

Gardner-Northern

A report to the Secretary of
State for Business, Energy and
Industrial Strategy on the
anticipated acquisition by Gardner
Aerospace Holdings Limited of
Northern Aerospace Limited

13 July 2018

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EXECUTIVE SUMMARY

1. This report is hereby given in response to the public interest intervention notice (the **Notice**) given to the Competition and Markets Authority (CMA) by the Secretary of State on 17 June 2018, in exercise of his powers under section 42(2) of the Enterprise Act 2002 (the **Act**).
2. The Notice relates to the proposed acquisition of Northern Aerospace Limited (**Northern**) by Gardner Aerospace Holdings Limited (**Gardner**), a wholly owned subsidiary of Shaanxi Ligeance Mineral Resources Co. Limited (**SLMR**).
3. The Notice required the CMA to investigate and report by midnight on Friday 13 July 2018.

Competition assessment

4. In response to the questions required to be answered under sections 44(3)(a) and 44(4) of the Act, the CMA:
 - (a) believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) does not believe that it is or may be case that the creation of that merger situation may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom (UK) for goods or services.
5. In view of its conclusions in (a) and (b) above, it has not been necessary to assess whether any of the exceptions to the duty to refer or undertakings in lieu of a reference apply in this case.
6. Accordingly, the CMA advises that it believes a relevant merger situation would be created but that the test for reference is not met on competition grounds.

Public interest

7. As required by section 44(3)(b) of the Act, the CMA has summarised representations received about the case which relate to the national security public interest consideration mentioned in the Notice.
8. The Ministry of Defence has assessed the national security aspects of the proposed merger and brought together its views and those of several other

UK defence and security services (together **MoD**) on the public interest consideration mentioned in the Notice. As well as the summary at paragraphs 85-88 below, we understand that other representations on national security have been sent directly from MoD to the Department of Business, Energy and Industrial Strategy.

9. No third parties sent representations to the CMA on the national security public interest consideration.

LEGAL FRAMEWORK

10. In anticipated mergers, the CMA is required to make a reference for a Phase 2 assessment where it believes that it is or may be the case that the creation of a relevant merger situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the UK for goods or services (section 33(1) of the Act).
11. The Act permits intervention by the Secretary of State in cases where he or she believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger concerned.¹
12. In such a case, section 33(1) does not apply² and instead the CMA is required to give a report to the Secretary of State within such period as he or she may require.³ The report must contain⁴:
 - (a) advice on the considerations relevant to the making of a reference under section 22 or 33 which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45; and
 - (b) a summary of any representations about the case which have been received by the CMA and which relate to any public interest consideration mentioned in the intervention notice concerned (other than a media public interest consideration) and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.
13. In particular, the report must include⁵ decisions as to whether the CMA believes that it is or may be the case that:

¹ Section 42(2) of the Act. As to public interest mergers more generally, see Chapter 16, [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014.

² Section 33(3)(d) of the Act.

³ Section 44(2) of the Act.

⁴ Section 44(3) of the Act.

⁵ The full list of requirements is set out in sections 44(3) and 44(4) of the Act.

- (a) a relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets within the UK for goods and services.
14. Following receipt of the CMA's report, the Secretary of State may, pursuant to section 45 of the Act, make a Phase 2 reference to the CMA on public interest grounds.⁶ In deciding whether to make such a reference, the Secretary of State is required to accept the CMA's decision on the matters listed in paragraph 13.⁷
15. On 11 June 2018, the Act was amended to introduce different jurisdictional thresholds for certain mergers where a "relevant enterprise" is brought under the ownership or control of a person or a group of persons. These amendments apply only in relation to cases where enterprises cease to be distinct after 11 June 2018.⁸
16. Section 23A of the Act defines relevant enterprises to include, amongst other things, enterprises active in the development or production of items for military or military and civilian use, quantum technology and computing hardware.⁹
17. The definition includes activities which consist in or include the development or production of "restricted goods", meaning goods, software or information the export or transfer of which is controlled by virtue of their being specified in the relevant export control legislation¹⁰, but excludes any goods, software or information which are controlled only to the extent that they are prohibited from being exported or transferred to one country only.

Relevant merger situation

18. On 31 March 2018, the Parties reached an agreement relating to a call option over the entire issued share capital of Northern. This agreement was

⁶ Under Section 45(6), any anti-competitive outcome shall be treated as being adverse to the public interest unless it is justified by at least one public interest consideration which is relevant.

