Gardner-Impcross

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

2 March 2020

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1. EXECUTIVE SUMMARY

1.1 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 for Business, Energy and Industrial Strategy (the **Secretary of State**) on 5 December 2019, in exercise of her powers under section 42(2) of the Enterprise Act 2002 (the **Act**).

1.2 The Notice relates to the anticipated acquisition by Gardner Aerospace Holdings Limited (**Gardner**) of the entire shareholding of Impcross Limited (**Impcross**), (the **Transaction**). Gardner and Impcross are referred to as the **Parties** in this report.

1.3 The Notice required the CMA to investigate and report by midnight on Monday 2 March 2020.

Relevant Merger Situation

1.4 As required by sections 44(3)(a) and 44(4) of the Act, 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.

1.5 For the purposes of this report, a relevant merger situation would arise because the Transaction, if carried into effect, would result in Gardner and Impcross ceasing to be distinct and because the turnover threshold set out in section 23(1)(b)(i) of the Act is satisfied.

Competition Assessment

1.6 The Parties' activities do not overlap in the production of any specific aerospace component. They only overlap when considering more widely the supply of avionics and equipment detailed parts to the aerospace industry by tier 2 suppliers.[1] The evidence shows that the competitive effect of this overlap is minimal. Based on data submitted by the Parties, they have a small combined share of supply and there is a negligible increment resulting from the Transaction. In addition, third parties indicated that there were numerous alternative component manufacturers operating in this market.

1.7 Accordingly, the CMA found that the Transaction does not give rise to competition concerns in relation to unilateral horizontal effects in the supply of

[1] See definition at paragraph 6.5 below.

avionics and equipment detailed parts to the aerospace industry by tier 2 suppliers globally.

1.8 Therefore, the CMA does not believe that it is or may be case that the creation of this relevant merger situation may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the UK for goods or services.

1.9 In view of the conclusions above, it has not been necessary for the CMA to assess whether any of the exceptions to the duty to refer apply in this case, or whether it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the Notice) by way of undertakings in lieu of a reference.

1.10 Accordingly, the CMA advises that it believes arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation but that the test for reference is not met on competition grounds.

Public Interest

1.11 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.

1.12 The Ministry of Defence has brought together its views and those of other UK defence and security services (together the **MoD**) in relation to the public interest consideration identified in the Notice. In its representations, the MoD identified national security concerns arising as a result of the Transaction.

1.13 Five third parties also made representations directly to the CMA regarding national security.

Remedies

1.14 The Secretary of State may either make a reference for a Phase 2 assessment on public interest grounds[2] or accept undertakings in lieu of such a reference[3] if he or she believes that it is or may be the case that the national security concerns identified may be expected to operate against the public interest.

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[2] Section 45 of the Act.

[3] Schedule 7 paragraph 3(2) of the Act.

1.15 The CMA understands that the MoD has been considering the specific risks identified in relation to national security matters and possible remedies to address those risks. The CMA understands that the MoD will advise the Secretary of State directly in this regard.

2. Legal Framework

2.1 In relation to 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 an SLC within any market or markets in the UK for goods or services (section 33(1) of the Act).

2.2 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.[4] In such a case, section 33(1) does not apply[5] and instead the CMA is required to give a report to the Secretary of State within such period as he or she may require.[6] The report must contain:[7]

(a) advice on the considerations relevant to the making of a reference under section 22 or 33 of the Act which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act; 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 of the Act.

2.3 In particular, the report must include[8] decisions as to whether the CMA believes that it is or may be the case that:

[4] 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.
[5] Section 33(3)(d) of the Act.
[6] Section 44(2) of the Act.
[7] Section 44(3) of the Act.
[8] The full list of requirements is set out in section 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 SLC within any market or markets within the UK for goods and services.

2.4 Following receipt of the CMA's report, the Secretary of State may make a Phase 2 reference to the CMA on public interest grounds.[9] 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 2.3 above.[10] The relevant legal framework in relation to the CMA's assessment of jurisdiction is set out in section 4.

