

Cobham – Ultra Electronics

A report to the Secretary of State for
Business, Energy & Industrial Strategy
on the anticipated acquisition by
Cobham Ultra Acquisitions Limited
of Ultra Electronics Holdings plc

13 January 2022



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1. Executive summary

- 1.1 This report is hereby given in response to the [public interest intervention notice](#) (the **Notice**) on the public interest ground of national security given to the Competition and Markets Authority (**CMA**) by the Secretary of State for Business, Energy & Industrial Strategy (the **Secretary of State**) on 18 August 2021, in exercise of his powers under section 42(2) of the Enterprise Act 2002 (the **Act**).
- 1.2 This Notice relates to the proposed acquisition by Cobham Ultra Acquisitions limited, a wholly-owned indirect subsidiary of Cobham Group Holdings Limited (together with its subsidiaries, **Cobham**), of Ultra Electronics plc (**Ultra**) (the **Merger**). In this report, Cobham and Ultra together are referred to as the **Parties** and as the **Merged Entity** for statements relating to the future.
- 1.3 The Notice required the CMA to investigate and report to the Secretary of State in accordance with section 44 of the Act by 18 January 2022.

The CMA's report and decisions

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, the CMA believes that it is or may be the case that each of Cobham and Ultra are enterprises; the Merger will result in each of Cobham and Ultra ceasing to be distinct; and the turnover threshold set out in section 23(1)(b)(i) of the Act is met. Accordingly, the CMA believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Competitive assessment

- 1.6 Cobham and Ultra overlap in the supply of Radio Frequency (**RF**) assemblies and components, satellite communication products and aircraft lighting in the United Kingdom (the **UK**). The CMA found that the Merger does not give rise to competition concerns in relation to unilateral horizontal effects in the supply of these products in the UK due to the current limited competitive interaction

between the Parties. The CMA found that, after the Merger, the Merged Entity would continue to be sufficiently constrained by other alternative providers.

- 1.7 Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the UK for goods or services.
- 1.8 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 or undertakings in lieu of reference apply in this case.
- 1.9 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

- 1.10 As required by section 44(3)(b) of the Act, the CMA has summarised representations about the case received from third parties which relate to the national security public interest consideration mentioned in the Notice.
- 1.11 The Ministry of Defence (**MoD**) has also given its view in relation to the national security public interest consideration. The MoD identified national security concerns arising as a result of the Merger.
- 1.12 A number of third parties sent representations directly to the CMA, which concerned public interest considerations.

2. Legal Framework

- 2.1 In relation to anticipated mergers which are not subject to the public interest regime, the CMA is required to make a reference for an in-depth phase 2 inquiry 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 the Secretary of State 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 In such a case, section 33(1) does not apply² and instead

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](#) (CMA2revised), December 2020 (**Guidance on the CMA's jurisdiction and procedure**).

² Section 33(3)(d) of the Act.

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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 contain:⁴

- (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 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 include⁵ decisions as to whether the CMA believes it is or may be the case that:

- (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 an SLC within any market or markets within the UK for goods and services; and
- (c) it would be appropriate to deal with the matter (disregarding the relevant public interest consideration) by way of undertakings in lieu of a reference to phase 2.⁶

2.4 Following receipt of the CMA's report, the Secretary of State may⁷ make a phase 2 reference to the CMA on public interest grounds. 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.⁸ The relevant legal framework in relation to the CMA's assessment of jurisdiction is set out in section 4.

³ Section 44(2) of the Act.

⁴ Section 44(3) of the Act.

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

⁶ Under paragraph 3 of Schedule 7 of the Act.

⁷ Pursuant to section 45 of the Act.

⁸ Section 46(2) of the Act.


3. Parties and Transaction

Transaction

- 3.1 The Merger involves the proposed acquisition of Ultra by Cobham.
- 3.2 The Merger was formally announced pursuant to Rule 2.7 of the Takeover Code on 16 August 2021.
- 3.3 The Merger will be implemented by way of a publicly announced English law court-sanctioned scheme of arrangement under Part 26 of the Companies Act 2006.
- 3.4 Each of Ultra's shareholders will be entitled to receive GBP 35 per share in cash. In addition, each of Ultra's shareholders will be entitled to receive, without any consequential reduction in the consideration, an interim cash dividend of 16.2 pence per share in Ultra as announced by Ultra on 19 July 2021. On this basis, the Merger values Ultra's ordinary share capital at approximately £2.57 billion on a fully diluted basis.
- 3.5 In addition to the UK, the Merger is conditional on competition clearances in Austria, Canada, Germany, Turkey, and the United States. The Merger is also conditional on foreign investment approvals in Australia, Canada, and the UK (insofar as they are required).