⁷ Section 46(2) of the Act.

⁸ The changes were introduced by [The Enterprise Act 2002 \(Share of Supply Test\) \(Amendment\) Order 2018](#) (SI 2018/578) and [The Enterprise Act 2002 \(Turnover Test\) \(Amendment\) Order 2018](#) (SI 2018/593).

⁹ For further guidance on the changes, see BEIS guidance [Enterprise Act 2002: guidance on changes to the turnover and share of supply tests for mergers](#) and CMA guidance [Mergers jurisdictional thresholds from June 2018](#).

¹⁰ See Section 23A(2) for the definition of "relevant export control legislation".

subsequently amended by side letters dated 17 April, 1 May, 14 June and 26 June 2018.¹¹

19. On 14 June 2018, Gardner exercised the call option (dated 31 March 2018) in its favour over the entire issued share capital of Northern (the **Merger**), with a target date for completion of 22 June 2018. On 25 June, the Parties announced that they did not complete on the transaction on 22 June as anticipated. On 11 July, the Parties told the CMA that the transaction had “lapsed” but that the Merger had not been abandoned, and arrangements were on-going to progress it.
20. As a result of the Merger, the enterprises of Gardner and Northern will cease to be distinct after 11 June 2018, and at a time or in the circumstances falling within section 24 of the Act.¹²

Relevant enterprise

21. Northern submitted to the CMA that it manufactures three categories of products which may constitute “restricted goods” within the meaning of the Act.¹³
22. MoD told the CMA that Northern holds one current export licence which concerns sales of [REDACTED] to a defence/ aerospace company ([REDACTED]) for the [REDACTED] military transport aircraft. Northern confirmed to MoD that it had produced [REDACTED] under this licence. MoD therefore advised that Northern is engaged in activities involving the development or production of goods specified in the relevant export control legislation and holds information that is capable of use in connection with the development or production of restricted goods and concluded that Northern was a relevant enterprise.
23. On the basis of the above information from Northern and MoD and following consultation with the Department for Business, Energy and Industrial Strategy (BEIS), the CMA believes Northern is a “relevant enterprise” under section 23A of the Act.¹⁴

¹¹ The side letter of 26 June stated the Parties’ joint agreement to interpret the agreement as further deferring completion until 7 July 2018.

¹² As noted in the [BEIS guidance](#) (2018), the Government can intervene on national security grounds in mergers which are underway (for example, are subject to ongoing negotiation) but where the parties have not yet ceased to be distinct at the time that the new provisions take effect (paragraph 4.7). See also Section 27(5) of the Act.

¹³ [REDACTED]

¹⁴ Section 23A of the Act defines relevant enterprises to include enterprises active in the development or production of items for military or military and civilian use, quantum technology and computing hardware.

24. Accordingly, in the course of Gardner and Northern ceasing to be distinct, the CMA considers that a relevant enterprise will come under the control of Gardner.
25. Northern submitted that its turnover in the UK is [REDACTED], which exceeds the £1m threshold set out in section 23(1)(b)(i) of the Act where in the course of enterprises ceasing to be distinct, a person or group of persons has brought a relevant enterprise under the ownership or control of the person or group. Therefore, the turnover test is met.
26. Accordingly, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation for the purposes of section 44(4)(a) of the Act.