3. Parties and transaction

3.1 Gardner is a manufacturer of parts for the aerospace industry. It is ultimately owned by Ligeance Aerospace Technology Co., Ltd, (**LAT**) which is listed on the Shenzhen Stock Exchange. Gardner operates in the UK and has other subsidiaries globally, including in China and France.[11] Most of Gardner's sales are made directly to Airbus or other suppliers whose products are subsequently fitted on to Airbus aircrafts.[12] Gardner's turnover in 2019 was approximately £[redacted]

3.2 Impcross is a UK-based manufacturer of parts for the aerospace industry. Impcross is privately owned.[14] Most of Impcross's sales are made to the commercial aerospace sector, with some sales to the military aerospace sector. Impcross's turnover in the UK in the financial year to 30 June 2019 was approximately £[redacted]

3.3 The Transaction involves the anticipated acquisition by Gardner of the entire shareholding in Impcross.[16] The terms of the Transaction are yet to be agreed between the Parties.

[9] Pursuant to section 45 of the Act.
[10] Section 46(2) of the Act.
[redacted]

4. Jurisdiction

4.1 The Secretary of State has the ability to refer a case to Phase 2 when he or she believes, following the advice from the CMA, that, for completed mergers, it is or may be the case that a relevant merger situation has been created. In the case of an anticipated transaction, a relevant merger situation will be created when:

(a) arrangements are in progress or in contemplation which, if carried into effect, will lead to two or more enterprises[17] ceasing to be distinct.[18] Two enterprises will cease to be distinct if they are brought under common ownership or control;[19] and

(b) either the thresholds under sections 23(1) (the turnover test) or 23(2) (the share of supply test) of the Act are satisfied.

Arrangements in progress or in contemplation which, if carried into effect, will lead to two or more enterprises ceasing to be distinct

4.2 As entities which carry on activities for gain or reward, Gardner and Impcross each constitute an enterprise.

4.3 Two enterprises will cease to be distinct if they are brought under common ownership or control.[20] The CMA considers that because the Transaction involves the sale of 100% of the shareholding in Impcross to Gardner, the Parties would cease to be distinct, provided that there are arrangements in progress or in contemplation which, if carried into effect, would lead to this.

The Parties' views

4.4 Gardner provided a detailed timeline of discussions between itself and Impcross [redacted] in relation to the Transaction. It submitted that this evidence showed that discussions between the Parties [redacted][21] Gardner also submitted that 'in order to [redacted]

[17] 'Enterprise' is defined in section 129 of the Enterprise Act 2002 as the activities, or part of the activities, of a business. Merger Assessment Guidelines Paragraph 3.2.2.
[18] Section 33(1)(a) of the Act and Section 23 of the Act.
[19] Section 26 of the Act.
[20] Section 26 of the Act.
[redacted]

[redacted]' However, Gardner submitted that [redacted] by the terms of the Public Interest Merger Reference (Gardner Aerospace Holdings Ltd. and Impcross Ltd.) (Pre-emptive Action) Order 2019 (the **Order**).[22]

4.5 Impcross submitted that it held [redacted] talks with Gardner and provided [redacted] information' about the company by way of an Information Memorandum. Impcross explained that [redacted] In addition, while [redacted] At the time of the Government's public interest intervention notice, [redacted]

4.6 Impcross submitted that Gardner and itself [redacted]

The CMA's view

4.7 Given the relatively early stage of the commercial arrangements, the CMA considered the question of whether arrangements are *in contemplation* (which, if carried into effect, will lead to two or more enterprises ceasing to be distinct). In doing so, the CMA has taken into account evidence of the Parties' actions and plans, as well as the Order, [redacted]

[22] Available at http://www.legislation.gov.uk/uksi/2019/1490/made
[23] [redacted]

[redacted]

4.8 [redacted] Accordingly, the CMA has found evidence of genuine consideration given on the part of the acquirer in relation to entering into the Transaction.

4.9 Moreover, [redacted] Accordingly, the CMA has found evidence of the Parties' mutual contemplation of and interest in the Transaction.

4.10 Based on the available evidence (and in particular [redacted] the CMA considers that Gardner has the capacity to bring about the Transaction.

4.11 While the Parties submitted that [redacted], neither Party submitted that they no longer had an interest in the Transaction and [redacted], for instance when the Order is lifted. [redacted] In addition, neither Party submitted

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24 [redacted]

25 [redacted]

that they had decided to abandon the Transaction (and there has been no public announcement to that effect). [redacted], if carried into effect, would lead to two or more enterprises ceasing to be distinct).