Cobham

- 3.6 Cobham provides products, systems and engineering services that enable solutions in space, avionics and electronics, in both commercial and defence markets.
- 3.7 Cobham is comprised of the following business units.
 - (a) CAES (formerly known as Cobham Advanced Electronic Solutions) provides electronic solutions across the defence, aviation and space. CAES generates a small share █████ of its total revenues within the UK and has no physical presence in the UK, with only two UK-based employees who act as sales representatives for the rest of Europe.
 - (b) Cobham Aviation Services Australia (CAVS Australia) provides aviation services for military and civil customers across Australia and Papua New Guinea. Products include aerial border surveillance, search-and-rescue operations, and closed charter (fly-in, fly-out) passenger and freight services.

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- (c) Cobham Communications and Connectivity (CCC) provides technology to enable resilient connection for complex, harsh, hazardous and regulated environments, in air and space, on land and at sea.
 - (d) Electrical and Electronic Equipment (EEE) provides technology for rotating applications, microwave systems and space platforms, including slip rings, microwave components and systems, and rotary joints.
 - (e) Aerospace Communications (CAC) provides control and communications technology for aircraft, including avionics systems, aircraft clocks, aircraft lights, satellite communication (satcom) systems and products and components for antennas. This business is based solely in France and the United States.

3.8 Cobham is ultimately indirectly controlled by funds managed by affiliates of Advent, a private equity investment business in Boston, Massachusetts.

Ultra

3.9 Ultra is a UK publicly listed company that provides application-engineered solutions in mission critical and intelligent systems, primarily for defence and other highly regulated and harsh environment markets. Ultra is comprised of the following business units.

- (a) Maritime: producing maritime sonar, radar, acoustic expendables, signature management and power systems.
- (b) Intelligence & Communications: producing intelligence, communications, command & control, cyber security and electronic warfare solutions.
- (c) Critical Detection & Control: producing control systems, data analytics and sensors, as well as precision control systems to military and commercial aerospace markets.ⁱ
- (d) Forensic Technology: supplying ballistic identification and forensic analysis solutions.
- (e) Energy: supplying products, including sensors and systems, for nuclear and industrial applications.

4. Jurisdiction

Legal Framework

- 4.1 The CMA has jurisdiction over transactions where it believes that 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 has been created when:
- (a) arrangements are in progress or in contemplation which, if carried into effect, will lead to two or more enterprises⁹ ceasing to be distinct.¹⁰ Two enterprises will cease to be distinct if they are brought under common ownership or control;¹¹ 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.

Parties' submissions

- 4.2 The Parties submitted that if carried into effect the Merger would result in a relevant merger situation as defined in section 23 of the Act. The Parties submitted that Cobham and Ultra would cease to be distinct and that the value of Ultra's annual UK turnover exceeds £70 million.¹²

Assessment

- 4.3 Section 129(1) of the Act defines an 'enterprise' as 'the activities, or part of the activities, of a business'. Each of Cobham and Ultra constitutes an enterprise within the meaning of section 129 of the Act.
- 4.4 The Merger involves Cobham acquiring the entire issued share capital of Ultra. Therefore, the enterprises of Cobham and Ultra will cease to be distinct within the meaning of section 26 of the Act.
- 4.5 Further, given Ultra had turnover in the UK of £158.4 million in 2020, the turnover test in section 23(1)(b)(i) of the Act is met.¹³

⁹ 'Enterprise' is defined in section 129 of the Enterprise Act 2002 as the activities, or part of the activities, of a business. Guidance on the CMA's jurisdiction and procedure, paragraph 4.10.

¹⁰ Section 33(1)(a) of the Act and Section 23 of the Act.

¹¹ Section 26 of the Act.

¹² Final Merger Notice submitted by Parties on 15 November 2021 (FMN), paragraph 94.

¹³ FMN, paragraph 95.

- 4.6 Accordingly, the CMA believes that it is or may be the case that a relevant merger situation has been created. The Merger results in the creation of a relevant merger situation as defined in section 23 of the Act, in that:
- (a) Cobham and Ultra will cease to be distinct on completion of the Merger; and
 - (b) Ultra, as target of the Merger, has annual turnover in the UK that exceeds £70 million.

5. Counterfactual

- 5.1 The CMA assesses a merger's impact relative to the situation that would prevail without the merger (ie the counterfactual).¹⁴ In an anticipated merger the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.¹⁵
- 5.2 The Parties submitted that the counterfactual is the pre-Merger situation whereby the Parties continue operating as independent entities.¹⁶ⁱⁱ
- 5.3 The available evidence does not support a counterfactual other than assessing the competitive effects of the Merger against the pre-Merger conditions of competition. The Parties have not provided evidence supporting a different counterfactual. Third parties have also not put forward alternative submissions in this respect.
- 5.4 The CMA therefore believes that the prevailing conditions of competition is the relevant counterfactual against which to assess the impact of the Merger.