PARTIES AND MERGER

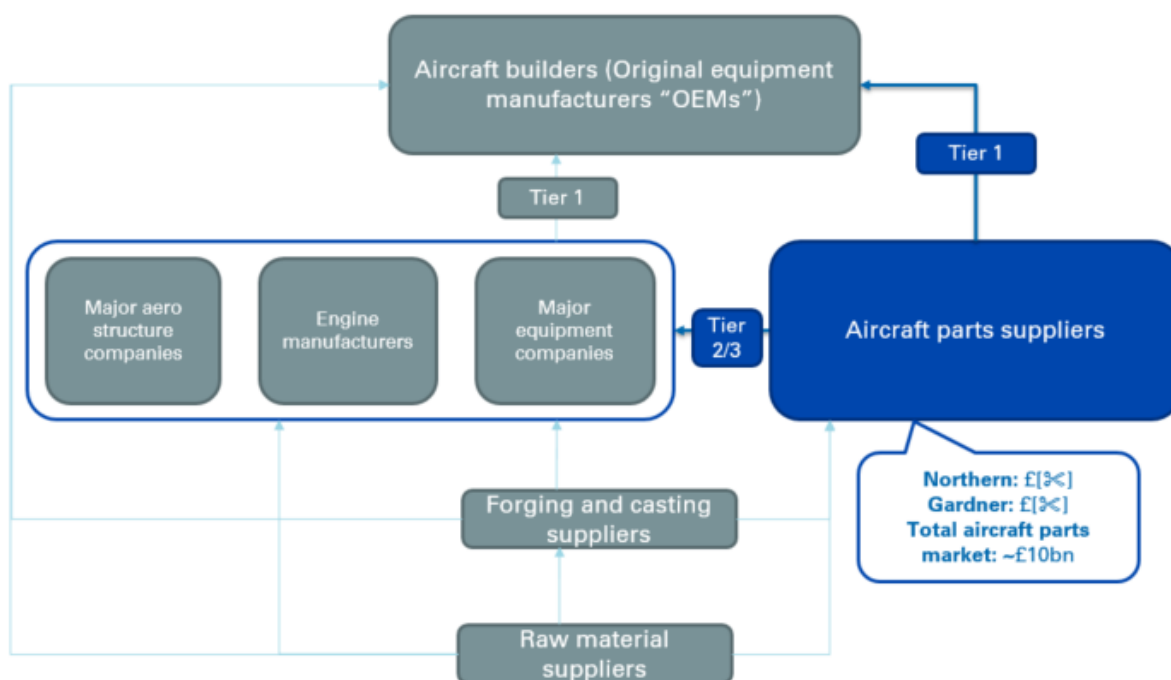
27. Gardner is a manufacturer of structural assemblies and parts¹⁵ for the aerospace industry. It has five manufacturing facilities in the UK (as well as others in France, Poland and India) from which it supplies a range of products including: door components, welded ramps, wing brackets and wing spars. Gardner is a wholly owned subsidiary of SLMR, a company listed on the Shenzhen Stock Exchange.
28. Northern is also a manufacturer of structural assemblies and parts for the aerospace industry. It has five manufacturing facilities in the UK and Poland which supply products including wing ribs, wing spars and wing stringers. Its worldwide turnover in 2017 was [REDACTED] of which [REDACTED] was generated in the UK.
29. Northern is majority owned by BECAP12 Fund LP, which is managed by BECAP12 GP Limited as general partner of BECAP12 GP LP (all three together referred to in this report as **Better Capital**). Another Better Capital fund (BECAP Fund LP) previously owned Gardner, which it sold to SLMR in June 2017.
30. Gardner and Northern together are referred to as **the Parties** in this report.

¹⁵ Assemblies include avionics racks, access doors and stretch-formed tail skins, whereas parts include prismatic machined parts and hard metal machined parts.

INDUSTRY BACKGROUND

31. Both Parties are active in the supply of parts used in the manufacture of aircraft. A high-level overview of the supply chain for aircraft manufacturing is shown in Figure 1.

32. **Figure 1: Aircraft manufacturing supply chain**



Source: CMA, based on the diagram in Northern's s.109 response, Annex 28, Gardner's response to RF11, Annex 2 and responses to RFIs 3 and 4

33. Demand for aircraft parts is driven by the aircraft builders or OEMs. OEMs are responsible for the overall aircraft design, assembly and delivery. As set out in *Safran/Zodiac Aerospace*¹⁶, there are three tiers of suppliers that support aircraft manufacturing by aircraft builders.

- a. Tier 1 suppliers tend to have integration capabilities and provide whole systems and equipment.¹⁷ The Parties responses also indicate that Tier 1 suppliers can include those who supply specified parts directly to OEMs.

¹⁶ Case no M.8425 [Safran/ Zodiac Aerospace](#).

¹⁷ Case no M.8425 [Safran/ Zodiac Aerospace](#), para. 14.