4.12 Based on the available evidence, the CMA considers that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, would lead to two or more enterprises ceasing to be distinct.

Relevant enterprise and jurisdictional thresholds

Changes to the turnover test under section 23(1)of the Act

4.13 On 11 June 2018, the Act was amended to introduce different turnover thresholds for certain mergers involving a 'relevant enterprise'.[29] These amendments provide that the turnover test is met where:

(a) the value of the turnover in the UK of the enterprise being taken over exceeds £1 million;[30] and

(b) 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.

4.14 Section 23A of the Act defines 'relevant enterprises' to include, amongst other things, enterprises active in the development or production of 'restricted goods', the development or production of items for military or military and civilian use, quantum technology and computing hardware. The provisions applicable to the Transaction are outlined below.

4.15 Under section 23A(1)(b)(i) of the Act, a relevant enterprise means any enterprise carrying out activities which consist in 'developing or producing restricted goods'.

4.16 Restricted goods means 'goods, software or information the export or transfer of which is controlled by virtue of their being specified in the relevant export control legislation' set out in the Act, but excluding any goods, software or

[29] See The Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018 (SI 2018/578), The Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018 (SI 2018/593) and Guidance on changes to the jurisdictional thresholds for UK merger control, CMA90.
[30] Section 23(1)(b)(i) of the Act.

information which are controlled only to the extent that they are prohibited from being exported or transferred to one country only.[31]

Assessment

4.17 Set out below is the CMA's assessment of whether Impcross is a relevant enterprise carrying out activities which consist in developing or producing restricted goods within the meaning of the relevant export legislation.

[redacted]

4.19 MoD submitted that the holding of an export licence is an indicator as to whether an enterprise may be engaged in activities which consist of, or include the development or production of, restricted goods.

4.20 MoD submitted that Impcross has held 15 licences for the export of products specified in the relevant export control legislation, predominantly for 'Aircraft', 'lighter-than-air vehicles', 'Unmanned Aerial Vehicles' (**UAVs**), aero-engines and 'aircraft' equipment, related goods and components, specially designed or modified for military use. MoD submitted that Impcross produces components, including export controlled components, for a variety of companies within the military supply chain.

4.21 MoD submitted that Impcross is a 'relevant enterprise' within the meaning of section 23A of the Act.

4.22 MoD submitted that relevant provisions of the export control legislation relevant for Impcross's products include:

(a) The Export Control Order 2008 (ECO 2008) SI 2008/3231, Schedule 2, as amended by SI 2019/989 [UK Military List], category ML10 which includes 'Aircraft', 'lighter-than-air-vehicles', UAVs, aero-engines and 'aircraft' equipment, related goods and component specifically designed or modified for military use.

(b) Annex I to Council Regulation (EC) No. 428/2009 [the EU Dual-Use List], Category 9, which includes aerospace and propulsion.

[31] Section 23A(2) of the Act.

4.23 The CMA notes that both of these provisions are listed as 'relevant export control legislation' under section 23A of the Act and that neither provision applies to export or transfer to one country only.

Conclusion

4.24 For the reasons set out above, the CMA considers that Impcross's activities include producing 'restricted goods' within the meaning of the Act.

Turnover thresholds

4.25 With regards to the turnover test, Impcross's turnover exceeded £1 million in the UK in 2019 as observed in paragraph 3.2.

Conclusion on jurisdiction

4.26 On the basis of the above, the CMA considers that:

(a) there are arrangements in progress or in contemplation which, if carried into effect, would result in Gardner and Impcross ceasing to be distinct;

(b) Impcross's activities consist in or include producing restricted goods within the meaning of section 23A of the Act and Impcross is therefore a 'relevant enterprise';

(c) the turnover threshold as set out in section 23(1)(b)(i) of the Act is satisfied.

4.27 Therefore, in accordance with sections 44(3)(a) and 44(4) of the Act, 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.