6. Competitive Assessment

- 6.1 The Parties are both active in the supply of products related to security and defence in the UK. Table 1 demonstrates the current overlaps between the Parties in the UK.¹⁷

¹⁴ Merger Assessment Guidelines, chapter 3.

¹⁵ Merger Assessment Guidelines, paragraph 3.2.

¹⁶ Draft Merger Notice submitted on 10 September 2021, paragraph 86.

¹⁷ The Parties confirmed that they do not have plans to start supplying products currently supplied by the other party (ie there are no potential overlaps other than the current overlaps described in Table 1).

Table 1: Summary of overlaps

	Cobham	Ultra	Overlap?
RF assemblies and components	✓	✓	Yes
[REDACTED]	✓	✓	Yes [†]
[REDACTED]	✓	✓	Yes
[REDACTED]	✓	✓	Yes
[REDACTED]	✓	✓	Yes
[REDACTED]	✓	✓	Yes
Satellite communication products	✓	✓	Yes
[REDACTED]	✓	x	No
[REDACTED]	✓	✓	Yes [‡]
[REDACTED]	✓	✓	Yes [§]
Aircraft lighting	x	✓	No
[REDACTED]	✓	✓	Yes [†]

Source: FMN, paragraphs 124 to 129 [REDACTED], FMN, Table 1 [REDACTED], FMN, paragraphs 153 to 154 [REDACTED] and FMN, Table 1 [REDACTED].

[†] The Parties have submitted that Cobham's [REDACTED] components are constituted by RF assemblies, whilst Ultra's [REDACTED] product is a complete system [REDACTED].

[‡] The Parties have submitted that they do not overlap in relation to [REDACTED] as Cobham serves commercial customers whilst Ultra serves military customers.

[§] The Parties have submitted that they do not overlap in relation to [REDACTED] as Cobham serves commercial customers whilst Ultra serves military customers.

[REDACTED]

6.2 The CMA's competitive assessment has focussed on the following overlapping product areas:^{18iv}

- (a) RF assemblies and components;
- (b) satellite communication products; and
- (c) aircraft lighting.

6.3 For each of the overlapping product areas listed above, the CMA assessed whether the Merger may give rise to horizontal unilateral effects.

6.4 Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering on its own and without needing to coordinate with its rivals.¹⁹ Horizontal unilateral effects are more likely when the merging parties are close competitors.²⁰

¹⁸ The CMA notes that Cobham's RF assemblies and components could be used as an input to Ultra's RF assemblies and as an input to Ultra's radar systems (Ultra's RF components could also be used as an input to Cobham's RF assemblies). The Parties have submitted that the Merged Entity would have no ability to foreclose rival suppliers of RF assemblies and radar systems given that the Merged Entity would not be a critical supplier of RF Components (there are other suppliers, and the large Prime contractors have other sources of supply) (FMN, paragraphs 254 to 259). Given the Parties' low estimated share of supply in RF assemblies and components (see paragraph 6.11), the number of other suppliers of RF assemblies and components (as outlined in paragraph 6.14(d) and 6.26) and the absence of third party concerns, the CMA did not consider these vertical links further.

¹⁹ Merger Assessment Guidelines, paragraph 4.1.

²⁰ Merger Assessment Guidelines, paragraph 4.8.

6.5 The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise. Market definition involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.²¹ In line with the approach set out in the CMA's Merger Assessment Guidelines,²² the CMA's assessment of the evidence for the purpose of its consideration of whether the Merger may be expected to result in an SLC in any market(s) in the UK does not depend on the precise definition of the relevant market(s) in any mechanistic way, as the CMA may take into account constraints outside the relevant market, segmentation within it or other ways that some constraints are more important than others.²³ The CMA considers that the analysis of the evidence gathered for the purposes of competitive assessment, which assesses the potentially significant constraints on the Parties' behaviour, captures the competitive dynamics more fully than a separate formal analysis of market definition.²⁴

RF assemblies and components

Background and frame of reference

6.6 The Parties are both active in the supply of RF assemblies and components. RF assemblies and components transmit, receive, and manipulate RF signals. Customers may purchase either individual RF components (such as isolators and circulators), which can be combined by the customer to create RF assemblies, or the customer may purchase complete assemblies (such as telemetry or frequency converter assemblies). RF assemblies can be further combined to produce RF systems and sub-systems, such as a missile guidance system (the Parties do not overlap in the production of RF systems and sub-systems).

6.7 In terms of previous decisional practice regarding product frame of reference, the European Commission (**EC**) previously considered a market definition for 'microwave components', defined as a subcategory of 'miscellaneous parts' that could be incorporated in defence related products.²⁵ The EC considered distinguishing between products made from different materials, but ultimately

²¹ Merger Assessment Guidelines, paragraph 9.2.

²² Merger Assessment Guidelines, paragraph 9.2-9.5.

²³ Merger Assessment Guidelines, paragraph 9.4.

²⁴ Merger Assessment Guidelines, paragraph 9.2.