- b. Tier 2 suppliers are active at an upstream level and supply minor structures and parts which are integrated into the systems or equipment by Tier 1 suppliers.¹⁸
 - c. Tier 3 suppliers supply parts to third-party specifications.¹⁹
- 34. The Parties overlap in the supply of wing spars and fuselage frames. The CMA understands that in relation to:
 - a. Wing spars: Gardner is a Tier 2 supplier, while Northern is primarily a Tier 1 supplier to Airbus, but also a Tier 2 supplier.
 - b. Fuselage Frames: Gardner is a Tier 2 supplier, while Northern is a Tier 1 supplier to [REDACTED].
- 35. Gardner compiled a review of the aircraft manufacturing sector that identified around 70 key firms producing aircraft parts and indicated that the total number of firms supplying parts was over 100. The largest aircraft parts suppliers, as identified by Gardner on the basis of sales, were PCC Aerostructures, GKN Aerospace, Triumph, Magellan Aerospace and Senior PLC.²⁰ Gardner ranked itself as nineteenth amongst its competitors in the supply of aircraft parts.²¹ Northern was not included in Gardner's market review. However, the company from which it acquired its business and assets, CAV Aerospace, was ranked twenty-ninth.²²
- 36. Northern's aircraft parts manufacturing (particularly in the UK) is focused on long-bed machined parts.²³ Long-bed machining is used for parts which run along the length of the aircraft or wings, such as the wing stringers, which are produced on machines of around 20 to 30 metres in length.²⁴ These parts require specialised machinery and have a high material content, with stringent engineering and manufacturing requirements. They are critical to an aircraft's safety and are often the starting point around which major aircraft section assemblies are built.²⁵ Currently, around [REDACTED] of Northern's revenue comes from the supply of wing stringers which are long-bed machined products.²⁶

¹⁸ Case no M.8423 [Safran/ Zodiac Aerospace](#), para.14.

¹⁹ Northern response to s.109, Annex 28.

²⁰ Note that GKN Aerospace and Triumph are also involved in the manufacture of major aero structures.

²¹ Gardner response to RFI 1, Annex 2.

²² Gardner response to RFI 1, Annex 2.

²³ Gardner response to s.109, Q.11.

²⁴ [REDACTED]

²⁵ Gardner response to s.109, Q11.

²⁶ Northern response to s.109, Annex 26.

37. Gardner does have some limited capability in long-bed machining. However, its machinery is out-dated and can only produce parts in an unfinished state.²⁷ Gardner focuses on the production of small-bed machined parts²⁸, generally of around two metres in length.²⁹ These parts tend to be used in the wing, fuselage³⁰ and cabin sections of an aircraft.³¹ Gardner's key products, in revenue terms, are brackets for the wing, fuselage and cabin.³²
38. Northern's focus on long-bed machined parts and Gardner's on short-bed machined parts means that the Parties' aircraft parts manufacturing is largely complementary. However, on a cautious basis, the Parties noted some potential overlaps in the supply of wing spars and fuselage frames, where Gardner uses its long-bed machine for the occasional supply of unfinished products to third parties. These overlaps are explored in the competitive assessment.
39. The CMA also examined the Parties' supply of short-bed machined and other smaller parts, where Gardner is more active. Northern submitted that its supply of these parts is generally ancillary to its long-bed machined parts (e.g. landing gear support structures or frames)³³ or involves "bolt on" parts such as brackets, plates, clamps, nuts and bolts that are not manufactured for a specific place on an aircraft.^{34 35}
40. In addition, customers who spoke to the CMA (accounting for more than [REDACTED] % of the Parties' sales of short-bed machined and other small parts) said that there are hundreds of alternative suppliers for these parts, with one also noting that it made its small parts in-house. No customers or other third parties expressed concerns about the Merger in relation to short-bed machined and other small parts.
41. Given the above, the CMA did not identify competition concerns with regards to short-bed machined and other small parts. Therefore, these products are not considered further in this report.

²⁷ Gardner response to s.109, Q11.

²⁸ Gardner response to s.109, Q11.

²⁹ [REDACTED]

³⁰ The fuselage is the main body of the aircraft holding the crew, passenger and cargo.

³¹ Gardner response to s.109, Q11.

³² Gardner response to RFI 2, Q.3.

³³ For 2017, Northern identified sales of £[REDACTED] in door components that were ancillary to its supply of frames to [REDACTED]. Northern response to RFI 3.

³⁴ Northern response to RFI 2.

³⁵ In terms of overlaps with the small parts manufactured by Gardner, Northern was only able to [REDACTED], Northern response to RFI3.

FRAME OF REFERENCE

42. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.³⁶
43. The starting point for the frame of reference is the Parties' overlap in the supply of wing spars and fuselage frames.

Product scope

44. The Parties made no submission on the relevant frame of reference because they submitted that there are no meaningful horizontal overlaps between any of the Parties' products for the reasons set out in paragraphs 36 to 39. However, they did note that there were minor or potential overlaps in two aircraft parts: a) wing spars and b) fuselage frames, respectively.
45. In previous cases, both the CMA (and its predecessors) and the European Commission have considered each type of aircraft part as a separate market due to the very high degree of specialisation on both the supply and demand side.³⁷
46. Key customers of the Parties told the CMA that purchasing different aircraft parts typically required separate tender processes, with the potential for different companies to be chosen for the supply of each aircraft part.
47. The CMA did not find any evidence to suggest that a departure from the approach in previous cases was necessary. The CMA therefore assessed the impact of the Merger in relation to the supply of wing spars and fuselage frames separately.