5. Counterfactual

5.1 The counterfactual is an analytical tool used in answering the question on whether a merger gives rise to an SLC. The SLC test involves a comparison of the competitive situation with the merger against the competitive situation that would prevail absent the merger (the counterfactual). For anticipated mergers, in Phase 1, 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, 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 these conditions.[32]

5.2 In reviewing mergers at Phase 1, the CMA is required to assess whether the merger creates a realistic prospect of an SLC. The 'is or may be the case' standard in the CMA's SLC test also has implications for its approach to the counterfactual. At Phase 1, the CMA considers the effect of the merger compared with the most competitive counterfactual providing always that it considers that situation to be a realistic prospect. In practice, the CMA generally adopts the prevailing conditions of competition (or the pre-merger situation in the case of completed mergers) as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that the prospect of prevailing conditions continuing is not realistic (eg because the CMA believes that one of the merger firms would inevitably have exited from the market) or where there is a realistic prospect of a counterfactual that is more competitive than prevailing conditions.

5.3 Gardner submitted that [redacted]

5.4 However, Gardner also submitted that, in its view, on either an alternative counterfactual or the prevailing conditions of competition, the increment in market share represented by Impcross due to the Transaction, which it considers small, would not give rise to competition concerns.

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[32] *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).
[33] See response to question 4 [redacted] The CMA notes that this is not in line with the test as set out at paragraph 4.3.10 of the *Merger Assessment Guidelines*.
[34] 'Tier 1' is defined and explained in paragraph 6.5
[35] See response to question 4 in [redacted]

5.5 Impcross submitted that the CMA should assess the competitive effects of the Transaction by reference to the current competitive situation.[36]

5.6 The CMA did not receive evidence from third parties or from the Parties' internal documents to support Gardner's views on the counterfactual. In addition, it did not receive any evidence from third parties suggesting foreseeable changes in the prevailing conditions of competition.

5.7 The CMA therefore considers that the prevailing conditions of competition is the relevant counterfactual against which to assess the impact of the Transaction.

6. Industry Background

6.1 This section summarises the CMA's understanding of the basic features of the aerospace industry, on the basis of information provided by Gardner and Impcross in their submissions to the CMA as well as third parties. It also introduces terms and concepts used in the remainder of this report.

6.2 The aerospace manufacturing industry is a high-technology industry that produces, amongst other products, aeroplanes for the transport of goods or passengers and for use by defence forces, and parts and accessories of aircraft.[37]

6.3 The sector is characterised by a small number of large multinational lead manufacturers or '**prime integrators**'. These include Airbus and Boeing which are the two largest manufacturers of commercial aircraft globally, as well as Defence prime integrators. Prime integrators are responsible for the overall aircraft design, assembly and delivery.

6.4 Aerospace component parts used in the construction of aircraft are commonly referred to as '**detailed parts'**[38] and are typically manufactured on a 'build to print' basis where a given part or sub-assembly is produced based on the prime integrator's exact technical specification.[39]

6.5 Prime Integrators manufacture some aerospace components themselves but also frequently sub-contract the production of other parts of the aircraft[40] to '**tier 1 suppliers**'. Tier 1 suppliers tend to have integration capabilities and

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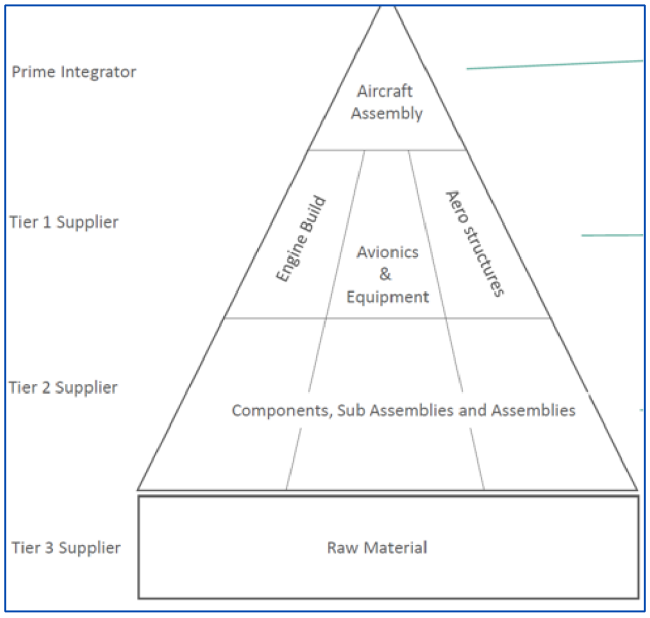
[36] Merger Notice, Paragraph 11.1
[37] Class 30.30: Manufacture of air and spacecraft and related machinery, UK Standard Industrial Classification (SIC) Hierarchy, Office for National Statistics.
[38] [redacted]
[39] Build to print manufacturers are generally not involved in the design of the component.
[40] The various key component parts of an aircraft (e.g. fuselage sections, wings, engines etc) are typically produced in different locations before being transported to the final aircraft assembly plants.