²⁵ Case No COMP/M.2781, Northrop Grumman / TRW, decision of 16 October 2002 (**Northrop Grumman / TRW**), paragraph 29.

left the exact product market definition open.²⁶ The EC also considered a separate product market for telemetry equipment, but ultimately left the exact product market open.²⁷

- 6.8 In terms of previous decisional practice regarding geographic frame of reference, the EC previously considered the possibility of defining markets for military and defence applications on an EEA-wide or national basis due to government regulations and national security-related preferences.²⁸
- 6.9 The CMA considers that it is not necessary to conclude on the exact product or geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.
- 6.10 In assessing whether the Merger may give rise to horizontal unilateral effects, the CMA had regard to the following sources of evidence in relation to the supply of RF assemblies and components:
- (a) shares of supply;
 - (b) Parties' views;
 - (c) evidence on closeness of competition, including internal documents and third party views; and
 - (d) evidence on competitive constraints, including internal documents and third party views.

Shares of supply

- 6.11 The Parties estimated their share of supply of RF assemblies and components to be low,²⁹ on any basis. Table 2 summarises the Parties' estimates.³⁰

²⁶ Northrop Grumman / TRW, paragraphs 32 to 35.

²⁷ Case No COMP/M.8425, Safran S.A./Zodiac Aerospace S.A., decision of 21 December 2017 (**Safran / Zodiac**), paragraph 243.

²⁸ Safran / Zodiac, paragraph 252.

²⁹ In addition, Cobham's CAES division provides RF assemblies and components to commercial customers. It estimates that its current share of supply of RF assemblies and components (either separately or together) to be [REDACTED] (on either a UK or worldwide basis).

³⁰ Cobham has based these shares of supply on internal knowledge with reference to third party market size estimates. Ultra has stated that its shares are likely to be conservative as it is based on a market size which includes only RF assemblies that Ultra is capable of producing, and, even then, does not include all the opportunities that it is aware of.

Table 2: Parties' estimated share of supply of RF assemblies and components, UK, 2020



Source: Parties' estimates, Response to request for information of 20 September 2021 (RF11), Q6.

Notes:

†Cobham EEE does not produce RF components.

6.12 The shares estimated by the Parties indicate that the Parties have a low combined share of supply on any basis (less than 10%, with low increments).

[Redacted]

6.13 The CMA considers that the estimates provided by the Parties indicate that they currently have low shares of supply in RF assemblies and components.

Parties' views

6.14 The Parties submitted that there are no competition concerns in relation to RF assemblies and components for the following reasons:

- (a) the Parties do not compete in the supply of RF components because Ultra does not supply RF components, only RF assemblies;³²
- (b) Cobham focusses on higher performance assemblies, and Ultra focusses on lower performance assemblies;³³
- (c) although the Parties both offer RF assemblies, the Parties do not face each other in tender processes for the categories of RF assemblies in which they overlap (as described in Table 1) and do not regard each other as competitors for their RF products;³⁴ and
- (d) the Parties face constraint from alternative providers such as Lockheed Martin, Raytheon, BAE Systems, Northrop Grumman, L3-Harris, Mercury Systems, Teledyne, Crane, Smiths, and Ball, as well as a larger number of smaller, but equally credible, competitors.³⁵

³¹ [Redacted]

³² FMN, paragraph 137.

³³ FMN, paragraph 130.

³⁴ FMN, paragraph 130.

³⁵ FMN, paragraph 140

Closeness of competition between the Parties

Internal documents

6.15 The CMA has reviewed internal documents supplied by the Parties³⁶ and identified limited instances in which the Parties refer to each other.

6.16 [Redacted]

6.17 [Redacted] These statements further suggest some level of overlap in product and technological capabilities.

6.18 [Redacted]

6.19 The CMA considers that the internal documents supplied by the Parties indicate that the Parties overlap and have similar capabilities in respect of RF assemblies and components. However, given the limited mentions of the

³⁶ Submitted in response to FMN, questions 9 and 10. Submitted as Annexes 11.1-11.9 and Annexes 13.1-13.25.

³⁷ [Redacted]

³⁸ [Redacted]

³⁹ [Redacted]

⁴⁰ [Redacted]

⁴¹ [Redacted]

⁴² [Redacted]

Parties in each other's' internal documents, the CMA considers that the internal documents do not support a view that there is currently particularly close competition between the Parties.

Third party views

- 6.20 The vast majority of third parties indicated that, from their perspectives, the Parties do not compete against each other for the supply of RF assemblies and components. One third party said it views the Parties as competing. That third party stated that the Parties compete for build-to-spec and build-to-print RF assemblies and components in the United States.
- 6.21 The vast majority of customers could not identify a tender within the last five years where both the Parties competed to supply RF assemblies or components to the customer. Only one customer identified tenders in which the Parties had competed against each other within the last five years (three tenders in total).
- 6.22 The CMA considers that the third party views described above indicate that the Parties may share similar capabilities but are not close competitors.

