

ANTICIPATED ACQUISITION OF IMPCROSS LTD BY GARDNER AEROSPACE HOLDINGS LTD

NOTICE OF ACCEPTANCE OF UNDERTAKINGS GIVEN BY GARDNER AEROSPACE HOLDINGS LTD PURSUANT TO PARAGRAPH 3(2) OF SCHEDULE 7 TO THE ENTERPRISE ACT 2002

Intervention under the Enterprise Act 2002

1. On 5th December 2019, the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) issued a Public Interest Intervention Notice to the Competition and Markets Authority (“CMA”) under section 42(2) of the Enterprise Act 2002 (“the Act”) in relation to the proposed acquisition by Gardner Aerospace Holdings Ltd (“Gardner”) (a subsidiary of Ligeance Aerospace Technologies) of Impcross Ltd (“Impcross”) (“the merger”).
2. On 2nd March 2020, the CMA reported to the Secretary of State in accordance with section 44 of the Act. The report sets out the CMA’s belief 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 summarised the representations it received relating to the national security public interest consideration specified in the intervention notice.
3. The Secretary of State received further written advice directly from the Secretary of State for Defence about the national security implications of the merger.
4. In light of the report from the CMA and advice of the Secretary of State for Defence, the Secretary of State considers that he has the power to refer the merger, under section 45 of the Act, to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to carry out a more detailed assessment. This is termed a “phase 2 inquiry”.
5. Alternatively, if the Secretary of State would otherwise be minded to refer the merger to a phase 2 inquiry, he may accept undertakings from the parties in lieu of such a reference to mitigate public interest concerns, under paragraph 3(2) of Schedule 7 to the Act.
6. On 16th March 2020, the Secretary of State wrote to Gardner and Impcross, under section 104 of the Act, setting out that he was minded to make a reference to a phase 2 inquiry and providing the parties 15 working days to make representations.
7. Gardner made representations that it was no longer pursuing the transaction at the present time and offered undertakings intended to confirm its change in position.
8. On 17th June 2020 the Secretary of State announced that he proposed to accept the undertakings from Gardner, in lieu of making a reference to a phase 2 inquiry.

9. The Secretary of State published the proposed undertakings for consultation between 17th June 2020 and 2nd July 2020, in accordance with paragraph 2 of Schedule 10 to the Act.
10. The Secretary of State considers that the proposed undertakings would mitigate the national security risks identified to an acceptable level and therefore proposes to accept the undertakings instead of making a reference to a phase 2 inquiry. No representations were received.

Decision to accept undertakings

11. The Secretary of State remains of the view that the proposed undertakings mitigate the national security risks identified to an acceptable level.
12. The Secretary of State has therefore accepted the undertakings in lieu of making a reference to a phase 2 inquiry, under paragraph 3(2) of Schedule 7 to the Act. Pursuant to paragraph 3(8) of Schedule 7, the undertakings came into force on acceptance.
13. This notice and the accepted undertakings are published on the GOV.UK website.

Accepted undertakings

14. The undertakings annexed to this notice are those accepted by the Secretary of State on 5th September 2020.

Niall Mackenzie, Director for Consumer and Competition Policy

An official of the Department for Business, Energy and Industrial Strategy

5th September 2020