provide whole systems and equipment. They may in turn source specific components or assemblies of components from '**tier 2 suppliers.**' Tier-2 suppliers tend to be active at an upstream stage, supplying components and sub-components which are later integrated into the systems/equipment by either the aircraft manufacturer (or Prime Integrator) or the tier-1 supplier.

6.6 A high-level overview of the supply chain for aircraft manufacturing is shown in Figure 1.

Figure 1: the aerospace supply chain



Source: CMA, based on submissions from the Parties

6.7 The products supplied to the prime integrators may also be subdivided by the type of component as follows:

(a) Aerostructures (the body of the aircraft itself);

(b) Engine build (the aircraft's propulsion system); and

(c) Avionics and equipment (electronic systems used on the aircraft).[41] A third party stated that 'equipment' does not have a fixed definition.

6.8 The aerospace manufacturing industry serves both commercial and military customers. The Parties' submissions and evidence from third parties indicates that there is no major difference in the requirements set by commercial and military customers, and that most prime integrators and tier 1 suppliers will be

[41] Including, for example, air conditioning / heating systems, rudder actuation, flap actuation system, auxiliary power unit, undercarriage systems, refuelling system, in cockpit systems.

involved in both commercial and military programmes. In particular, both customer groups generally require that any design and proprietary data is held by the supplier on a secure basis and that the relevant supplier has adequate security and robust policies and procedures to protect such information. However, the end-use of a military work package may require certain changes to production processes such as access restrictions for foreign nationals to data and components.

6.9 The overlap between the Parties' activities within the aerospace supply chain is described below.

7. Overlap and Related Activities

7.1 Based on the Parties' submissions, Impcross is only active in the manufacture of detailed parts for avionics and equipment, while Gardner is active in the manufacture of detailed parts across aerostructures, engines and avionics and equipment.

7.2 The Parties therefore overlap in the production of avionics and equipment components. The Parties submitted that they do not produce the same specific products or share any of the same customers. This was confirmed by the Parties' internal documents and by third parties. However, third parties also indicated that there are high-level similarities between the manufacturing capabilities of the Parties.

7.3 The Parties submitted that they are both tier 2 manufacturers[42] and are not involved in any upstream or downstream markets that form part of the same supply chain. This was also confirmed by third parties. The CMA found no evidence of a vertical relationship between the Parties.

8. Frame of Reference

8.1 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

[42] Gardner submitted that it operates at tier 2 and supplies its parts to tier 1 companies and prime integrators while Impcross also operates at tier 2, but only supplies its components parts to tier 1 companies. This reflects the fact that Impcross does not, on Gardner's understanding, manufacture higher level assemblies but only components to be incorporated into such assemblies.

than others. The CMA will take these factors into account in its competitive assessment.[43]

Product scope

8.2 The starting point for market definition is the narrowest overlap between the Parties' products.[44] As noted above, Gardner and Impcross do not overlap in relation to the manufacture of any specific components. The narrowest product scope in which the Parties' activities overlap is the manufacture of avionics and equipment detailed parts by tier 2 suppliers.

8.3 Therefore, the CMA has considered the competitive effects of the Transaction using this product scope. However, since no competition concerns arise on any plausible basis it has not been necessary for the CMA to conclude on the product frame of reference.

Geographic scope

8.4 The Parties submitted that the supply of aerospace manufactured detailed parts occurs on a worldwide basis.

8.5 In previous cases the supply of aerospace components has been considered to be worldwide in scope.[45] In addition, third party evidence received by the CMA also supports a worldwide geographic frame of reference. Some third parties indicated that for defence contracts the location or countries from which the supplier is able to source may be more limited. However, one of these third parties specified only a small number of countries from which it could not source parts. Another third party stated that adjustments may be necessary when using non-UK suppliers.