Competitive constraints

Internal documents

6.23 The internal documents from Cobham contain limited mention of alternative providers of RF assemblies and components.

6.24 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

43 [REDACTED]
44 [REDACTED]

[REDACTED]

6.25 The CMA considers that the available internal documents indicate that the Parties face strong competitive constraints from alternative providers.

Third party views

6.26 Third parties indicated that alternative suppliers of RF assemblies and components include Northrup Grumman, BAE Systems, Leonardo DRS, Elbit Systems and Raytheon.

6.27 Further, when providing evidence as to the three tenders that the Parties competed to supply within the last five years (see paragraph 6.21 above), the relevant customer noted that there were 'multiple' other competing bidders for each of the tenders.

6.28 The CMA considers that the third party views described above indicate that the Parties face strong competitive constraints from alternative providers.

CMA conclusion

6.29 On the basis of the available evidence explained above, the CMA considers that the Parties do not compete closely for the supply of RF assemblies and components and that the Merged Entity will be constrained by a sufficiently large number of competitors post-Merger.

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Satellite communication products

Background and frame of reference

- 6.30 The Parties are both active in the supply of satellite communication products, including electrical components, antenna and satellites. In particular, the Parties overlap in the supply of portable antenna used to provide connections to satellite systems (such as driveaway and flyway antenna).
- 6.31 Decisional practice has typically considered a distinction between (i) electronics and systems provided to the civil/commercial sector and (ii) electronics and systems provided to the defence sector/military.⁴⁷
- 6.32 In terms of geographic scope, the EC has previously considered that the markets within civilian satellite communication products are worldwide in scope. In contrast, the EC has noted that national security requirements may limit competition for military satellite communication products but that there is an international approach to procurement and ultimately left the geographic market definition open.⁴⁸
- 6.33 The CMA considers that it is not necessary to conclude on the exact product or geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.
- 6.34 In assessing whether the Merger may give rise to horizontal unilateral effects, the CMA had regard to the following sources of evidence in relation to the supply of satellite communication products:
- (a) shares of supply;
 - (b) Parties' views;
 - (c) evidence on closeness of competition, including internal documents and third party views; and
 - (d) evidence on competitive constraints, including internal documents and third party views.

⁴⁷ Case IV/M.1121, Alcatel/Thomson SA - Thomson-CSF, decision of 25 May 1998 (**Alcatel / Thomson**) , paragraphs 9 and 18.

⁴⁸ Alcatel / Thomson, paragraphs 48 to 51.

[REDACTED]

Shares of supply

6.35 Cobham estimated that its share of supply in satellite communication products is [REDACTED], on either a UK or worldwide basis. When focussing on the product segments where Cobham and Ultra overlap, namely driveaway and flyaway antennas (see Table 1), Cobham estimates its share of supply to be below [REDACTED] in the UK (for the supply of each of driveaway and flyaway antennas separately) and below [REDACTED] worldwide (for the supply of each of driveaway and flyaway antennas separately).⁴⁹ Cobham has based these shares of supply on internal knowledge with reference to third party market size estimates.

6.36 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6.37 The CMA considers that the estimates provided by the Parties indicate that they currently have low shares of supply in satellite communication products, with a combined share of less than 10% on either a UK or worldwide basis, for both a wider category including all satellite communication products or narrower categories of driveaway and flyaway antennas.

Parties' views

6.38 The Parties stated that they do not overlap in the supply of satellite communication products because Cobham serves commercial/civilian customers whilst Ultra focusses on military customers.⁵¹ Ultra noted that its products are focussed on satellite systems [REDACTED] [REDACTED] which are neither required, nor suitable, for civilian products (such as those produced by Cobham).⁵²

Closeness of competition between the Parties

Internal documents

6.39 The CMA has seen internal documents from the Parties that discuss satellite communication products.⁵³ However, each Party's documents do not refer to

⁴⁹ FMN, paragraphs 232 and 233.

⁵⁰ [REDACTED]

⁵¹ FMN, paragraph 207.

⁵² FMN, paragraph 151.

⁵³ See, for example, [REDACTED] and [REDACTED].

[REDACTED]

the other Party as a competitor for satellite communication products, suggesting that the Parties are not close competitors.