³⁶ [Merger Assessment Guidelines](#), paragraph 5.2.2.

³⁷ [Case no COMP/M.1745 EADS](#) paragraph 24.

Geographic scope

48. Northern submitted that the relevant geographic area for the supply and purchase of aircraft parts is global. Northern noted that aircraft manufacturers source parts from a large number of suppliers throughout the world.³⁸
49. Similarly, Gardner submitted that the supply of aircraft parts occurs on a worldwide basis and that it considered its primary competitors to be other major international suppliers of parts to the aerospace industry.³⁹ Gardner told the CMA that it has facilities in the UK, France, Poland and India to allow it to meet global demand for its parts from OEMs and other customers that organise procurement on a global basis.
50. The Parties' submission that the market is global is in line with previous cases. For example, in *Safran/Zodiac Aerospace*⁴⁰, the European Commission found that the geographic scope for all relevant aircraft parts markets were worldwide in scope from the perspective of both aircraft builders and their suppliers, due to the global nature of procurement and supply activities. In *Meggitt/Dunlop*⁴¹, the OFT found that the geographic scope for aerospace parts was worldwide.⁴²
51. All customers confirmed that they sourced their parts from across the world, although some noted that for small parts that are more readily available, they may choose suppliers in the same continent.
52. The CMA did not find any evidence to suggest that a departure from the geographic frame of reference in previous cases was necessary. While acknowledging the worldwide aspects of competition, the CMA has considered the impact of the Merger in the UK.

COUNTERFACTUAL

53. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where,

³⁸ Northern response to s.109, Q.9.

³⁹ Gardner response to s.109, Q.16.

⁴⁰ Case no M.8425 [Safran/ Zodiac Aerospace](#).

⁴¹ Case no ME/1214/04 [Meggitt plc/ Dunlop Standard Aerospace Group Ltd](#).

⁴² Other precedent submitted by Parties - Case M.8425 – [Safran / Zodiac Aerospace](#) (2017), at paragraph 297, citing Cases M.290 – [Sextant / BGT-VDO](#); M.368 – [Snecma / IT](#); M.697 – [Lockheed Martin / Loral Corporation](#); M.2168 – [Snecma / Hurel-Dubois](#); M.2220 – [General Electric / Honeywell](#); M.4561 – [GE / Smiths](#); M.5426 – [Dassault Aviation / TSA/ Thales](#); M.6410 – [UTC / Goodrich](#); M.6844 – [GE / Avio](#).

based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than those conditions.⁴³

54. [REDACTED].⁴⁴
55. Northern therefore submitted that if the Merger does not complete, Northern would face severe harm [REDACTED].⁴⁵
56. As set out in the CMA's Merger Assessment Guidelines, for the CMA to accept an exiting-firm scenario at Phase 1, it needs, on the basis of compelling evidence, to believe that it was inevitable that Northern would have exited the market (Limb One) and be confident that there was no substantially less anti-competitive purchaser for Northern (Limb Two). The CMA would then need to conclude, having regard also to what would have happened to the sales of Northern in the event of its exit, that there was no realistic prospect of a substantially less anti-competitive outcome than the merger (Limb Three).⁴⁶
57. In this case, the CMA considers that there is insufficient evidence to support a different counterfactual at Phase 1 and does not believe that the requirements of the exiting-firm scenario have been met. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

COMPETITIVE ASSESSMENT

Horizontal unilateral effects

58. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.⁴⁷ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of wing spars and fuselage frames.

⁴³ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

⁴⁴ Gardner response to s.109, Annex 7.2.

⁴⁵ Northern response to s.109, Q.8.

⁴⁶ [Merger Assessment Guidelines](#), paragraph 4.3.10.

