Companies Act 1985.

On behalf of BAE SYSTEMS plc:

Signed (director)

..... (director/secretary)

Date