Third party views

- 6.40 The CMA has gathered evidence that third parties generally do not consider the Parties to be close competitors for the supply of satellite communication products.
- 6.41 Military customers (of Ultra) do not generally view satellite communication products produced for civilian end-use (such as those produced by Cobham) as alternatives to satellite communication products produced for military applications, and vice versa.⁵⁴ As such, customers generally do not consider Cobham and Ultra to be close competitors. For instance, some respondents noted that military and civilian satellite communication products operate on different frequencies and that military products have potentially unique performance requirements, which also make them too expensive and less attractive for use in civilian products. However, some substitutability was acknowledged by most respondents; for instance, it was noted by one customer that fabrication and performance of some civilian products may satisfy military specifications, and another customer submitted that substitution may be possible depending on application, as well as technical, environmental and security requirements.
- 6.42 The vast majority of third parties responding to the CMA's merger investigation told the CMA that the Parties are not competing in the supply of satellite communication products. Only one third party submitted that the Parties offered similar products, namely satellite communication products for use on land (as opposed to maritime use).
- 6.43 The CMA considers that third party views indicate that the Parties are not close competitors because Ultra serves military customers and Cobham serves civilian/commercial customers and there is limited substitutability between the products used by these two groups.

⁵⁴ The CMA has also considered whether suppliers currently active in supplying military customers could start supplying civilian customers and vice versa. The Parties have stated that switching production from civilian satellites to military satellites would cost between [REDACTED] and take [REDACTED], and any such switch would be unattractive to military customers who require suppliers to have an established reputation in the supply of military satellites (FMN, paragraph 159). A switch from producing military satellites to civilian satellites would require the supplier to engineer the satellite to operate at different frequencies and wavelengths, and to invest to be able to produce satellites for sale at lower price points. Ultra submitted that it does not supply the civilian market (FMN, paragraph 237). The CMA has not identified any examples of suppliers switching production between military and civilian customers, or the reverse (although there are certain suppliers who serve both civilian and military customers).

[REDACTED]

Competitive constraints

Internal documents

6.44 The Parties' internal documents indicate a number of competitors that exert a constraint on the Parties.

(a) [REDACTED]
[REDACTED]
[REDACTED] 55

(b) [REDACTED]
[REDACTED]
[REDACTED]

Third party views

6.45 The CMA gathered evidence that third parties consider there are multiple alternative suppliers for the supply of satellite communication products. Third parties noted that there are a number of other companies active in the production of satellite communication products, such as Viasat (now combined with Inmarsat) and Wireless Innovation. One third party indicated a range of other alternatives, including Texas Instruments and Elta Systems.

CMA conclusion

6.46 The CMA considers that there is currently limited competitive interaction between the Parties in respect of satellite communication products because Ultra serves military customers and Cobham serves civilian/commercial customers. The evidence also indicates there is likely to be limited substitutability between civilian and military satellite communication products. In addition, the evidence indicates that there are sufficient alternative providers of satellite communication products that will constrain the Merged Entity post-Merger.

⁵⁵ FMN, Annex 11.9, 'Cobham SATCOM Strategy Blueprint Exec Sum_EULEGAL'.

⁵⁶ FMN, Annex 13.16, 'Competitor Landscape'.

Aircraft lighting

Background and frame of reference

- 6.47 The Parties are both active in the supply of aircraft lighting products such as internal cabin lighting, safety lighting, cockpit switches and indicators.
- 6.48 In terms of previous decisional practice regarding product frame of reference, the EC previously assessed the market for aircraft lighting distinguishing between civil and defence/military products, as well as exterior and interior lighting.⁵⁷
- 6.49 In regard to geographic frame of reference, the EC previously considered the market for civil aircraft lighting to be worldwide in scope.⁵⁸
- 6.50 The CMA considers that it is not necessary to conclude on the exact product or geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.
- 6.51 In assessing whether the Merger may give rise to horizontal unilateral effects, the CMA had regard to the following sources of evidence in relation to the supply of aircraft lighting products:
- (a) shares of supply;
 - (b) Parties' views;
 - (c) evidence on closeness of competition, including internal documents and third party views; and
 - (d) evidence on competitive constraints, including internal documents and third party views.

Shares of supply

- 6.52 The Parties estimated that Cobham's share of supply of aircraft lighting to UK customers is less than 5%. The Parties estimated that Cobham's share is also less than 5% in each of the narrower segments of: [REDACTED]

⁵⁷ Case M.8658 – UTC / Rockwell Collins, decision of 4 May 2018 (**UTC / Rockwell Collins**), paragraph 110; Case M.8305 – Rockwell Collins / BE Aerospace, decision of 11 April 2017 (**Rockwell Collins / BE Aerospace**), paragraph 26; Case No COMP/M.6410 - UTC/ Goodrich, decision of 26 July 2012 (**UTC / Goodrich**), paragraphs 130 to 142.