⁴⁷ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Theory of Harm 1 - Horizontal unilateral effects in the supply of wing spars and fuselage frames

59. Under this theory of harm, we examined the Parties' overlap in (a) wing spars; and (b) fuselage frames.
60. Wing spars are long pieces of aluminium alloy which form an important part of the internal wing structure. Other parts of the wing structure will often be attached to the spars e.g. stringers⁴⁸ and ribs⁴⁹. The wing spars support flight loads, as well as the weight of the wings on the ground, the fuselage, landing gear and engines. The Parties produce their wing spar parts using their long-bed machines.
61. Fuselage frames are internal semi-circular frame structures that can be used to attach the fuselage stringers and the fuselage covering (skin). Fuselage frames are typically made using long-bed and stretch form⁵⁰ machines, although this will depend on the particular aircraft being manufactured. Again, the Parties produce their fuselage frame parts using their long-bed machines.

Shares of supply

Wing spars

62. Northern is a Tier 1 and Tier 2 supplier of wing spars. Its global revenue from the sale of wing spars in 2017 was £[REDACTED]⁵¹, with an estimated share of supply of [0-5]% for large civil and regional aircraft.^{52 53}
63. Gardner told the CMA that it does not produce finished wing spars for any aircraft type⁵⁴ and it does not market itself as producing wing spars.⁵⁵ It described itself as a Tier 2 supplier of unfinished wing spars.⁵⁶ As part of a sub-contract with [REDACTED], Gardner occasionally “rough machines” wing spars using its aged long-bed machine.⁵⁷ [REDACTED] has internal capacity

⁴⁸ Stringers are structural pieces which run spanwise along an aircraft wing to prevent the wing skin from bending.

⁴⁹ Ribs are structural crosspieces of an aircraft wing which are usually manufactured from wood or metal. They run chordwise (leading edge to trailing edge of an aircraft wing)

⁵⁰ This involves the use of the whole sheet of material, where hydraulic rams are used to force tools into the sheet, stretching it to shape.

⁵¹ Northern response to RFI 1, Q.7.

⁵² This is based on Northern's estimate for the global sales of wing spars in 2018 of £149.4m. Northern response to RFI 4.

⁵³ Note this share of supply estimate has not been verified by collecting revenue information from competitors.

⁵⁴ Gardner response to RFI1, Q.4.

⁵⁵ Gardner response to s.109, Q.25.

⁵⁶ Gardner response to RFI4, Q.1.

⁵⁷ Gardner response to RFI 1, Q.4 and RFI 4, Q.3.

to manufacture these products but places infrequent orders with Gardner where capacity issues arise.⁵⁸

64. Gardner's revenue in 2017 from wing spars was £[REDACTED].⁵⁹ This adds an increment of [0-5]% to Northern's share of global wing spar supply. Note, however, Gardner's submission that it has no market share in relation to the supply of finished wing spars.⁶⁰

Fuselage frames

65. Northern's total revenue from the sale of fuselage frames was £[REDACTED] in 2017⁶¹, with a share of global fuselage frame supply of [0-5]%.⁶² Northern is a Tier 1 supplier of wing spars.⁶³ Gardner submitted that it does not produce any finished fuselage frames, nor does it promote itself as capable of producing such frames.⁶⁴ It is a Tier 2 supplier of unfinished fuselage frames and carries out some "rough machining" work for a third party ([REDACTED]). These activities were worth £[REDACTED] in 2017⁶⁵, generating an increment to the share of supply of [0-5]%.

Closeness of competition

66. The CMA considered a range of evidence to assess the closeness of competition between the Parties' in the production of wing spars and fuselage frames. This included the (a) manufacturing capabilities of the Parties; (b) evidence in internal documents; and (c) views of third parties.

Manufacturing capabilities

67. In relation to the production of wing spars and fuselage frames, Gardner submitted that it has limited production capacity in relation to the manufacture of long-bed machined parts. Specifically, Gardner has one aged, non-competitive production asset located at its facility in Hull which can produce parts that may be considered as long-bed. However, it cannot produce the full range of these types of parts (the maximum size is around 33 meters). Further, Gardner's machine produces parts in a "semi-finished" state and

⁵⁸ Gardner response to s.109, Q.11.

⁵⁹ Gardner response to RFI 1, Q.6.

⁶⁰ Gardner response to RFI 1, Q.7.

⁶¹ Northern response to RFI 1, Q.3.

⁶² This is based on Northern's estimate for the global sales of fuselage frames in 2018 of £604.7m. Northern response to RFI 4.

⁶³ Northern response to RFI 4.

⁶⁴ Gardner response to RFI1, Q.1.

