

**ANTICIPATED ACQUISITION OF ULTRA ELECTRONICS HOLDINGS PLC BY
COBHAM ULTRA ACQUISITIONS LIMITED**

NOTICE OF PROPOSED UNDERTAKINGS OFFERED BY THE PARTIES

Views are sought by midnight at the end of 03 July 2022 on the attached undertakings which are designed to mitigate public interest concerns in relation to the interests of national security raised by the proposed merger.

Intervention under the Enterprise Act 2002

1. On 18 August 2021, the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) issued a public interest intervention notice under section 42(2) of the Enterprise Act 2002 (“the Act”) in relation to the proposed acquisition by Cobham Ultra Acquisitions Limited (a wholly-owned indirect subsidiary of Cobham Group Holdings Limited) of the entire issued and to be issued ordinary share capital of Ultra Electronics Holdings plc (“Ultra”) (“the merger”). Under section 44 of the Act, the Secretary of State instructed the Competition and Markets Authority (“CMA”) to investigate the proposed acquisition and to report its findings by 18 January 2022.
2. On 13 January 2022, the CMA reported to the Secretary of State. The report set 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 advice directly from the Ministry of Defence about the national security implications of the merger.
4. In light of the report from the CMA and advice from the Ministry of Defence, the Secretary of State considers that he has the power, under section 45 of the Act, to refer the merger 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 of Schedule 7 to the Act.

Public interest considerations

6. The Secretary of State considers that the following risks are raised by the merger:
 - a. risks to assured capability where, under the ownership of Cobham, certain critical services and equipment could cease to operate, cease to operate effectively or be sold or transferred abroad;
 - b. risks to the security of supply in support of critical strategic capabilities; and

- c. the safeguarding of sensitive information and the risk of unauthorised access to classified material which extends to the protection of information pertaining to strategic capabilities and unique intellectual property.

Proposed undertakings

7. The parties have offered undertakings designed to mitigate the public interest considerations. These would:
 - a. **SecureCos**: creating two new 'SecureCos', UK legal entities which encompass the UK Ultra facilities that deliver the sensitive capabilities to HM Government.
 - b. **Board Representation**: placing an HM Government appointed non-executive director on the Board of each SecureCo to protect UK national security interests and provide oversight of any disinvestment or divestment of sensitive capability.
 - c. **Articles of Association**: giving HM Government the right to approve the Articles of Association of each SecureCo and draft their strategic objectives which would transfer to any future owner, locking that protection in. Any changes would be subject to the HM Government Director's agreement.
 - d. **Step-In Rights**: giving HM Government strong step-in rights (similar to a "special share"), enabling transfer of ownership of the SecureCos on national security grounds, either to a third- party or the Government.
 - e. **Access to Intellectual Property**: giving HM Government the power to access Intellectual Property and/or to transfer knowledge or training necessary for HMG to exercise its step-in rights effectively.
 - f. **ITAR Protections**: requiring Advent to institute an HM Government-approved control plan to prevent International Traffic in Arms Regulations controls applying to ITAR-free products designed and manufactured by Ultra.
8. 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.
9. The Secretary of State now publishes the proposed undertakings for consultation and will consider any representations made before deciding whether to accept the undertakings.

Consultation responses

10. Views are sought by **midnight at the end of 03 July 2022**. Responses should be sent to consultation.publicinterest@beis.gov.uk.

Disclosure, Confidentiality and Data Protection

11. We may publish non-confidential versions of the responses received on the GOV.UK website and may also refer to them in any response to the consultation or in further publications related to the Secretary of State's decisions. We would be grateful if you

would indicate in your response whether you would be content for your response to be published and submit a non-confidential version for publication highlighting any redactions you wish to make. It would also be helpful if you would indicate whether you are content for your name and/or the name of your organisation to be published either alongside your response or, if not, as having responded to the consultation.

12. All responses and personal data will be processed in compliance with the Data Protection Act 2018 and the General Data Protection Regulation. More information on disclosure, confidentiality and data protection is set out in the Privacy Notice associated with this consultation.

Related information

13. All documents published by the Department in relation to the proposed merger are available at: <https://www.gov.uk/government/consultations/proposed-acquisition-of-ultra-electronics-holdings-plc-by-cobham-ultra-acquisitions-limited-draft-undertakings>

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