⁵⁸ Rockwell Collins / BE Aerospace, paragraphs 25 to 27; UTC / Goodrich, paragraph 144

[REDACTED]

[REDACTED] 59

6.53 The Parties stated that Ultra only supplies aircraft lighting for military customers [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 60

Parties' views

6.54 The Parties stated that the focuses of Cobham and Ultra are different, with Cobham focussing on commercial/civilian customers whilst Ultra only supplies military customers.⁶¹

6.55 The Parties stated that both Cobham and Ultra are focussed on supplying existing customers with aftermarket services [REDACTED]

[REDACTED] 62 Furthermore, [REDACTED]

[REDACTED]

[REDACTED] 63

6.56 In terms of the competitive landscape, the Parties stated that they face a number of competitors in the supply of aircraft lighting, including Safran/Zodiac, Collins Aerospace, Luminator Aerospace, Oxley, Whelen Engineering, SELA, and Astronics.⁶⁴

Closeness of competition between the Parties

Internal documents

6.57 The CMA has not seen any internal documents from the Parties that discuss aircraft lighting.

Third party views

6.58 Third parties did not provide evidence to indicate that the Parties are close competitors.

⁵⁹ FMN, paragraph 236.
⁶⁰ FMN, paragraph 236.
⁶¹ FMN, paragraph 174, Paragraph 174 clarifies that Cobham supplies lighting systems for both commercial and military end uses, whilst Ultra only supplies lighting systems for military aircraft.
⁶² FMN, paragraphs 186.
⁶³ Response to RFI 1, Q5.
⁶⁴ FMN, paragraphs 168 and 171.

Competitive constraints

Internal documents

6.59 As above at paragraph 6.57, the CMA has not seen any internal documents from the Parties that discuss aircraft lighting.

Third party views

6.60 The CMA asked third parties to indicate if there were products and/or services that are both supplied by Cobham and Ultra and where there are limited alternative suppliers. The CMA did not receive evidence from third parties that there were limited alternative suppliers for aircraft lighting.

CMA conclusion

6.61 On the basis of the available evidence explained above, the CMA considers that the Parties do not compete closely for the supply of aircraft lighting and that there would be sufficient constraint on the Merged Entity post-Merger.

Barriers to entry and expansion

6.62 Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁶⁵

6.63 However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

7. Conclusion on substantial lessening of competition

7.1 For the reasons set out above, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.

⁶⁵ Merger Assessment Guidelines, paragraph 8.31 and following.

8. Public Interest Consideration

Summary of interested parties

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

The MoD

8.2 The MoD considers that there are a number of national security concerns arising from the Merger. These relate to several critical and highly sensitive capabilities Ultra provides to Her Majesty's Government (**HMG**). These concerns include risks:

- (a) to assured capabilities;
- (b) to UK security of supply; and
- (c) of unauthorised access to classified material.

Risk to assured capabilities

8.3 The MoD submitted that one set of national security concerns focussed on the question of whether, under the ownership of Cobham, certain parts of Ultra that provide critical services and equipment could cease to operate, cease to operate effectively, or be sold or transferred abroad. Such moves could change, to the detriment of UK defence, the contractual or regulatory structures around those inputs or require HMG or Ultra's delivery partners to put in place alternatives which may not be readily available. Some of these capabilities are unique and would not be readily replaceable should any withdrawal or degrading of service take place. Separately, it has long been recognised that certain critical infrastructure and capability are of a nature that it is necessary to have a secure national facility. In principle certain capabilities within the defence and national security sectors are required to remain within UK ownership and control in order to ensure that those critical inputs are not exposed to external risks which are not able to be managed on a national level.

8.4 The MoD submitted that these risks include a need to have a full assurance of the capability and oversight of all information and production systems to a degree not possible if elements of the capability are controlled from abroad.

There may also be a need to ensure that capability is not subject to external commercial or governmental controls which inhibit the full range of access to that capability. This could include an ability of another actor to change the prioritisation of UK access to the capability or to impose restrictions on elements of the capability which lessen the range of UK access or form additional impediments. The MoD believes that the need for certain capabilities to be provided through a secure national facility is captured in the concept of UK sovereignty and a UK sovereign facility.

- 8.5 By giving rise to the potential for non-UK influence over critical capability, particularly through the potential exploitation of commercial and structural synergies under the business model of Advent, the acquisition of Ultra by Cobham has the potential to directly impact the UK's operational independence, in particular the MoD's ability to conduct military operations as the MoD chooses and protect the sensitive technologies that underpin such operational capabilities.

Risk to UK security of supply

- 8.6 The MoD further submitted that, in support of critical, strategic capabilities, there are certain areas of industry that are so fundamental to the UK's national security, and/or where international law and treaties limit what HMG can obtain from overseas, that HMG must retain the majority of said industrial base within the UK. This requirement for an onshore production base extends to the ability to control development of strategic capabilities, and the need to retain a strong UK suitably qualified and experienced personnel base necessary for future capability planning and development. There is a risk posed to existing MoD programmes if the Merged Entity took decisions to exit from, underinvest in, or move off-shore, the associated capability.
- 8.7 Any internationalised exploitation of Ultra's business under the auspices of business development within the Cobham/Advent group has the potential to directly impact HMG's continued access to critical intellectual property (IP) and know-how, and, in addition, has the potential to introducing foreign regulatory requirements.