⁶⁵ Gardner response to RFI1, Q.2.

cannot produce finished parts. This means that customers either need to undertake additional processing steps internally or with third parties to produce a finished part.⁶⁶

68. In response to further questions, Gardner noted that its long-bed machine was 40 years-old and upgrading it would be impractical. In Gardner's view, it would need to acquire a new machine to be credible within the market and would possibly need to acquire more than one machine to offer security of supply.⁶⁷
69. By contrast, Northern has dedicated production assets in the UK which can manufacture all sizes of long-bed machined parts (up to 54 metres long) in a fully finished form.⁶⁸
70. The difference in manufacturing capability is reflected in the different types of aircraft for which Gardner and Northern are currently producing wing spars. The wing spars produced by Northern are for [REDACTED]⁶⁹, a large civil jet aircraft, while Gardner's rough-machined spars are for a (much smaller) single-aisle commercial aircraft.⁷⁰
71. The Parties' different capabilities were confirmed by all customers who responded to the CMA's market testing, who stated that they would not consider Gardner when requesting tenders for long-bed products. Some stated that the reason for this is that Gardner's facility for long-bed machining was old and non-competitive. Others were unaware that Gardner had any capability in long-bed products.

Internal documents

72. The Parties' internal documents do not indicate any competition in the supply of wing spars or fuselage frames. Rather, internal documents support the Parties' submissions that Northern is perceived as primarily a long-bed machined part supplier and Gardner as primarily a short-bed machined part supplier.
73. Gardner describes itself as "one of Europe's largest independently owned supplier of metallic aerospace details and subassemblies".⁷¹ Northern, on the other hand, describes itself as "focused on the supply of particularly long

⁶⁶ Gardner response to s.109, Q.11.

⁶⁷ Gardner response to RFI 1, Q.8.

⁶⁸ Gardner response to s.109, Q.11.

⁶⁹ Northern response to s.109, Q5.

⁷⁰ Gardner response to RFI 1, Q.4.

⁷¹ Gardner response to s.109, Annex 5.

and/or particularly large sized machined parts”.⁷² By acquiring Northern, Gardner notes that it can “move...up the product unit value chain” because of the “large and complex” parts that Northern produces.⁷³

74. There is also some indication that the Parties largely have different customers and that where their customers do overlap, they are supplying different parts. Gardner notes that the main customer impact of acquiring Northern would be to “further develop the relationship with Airbus” ie, because Gardner will be able to supply Airbus with a broader range of products.⁷⁴ Gardner further notes that Northern is an “important supplier of large machined products...to Embraer Brazil, Gulfstream USA, Pilatus Switzerland, RUAG Switzerland and Germany, Safran Electrical Power & Safran Landing Gear”.⁷⁵ This group of customers are described as “new to Gardner”.⁷⁶ Gardner states its view that it will be able to “use NAL’s access to these customers to promote the broader Gardner product and service offering”.⁷⁷

Third party views on closeness of competition

75. All customers who responded to the CMA’s market testing indicated they do not consider the Parties to be close competitors. In general customers were supplied products by only one of the Parties and, where there was an overlap, the customer used the Parties to provide different aircraft parts. In line with the Parties’ long-bed and short-bed positioning, that customer told the CMA that none of the products which it currently purchases from Northern could be manufactured by Gardner. Other customers noted that Northern’s offering is quite complementary to Gardner’s because it has predominantly long-bed capabilities, while Gardner produces small short-bed machined parts. One customer noted that a key rationale for the Merger was for Gardner to obtain capability and expertise in long-bed machined parts.
76. In relation to short-bed machined parts, all customers confirmed that that they do not consider the Parties to be alternatives in supplying these products. One said that it purchased short-bed machined parts from Gardner but that Northern is focused on long-bed machined parts and they had never purchased any products from it. [REDACTED]
77. The difference in the Parties’ capabilities is also reflected in the Parties’ customers for wing spars or unfinished wing spars which do not overlap.

⁷² Northern response to s.109, Q5.

⁷³ Gardner response to s.109, Annex 7.6.

⁷⁴ Gardner response to s.109, Annex 7.5.

⁷⁵ Gardner response to s.109, Annex 7.5.

⁷⁶ Gardner response to s.109, Annex 7.5.

⁷⁷ Gardner response to s.109, Annex 7.5.

Northern's spars are produced for the [REDACTED] and Gardner's are produced for [REDACTED] and are for a smaller, single-aisle commercial aircraft. Similarly, the Parties' customers for fuselage frames do not overlap.

