

[REDACTED]
[REDACTED]

Enterprise Act 2002 Undertakings

ANTICIPATED ACQUISITION BY PARKER-HANNIFIN CORPORATION OF MEGGITT PLC

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

BY

PARKER-HANNIFIN CORPORATION, INCORPORATED AND EXISTING UNDER THE LAWS OF OHIO WITH COMPANY NUMBER 175441 WHOSE PRINCIPAL EXECUTIVE OFFICES ARE AT 6035 PARKLAND BOULEVARD, CLEVELAND, OHIO 44124-4141, THE UNITED STATES OF AMERICA (“PARKER”)

MEGGITT PLC, INCORPORATED AND REGISTERED IN ENGLAND AND WALES WITH COMPANY NUMBER 00432989 WHOSE REGISTERED OFFICE IS AT PILOT WAY, ANSTY BUSINESS PARK, COVENTRY, ENGLAND, CV7 9JU (“MEGGITT”)

WHEREAS:

- A. On 2 August 2021, Parker and Meggitt announced the proposed acquisition by Parker of the entire issued and to be issued ordinary share capital of Meggitt (the “**Transaction**”);
- B. On 18 October 2021, the Secretary of State issued a public interest intervention notice to the Competition and Markets Authority (“**CMA**”) under section 42 of the Enterprise Act 2002 (the “**Act**”);
- C. On 18 March 2022, the CMA reported to the Secretary of State in accordance with section 44(2) of the Act, which was within the period specified by the Secretary of State, summarising representations received by it relating to the national security public interest consideration specified in the public interest intervention notice;
- D. The Secretary of State has the power to refer the Transaction 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 or may, instead of making such a reference, accept undertakings in lieu under paragraph 3(2) of Schedule 7 to the Act; and
- E. The Secretary of State considers the undertakings given below by Parker and Meggitt are appropriate to remedy, mitigate or prevent any of the effects adverse to the public interest within the meaning of section 58(1) of the Act which may be expected to result from the creation of the relevant merger situation, and the Secretary of State shall in consequence not make a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

[REDACTED]

Parker and Meggitt therefore give to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of this relevant merger situation.

1. INTERPRETATION AND DEFINITIONS

In these Undertakings:

- 1.1. where reference is made to any company then in the event of any merger, joint venture or acquisition or internal re-organisation or sale either private or to the public, such reference shall, subject to clause 4.1 below, be interpreted as applying to the equivalent or successor organisation in the new structure;
- 1.2. except where the context does not allow, the singular shall include the plural and the plural shall include the singular;
- 1.3. reference to a clause is a reference to a clause within these undertakings;
- 1.4. **“Affiliate”** means, in respect of a person, any other person Controlled by, Controlling or under common Control with that first person;
- 1.5. **“Board”** means the board of directors of a company;
- 1.6. **“Classified Material”** means any security sensitive information or assets given and marked with a security classification of ‘Official-Sensitive’ or ‘Secret’ or ‘Top Secret’ by a Government Department/Agency or an equivalent status by an International Organisation as defined in the Cabinet Office ‘Government Security Classifications’ document as updated¹;
- 1.7. **“CMA”** means the UK Competition and Markets Authority;
- 1.8. **“Control”** has the same meaning as in section 26 of the Act;
- 1.9. **“Critical Meggitt Capability”** means the Meggitt capability in the UK employed at the Effective Date in the design, production and support of products and components provided directly or indirectly to the Ministry of Defence in relation to the Ministry of Defence platforms listed in the confidential Appendix 2 or in relation to a New Business Arrangement, excluding products or components designed or manufactured for a platform constructed or to be constructed by a prime contractor that is located or organised in the United States, or which are otherwise already subject to ITAR at the Effective Date;

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715778/May-2018_Government-Security-Classifications-2.pdf

- [REDACTED]
- [REDACTED]
- 1.10. **“Customer”** refers to a situation where the Ministry of Defence is either a direct purchaser of products or services from Meggitt or a UK Subsidiary or is specified under the applicable contract as the ultimate user of products or services procured from Meggitt or a UK Subsidiary by a third party for the Ministry of Defence;
 - 1.11. **“Director”** means a director of the Board who has voting or decision-making rights irrespective of whether the individual is in an executive position or not;
 - 1.12. **“Effective Date”** means the date on which these undertakings are accepted by the Secretary of State, except where the Transaction is not completed, in which case these undertakings shall not take effect until the date of such completion;
 - 1.13. **“Government Contractor”** means a government contractor within the meaning of section 12 of the Official Secrets Act 1989 which provides, or is employed in the provision of, goods or services to the Ministry of Defence under a Security Aspects Arrangement and includes any sub-contractor in a chain of sub-contractors;
 - 1.14. **“ITAR”** means the US International Traffic in Arms Regulations;
 - 1.15. **“List X (Facility Security Clearance) Area”** means any secure area that has been approved to hold Classified Material or is, subsequent to the Effective Date, granted List X status by the Ministry of Defence in accordance with the Security Requirements for List X Contractors;
 - 1.16. **“List X (Facility Security Clearance) Contractor”** means a government contractor granted List X status by the Ministry of Defence in accordance with the Security Requirements for List X Contractors;
 - 1.17. **“Meggitt”** means Meggitt PLC, an international group headquartered in the UK;
 - 1.18. **“Meggitt Group”** means Meggitt and any subsidiary from time to time of Meggitt, including subsidiaries created after the Effective Date. A reference to a subsidiary means a subsidiary as defined in section 1159 of the Companies Act 2006;
 - 1.19. **“Ministry of Defence”** means the UK Secretary of State for Defence;
 - 1.20. **“New Business Arrangement”** means a contract specified by the Ministry of Defence and Meggitt in accordance with paragraph 2.21 of these undertakings.
 - 1.21. **“Relevant Agreements”** means the agreements in force as at the Effective Date under which Meggitt or a UK Subsidiary provides products or services, directly or indirectly, to the Ministry of Defence for the Ministry of Defence platforms listed in the confidential Appendix 1; or a New Business Arrangement;