Risk of unauthorised access to classified material

- 8.8 The MoD further submitted that the protection of key UK industrial assets, such as a critical industrial base, extends also to the protection of information pertaining to strategic capabilities and unique intellectual property that supports this. Certain parts of Ultra hold sensitive material necessary to support the provision of critical services and equipment. The importance of securing material relating to defence is long recognised, especially material

that relates to key strategic capabilities, and any reduction in controls or widening of access only increases this risk.

Assessment

8.9 In light of Ultra's activities and the national security concerns identified by the MoD, the MoD submitted that it does not consider behavioural measures will provide sufficient reassurance in relation to the risks to the capability concerned. The MoD noted, in particular, the risks around the need for assured capability and risks to UK security of supply. The fact that national security concerns reach into Ultra's structural operating model means behavioural measures do not answer the risks that the MoD has identified at this stage. The MoD also noted that the need for compliance and monitoring of behavioural measures and the significant consequences of breach weigh against the suitability of behavioural measures to address the concerns the MoD has identified.

Third parties

8.10 Three third parties submitted to the CMA that they did not consider the Merger posed national security concerns.

(a) One third party noted that many UK defence platforms are either built in the US or rely on US industrial support. The third party submitted that UK sovereign interests will be satisfied by the current security regime and that the Merger will also ensure Ultra's products maintain a capability edge as its products will benefit from greater resources.

(b) One third party submitted that concerns relating to security of supply, loss of intellectual property or capability can be mitigated and that existing contracts would already provide appropriate safeguards. The third party noted the strategic and military alliance between the UK and US, as well as noting that UK defence companies' supply chains already include US companies, suggesting that the Merger poses limited national security concerns.

(c) One third party, a director of one of the Parties, noted that strict controls and procedures to ensure the security of supply, data and intellectual property apply regardless of ownership or parenting nationality. On this basis, the third party submitted that these procedures ensure compartmentalisation of identified sites and capability and ensure no foreign oversight or influence can be exercised without the UK Government's express permission. This third party also submitted that the Merger will solidify the US and UK's supply chains and approach to

threats to security of that supply chain, as well as solidifying the US and UK military relationship.

- 8.11 Aside from positive statements that focussed specifically on national security, another third party submitted that they supported the Merger because it aligns with the cooperative vision for joint technology and interchangeability that the US and UK navies share.
- 8.12 One third party submitted to the CMA that they considered the Merger posed national security concerns given the risk of Cobham and Advent restructuring Ultra or selling off assets that could weaken Ultra's capabilities. This third party submitted that foreign ownership and interests in Ultra would constrain any UK management's ability to take long-term decisions in the interests of the UK's national security and economy. Further, this third party submitted that the Merger is not consistent with sustaining a strong and capable UK industrial base. They stated that, if Ultra's assets or businesses were sold, there was a risk of limiting routes to market for smaller defence businesses and Advent may be less interested in supporting UK supply chain partners.
- 8.13 Consistent with sections 44(2) and 44(3) of the Act 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.⁶⁶

9. Assessment and Advice to the Secretary of State

- 9.1 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).
- 9.2 This report contains advice on considerations relevant to the making of a reference under section 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, namely that the CMA believes that :
- (a) 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) the creation of that merger situation is not expected to result in an SLC within a market or markets in the UK for goods or services.

⁶⁶ Guidance on the CMA's jurisdiction and procedure, paragraph 16.7 (d).

9.3 This report also contains a summary of the representations about the case which it has received which relate to the national security public interest consideration mentioned in the Notice.

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

Eleni Gouliou, Director

A handwritten signature in black ink, appearing to read 'E. Gouliou', is enclosed in a rectangular box.

13 January 2022

ⁱ As regards paragraph 3.9 sub (c), (d) and (e) the Parties submitted that Precision Control Systems, Forensic Technology and Energy are all sub-units of the Critical Detection & Control strategic business and hence that those three sub paragraphs should be combined to be read as:

“(c) Critical Detection & Control: producing control systems, data analytics and sensors, including:
(i) Precision Control Systems supplied primarily to military and commercial aerospace markets;
(ii) Forensic Technology: ballistic identification and forensic analysis solutions; and
(iii) Energy: supplying products, including sensors and systems, for nuclear and industrial applications.”

The Parties also submitted that Ultra’s structure also includes the Group Support Functions unit, which provides electronics manufacturing and cyber security solutions.

ⁱⁱ Footnote 16 should read “FMN Paragraph 108.”

ⁱⁱⁱ As regards paragraph 6.1, the reference to “frequency generation (transceivers)” in Table 1 should read “frequency converters (transceivers).”

^{iv} The first sentence in footnote 18 should read “The CMA notes that Cobham’s RF assemblies and components could be used as an input to Ultra’s RF assemblies and as an input to Ultra’s radar systems.”