Competitive constraints

78. The Merger is likely to have little impact on the supply chain for wing spars and fuselage frames, with Northern having a small share of the market and Gardner only producing unfinished products on an infrequent basis. While the number of parts manufacturers supplying long-bed machined parts is less than for short-bed parts, customers identified a number of third-party competitors that specifically constrain Northern, and none identified Gardner in this group. One customer told the CMA that, if it was unable to acquire long-bed products from Northern, it had two other possible suppliers in the US, one in Europe and one in Asia. Other customers cited companies in the US and Magellan as competitors to Northern.
79. Further, one customer noted that Northern was not the strongest competitor in this area and stated that they were reluctant to grow their business with Northern due to concerns about its viability. Gardner also noted during their due diligence process that Northern's "equipment is generally aged and complex" and "sites are "tired"" and required an upgrade.⁷⁸
80. The CMA therefore considers that there will be a sufficient number of effective competitors remaining post-Merger to constrain the merged entity.

Conclusion on Theory of Harm 1 – Horizontal unilateral effects in the supply of wing spars and fuselage frames

81. The evidence received by the CMA indicates that there has been almost no competitive interaction between the Parties pre-Merger. The Parties manufacturing processes and capabilities differ significantly and are currently used to serve customers with different needs. The CMA has not received any evidence indicating that the Parties are considered to be alternatives. The CMA therefore considers that the constraint between the Parties which would be lost as a result of the Merger is not material.
82. The CMA also found that, post-Merger, the merged entity's products would be sufficiently constrained by other competitors.

⁷⁸ Gardner response to s.109, Annex 7.4.

PUBLIC INTEREST CONSIDERATION

Summary of interested parties

83. Section 44(3)(b) of the Act requires the CMA to provide a summary of representations it has received and which relate to the public interest consideration mentioned in the intervention notice (in this case national security), and which is or may be relevant to the Secretary of State's decision as to whether to make a reference for a phase 2 assessment under section 45 of the Act.
84. The CMA is not expert in national security matters and during the Phase 1 process, it only summarises the representations made to it. In this case, the CMA only received representations from MoD and these representations are summarised below.⁷⁹

Ministry of Defence

85. As noted earlier (paragraph 22), MoD submitted that Northern is engaged in activities involving the development or production of goods specified in the relevant export control legislation and holds information that is capable of use in connection with the development or production of "restricted goods". MoD also noted that Northern is an active participant in the UK aerospace industry which is a strategic priority for defence.
86. MoD told the CMA that when SLMR acquired Gardner in June 2017, two Deeds of Undertaking were put in place to address concerns raised at that time by the Government.
- a. The first deed, between SLMR and Gardner, operates to prevent SLMR accessing 'Restricted Information' (ie, controlled items, sensitive information or intellectual property rights, relating to Gardner or its customers).
 - b. The second deed, between Gardner and the Secretary of State for Defence, required Gardner to appoint an independent auditor and establish a series of auditable security arrangements to protect any Restricted Information held or obtained by the Gardner group as well as affirming the terms of the first deed. Both deeds are enforceable in

⁷⁹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2),, paragraph 16.7, fourth bullet and see also [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2),, paragraph 16.24, for the CMA's approach in special public interest intervention notice cases.

the courts of England and Wales by MoD and by customers of Gardner.

87. In light of the above, the national security concern is to ensure that the UK's aerospace capability is fully protected and, in particular, any sensitive technology that Northern might have access to by virtue of its activities in the future is safeguarded. In relation to the acquisition of Northern, MoD's national security analysis was concerned with establishing whether the Merger created the potential for SLMR to have access, through existing or future commercial arrangements, to Restricted Information.
88. MoD told the CMA that it had obtained written assurances from Gardner and SLMR confirming that the protections in the two deeds (described in paragraph 86) will be applied to Northern if it is acquired by Gardner.

ASSESSMENT AND ADVICE TO THE SECRETARY OF STATE

89. The CMA produces this report to the Secretary of State pursuant to its duty under section 44(2) of the Act, following investigations carried out under section 44(7).
90. This report contains advice on considerations relevant to the making of a reference under section 33 which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act, namely that the CMA:
- (a) believes that it is, or may be, the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) does not believe that the creation of that merger situation may be expected to result in a substantial lessening of competition within a market or markets in the UK for goods or services.
91. This report also contains a summary of the representations about the case which it has received from MoD which relate to the national security public interest consideration mentioned in the Notice.
92. This report does not contain advice or recommendations on the public interest consideration under section 44(6) of the Act.

Jennifer Halliday, Director

13 July 2018