- [REDACTED]
- [REDACTED]
- 1.22. **“Restricted Information”** means Classified Material or information property rights owned or partially owned by the relevant Department;
- 1.23. **“Secretary of State”** means the UK Secretary of State for Business, Energy and Industrial Strategy;
- 1.24. **“Security Aspects Arrangement”** means a contractual arrangement entered into between the Ministry of Defence and Meggitt or a UK Subsidiary which incorporates DEFCON 659/A – Security Measures or any specific, enhanced arrangement which concerns assets or information marked “Official-Sensitive” or as “Secret” or “Top Secret” by an authorised UK government representative, and the Security Requirements for List X Contractors;
- 1.25. **“Security Requirements for List X (Facility Security Clearance) Contractors”** means the Security Requirements for List X Contractors v10.0² or any updated version published by the UK Cabinet Office;
- 1.26. **“Security Undertakings”** means the undertakings made in clause 2;
- 1.27. **“Transaction Parties”** means Parker and Meggitt;
- 1.28. **“UK”** means the United Kingdom of Great Britain and Northern Ireland;
- 1.29. **“UK Subsidiary”** means any subsidiary from time to time of Meggitt that is incorporated in the UK;
- 1.30. **“US”** means the United States of America.

2. SECURITY UNDERTAKINGS

Security of Supply

- 2.1. The Transaction Parties undertake to ensure that the relevant members of the Meggitt Group shall comply with their respective contractual obligations under the Relevant Agreements while the Relevant Agreements remain in force.

Protection of Information

- 2.2. The Transaction Parties undertake to ensure that the relevant members of the Meggitt Group shall:

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/367514/Security_Requirements_for_List_X_Contractors.pdf

- [REDACTED]
- [REDACTED]
- 2.2.1. comply with, and maintain certification pursuant to, the Security Requirements for List X Contractors in respect of areas where Classified Material warranting Security Requirements for List X Contractors is used or stored;
 - 2.2.2. continue to operate a consolidated set of security controls in respect of the Meggitt [REDACTED] List X (Facility Security Clearance) site which is accredited under [REDACTED]; and
 - 2.2.3. maintain related national security vetting service personnel security clearances.
- 2.3. The Transaction Parties undertake to ensure that the relevant members of the Meggitt Group shall comply with the applicable Security Aspects Arrangements agreed in respect of all areas and all matters relating to Classified Material provided to or held by Meggitt or a UK Subsidiary in relation to the Relevant Agreements and any other services provided by Meggitt or its UK Subsidiaries as Government Contractors.
 - 2.4. The Transaction Parties shall undertake that no transfer or disclosure of any Classified Material shall be made within the Meggitt Group, or to any third party, or to locations outside of the UK other than in accordance with the provisions of the relevant Security Aspects Arrangements or with prior written approval of the Ministry of Defence.
 - 2.5. The Transaction Parties shall ensure that only personnel with the relevant clearance have access to Classified Material or to a List X (Facility Security Clearance) Area, unless and to the extent the Ministry of Defence has granted prior written approval for the relevant individual to have such access.
 - 2.6. The Transaction Parties shall comply with the Cabinet Office guidance "*Industrial Security – Departmental Responsibilities Version 10.1 May 2018*" as amended or replaced from time to time, in respect of the handling of Classified Material provided to Meggitt or its UK Subsidiaries in connection with the Relevant Agreements and any other services provided by Meggitt or its UK Subsidiaries as Government Contractors.
 - 2.7. For so long as Meggitt or any of its UK Subsidiaries (i) operates as a Government Contractor and (ii) is a List X Contractor, a majority of the Board of Directors of Meggitt (or, if different, the UK holding company of the Meggitt Group) shall be both UK nationals and resident in the UK, except insofar as the Ministry of Defence has separately agreed in writing.
 - 2.8. Insofar as any directors, officers or authorised representatives of Parker, other than those with appropriate UK security clearance, have access to Meggitt's systems or are involved in day-to-day operations of the Meggitt business, such access shall be limited such that it will not extend to Classified Material.