8.6 The CMA therefore considers that the geographic scope is likely to be worldwide (with some restrictions on sourcing from certain countries for some defence contracts). However, it is not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below no competition concerns arise on any plausible basis.

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[43] Merger Assessment Guidelines, paragraph 5.2.2.
[44] Merger Assessment Guidelines, paragraph 5.2.11.
[45] Case no ME/1214/04 Meggitt plc/Dunlop Standard Aerospace Group Ltd and Case no M.8425 Safran/Zodiac Aerospace.

Conclusion on frame of reference

8.7 For the reasons set out above, on a cautious basis, the CMA has considered the impact of the Transaction on the supply of avionics and equipment detailed parts to the aerospace industry by tier 2 suppliers worldwide.

8.8 However, it is not necessary for the CMA to reach a conclusion on the frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

9. Competitive Assessment

9.1 The CMA has assessed whether the Transaction could lead to horizontal unilateral effects in the supply of avionics and equipment detailed parts to the aerospace industry worldwide.

9.2 Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to profitably raise prices or to degrade quality on its own without needing to coordinate with its rivals.[46] The concern under this theory of harm is that the removal of one party as a competitor could allow the parties to increase prices, lower quality, reduce the range of their services and/or reduce innovation. After the Transaction, it is less costly for the merging company to raise prices (or lower quality) because it will recoup the profit on recaptured sales from those customers who would have switched to the offer of the other merging company. Horizontal unilateral effects are more likely when the merging parties are close competitors.

9.3 In previous cases involving the manufacture of aerospace components[47] it has been noted that each detailed component typically performs a distinct and vital function so that different components are not substitutable. As noted above, and as confirmed by third parties, the Parties do not currently produce the same specific components. In particular, third parties indicated that they have not approached the Parties to produce the same products.

9.4 As outlined in paragraph 7.1, the Parties both produce avionics and equipment detailed parts but Gardner's activity in avionics and equipment detailed parts is relatively limited. Gardner submitted that it is primarily focussed on aerostructures and generates less than 1%[48] of its revenues from

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[46] *Merger Assessment Guidelines*, from paragraph 5.4.1.
[47] More recently including CMA Case no ME/6763/18 Gardner/Northern Aerospace and EU Case no M.8242 Rolls-Royce/ITP.
[redacted]

avionics and equipment. Third parties confirmed that they generally consider Gardner and Impcross to produce different types of components, with Impcross concentrated on avionics and equipment and Gardner focussed on aerostructures. Therefore, the CMA does not consider the Parties to be close competitors.

9.5 Further, although it was submitted by some third parties that both Parties have similar general machining capabilities, there is evidence of specialisation at each company[49] which limits the possibility that either Party will expand to begin to supply specific components currently manufactured by the other.

9.6 The Parties submitted that the global detailed parts market is highly fragmented with a large number of players.[50] Gardner submitted that the supply of global aerospace detailed parts for avionics and equipment is estimated to be worth c.$1.8bn and the shares of supply of the Parties are negligible at c.0.11% and c.0.85% for Gardner and Impcross, respectively. Shares of supply for avionics and equipment focussed on tier 2 manufacturers were not available (as neither the Parties nor third parties were able to provide such data to the CMA) but the CMA considers that the combined shares of supply of the Parties would still be low on this basis.

9.7 Evidence from third parties indicates that there is a strong competitive constraint on each of the Parties, with customers of both Gardner and Impcross indicating that there are many alternative suppliers to choose from. For example, one customer of Gardner, listed 11 alternative suppliers located in different countries. A customer of Impcross also listed a number of alternative suppliers in relation to defence contracts specifically.

9.8 In addition, no third party raised competition concerns about the Transaction. The CMA contacted customers and competitors of the Parties, as well as a trade association and industry experts from the 'Aerospace team' at BEIS.

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[49] [redacted]

[50] For example, Gardner's [redacted] In addition, a third party told the CMA that there were more than 100 suppliers of parts that the Parties produce.

Conclusion

9.9 For these reasons, the CMA considers that the Transaction will not give rise to a realistic prospect of an SLC in the supply of avionics and equipment detailed parts to the aerospace industry by tier 2 suppliers, globally.

10. Public Interest Consideration

Summary of interested parties

10.1 Section 44(3)(b) of the Act requires the CMA to provide a summary of representations it has received, which relate to the public interest consideration in question, national security, and which are 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.

10.2 The CMA received representations from the MoD and five third parties, a summary of which is set out below.

The MoD advice on third party representations and national security matters

10.3 The MoD submitted that Impcross 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'. The MoD also submitted that Impcross is an active participant in the UK aerospace industry which is a strategic priority for UK Defence.

10.4 The MoD submitted that its national security analysis was concerned with establishing:

(a) the integrity and security of the F-35 supply chain, other military supply chains and related sensitive information held by Impcross, including the potential for supply chain disruption as a direct result of the change in ownership of Impcross; and

(b) whether the change in ownership of Impcross might impact the UK's operational advantage given the sensitive information, skills and manufacturing capabilities that Impcross holds or may have access to by virtue of its activities now or in the future.

10.5 The MoD submitted that it issued various information requests to the Parties and selected third parties and conducted site visits to Impcross and

commissioned further analysis from defence and security subject matter experts.

10.6 The MoD submitted that its assessment is that the Transaction raises national security concerns relating to the protection of the UK's aerospace capability and the safeguarding of sensitive information, skills and manufacturing capabilities within Impcross.

10.7 The MoD submitted that it also concluded that the Transaction poses risks to the UK's operational advantage, noting that in 2018 the Government's published guidance on mergers that give rise to national security implications, which states:

> The national security interests in relation to military and dual-use technologies are obvious – these items can, in the wrong hands, pose clear and immediate risks to the UK, our people and society. In addition, the acquisition of items which provide the UK with its operational advantage can raise legitimate and significant national security concerns.[51]

10.8 The MoD submitted that it had identified national security risks, of the nature described by the guidance, that would arise from the Transaction.

10.9 The MoD submitted that it directly received representations and documentation from third parties, including from other Government departments, concerning national security. The CMA understands that some of those representations concern highly sensitive materials related to national security. The CMA has not seen or considered the representations received directly by the MoD.

10.10 The MoD submitted that it considered the specific risks identified in relation to national security matters and whether remedies are available to address those risks. The CMA has no reason to doubt any representations made by the MoD on whether remedies are available to remedy or prevent the specific effects adverse to the public interest identified by it and which are briefly described above. The CMA understands that the MoD will advise the Secretary of State directly in this regard.

[51] Explanatory Memorandum to the Enterprise Act 2002 (Turnover Test) (amendment) order 2018 no. 593, paragraph 7.8 https://www.legislation.gov.uk/uksi/2018/593/pdfs/uksiem_20180593_en.pdf

10.11 Consistent with its role as a competition authority at Phase 1[52], the CMA does not provide in this report advice or recommendations on the national security public interest consideration under section 44(6) of the Act.

Other third parties

10.12 Third parties have raised concerns regarding the potential involvement in the merged entity's activities of Gardner's parent company, LAT, (previously called Shaanxi Ligeance Mineral Resources Co Ltd) which is registered and based in China.

[redacted]

10.17 A further third party expressed that it prefers that aerospace products remain produced in the UK by UK producers.

10.18 The CMA considers that the concerns raised by these third parties do not result from the competition effects of the Transaction. The CMA has forwarded the concerns expressed above to BEIS and the MoD, after informing the third parties.

[52] See paragraph 16.7 of CMA2, fourth bullet.

11. Remedies – Undertakings in Lieu

11.1 The MoD informed the CMA that it has been considering the specific risks identified in relation to national security matters and possible remedies to address those risks. The CMA understands that the MoD will advise the Secretary of State directly in this regard.

11.2 Although the CMA is aware of the general nature of the national security concerns held by the MoD,[53] the CMA has at the time of this Report provided no views to BEIS or the MoD on the substance of any undertakings, were they to be required and offered.

12. Assessment and Advice to the Secretary of State

12.1 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).

12.2 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 SLC within a market or markets in the UK for goods or services.

12.3 This report also contains a summary of the representations about the case which it has received (from the MoD and from five third parties) which relate to the national security public interest consideration mentioned in the Notice.

12.4 This report does not contain advice or recommendations on the public interest consideration under section 44(6) of the Act.

[redacted], **Director**

2 March 2020

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[53] As outlined at paragraphs 10.3-10.11 above.