Non-applicability of ITAR

- [REDACTED]
- [REDACTED]
- 2.9. The Transaction Parties undertake to ensure that, except to the extent that the Ministry of Defence has waived this requirement in writing, Critical Meggitt Capability is retained in the UK for as long as the Ministry of Defence wishes to be a Customer of such Critical Meggitt Capability, subject to: (a) the Ministry of Defence acting reasonably in negotiating and offering to place contracts in the future; and (b) applicable third party dependencies.
 - 2.10. For so long as a Critical Meggitt Capability is retained in the UK in accordance with clause [2.9] above, the Transaction Parties shall not, without prior written approval from the Ministry of Defence, do or refrain from doing anything that would cause any such Critical Meggitt Capability to become subject to ITAR.
 - 2.11. In order to comply with the requirements of clause [2.10] above, the relevant members of the Meggitt Group shall maintain an ITAR internal control plan in the same or substantially similar form to the plan set out in the confidential Appendix 3. The ITAR internal control plan shall be provided to all Meggitt staff members working on Critical Meggitt Capability.
 - 2.12. In the event that a Critical Meggitt Capability becomes subject to ITAR as a result of a change in the scope or application of ITAR arising after the Effective Date, this shall not be deemed a breach of these undertakings. The Transaction Parties shall notify the Ministry of Defence as soon as reasonably practicable after they become aware of any such change in scope or application affecting Critical Meggitt Capability and shall discuss and agree with the Ministry of Defence a reasonable response plan, with both the Transaction Parties and the Ministry of Defence acting in good faith.

Compliance

- 2.13. The Transaction Parties shall employ a security controller responsible for facilitating and overseeing compliance with the Security Requirements for List X (Facility Security Clearance) Contractors and the Security Undertakings and facilitate information requests from the Ministry of Defence made in accordance with clause [2.14]. Such security controller shall be a Board Level Contact who is a UK national and a member of the Board of Meggitt with security clearance.
- 2.14. If the Transaction Parties are unable to comply with any of the Security Undertakings, or become aware of any material non-compliance, they shall: notify the Ministry of Defence immediately; provide to the Ministry of Defence full reasons for the inability to comply or the non-compliance within two (2) months of becoming so aware; and use best endeavours to remedy any non-compliance as soon as possible.
- 2.15. The security controller shall provide an annual compliance notice to the Ministry of Defence confirming that the Transaction Parties have undertaken and maintained all commitments within the Security Undertakings and providing further details and the outcome of any non-compliance notice issued in accordance with clause 2.14.

- [REDACTED]
- [REDACTED]
- 2.16. For the purposes of checking compliance with the Security Undertakings, authorised representatives of the Ministry of Defence shall be entitled to enter and inspect any premises insofar as they are used by Meggitt to provide products and services under the Relevant Agreements to the Ministry of Defence and which handle or have access to Classified Material, and inspect any document or thing in such premises which is concerned with such Classified Material, whether the visit is announced or unannounced. Such representatives shall be entitled to access, on reasonable notice, all such information as they may reasonably require and may remove from any premises any Classified Material that is being used or stored in breach of a Security Aspects Arrangement it being understood that these rights are limited to information used by Meggitt under the Relevant Agreements to provide products or services to the Ministry of Defence.
- 2.17. The Transaction Parties shall take or refrain from taking such action as is reasonably necessary, in order to enable Meggitt to comply with the Security Undertakings.

Provision of Information

- 2.18. The Transaction Parties shall co-operate with the CMA and provide it with such information as it may reasonably require for the purpose of any of its functions under section 92 of the Act in relation to these undertakings.
- 2.19. The Transaction Parties shall provide the Secretary of State or Ministry of Defence with such information as they may from time to time reasonably require to ascertain that they are fulfilling these undertakings.

Directions from the CMA

- 2.20. The Transaction Parties shall comply with such written directions as the CMA may from time to time give to take such steps within their competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings. The Transaction Parties shall do or refrain from doing anything so specified or described in such written directions which they might be required by these undertakings to refrain from doing or to do.

New Business Arrangement

- 2.21. Where a contract for the design, production and support of products and components provided directly or indirectly to the Ministry of Defence for a Ministry of Defence platform is concluded with Meggitt or a UK Subsidiary after the Effective Date and that contract specifies the requirement for measures to control or restrict the applicability of ITAR to the subject matter of the contract, such contract shall, if expressly agreed in the contract, be specified as a New Business Arrangement for the purposes of these undertakings.

3. IMPLEMENTATION OF UNDERTAKINGS

- 3.1. The Transaction Parties shall implement these undertakings as soon as possible and in any event within five (5) working days of completion of the Transaction.



4. TERM OF UNDERTAKINGS

- 4.1. These undertakings shall take effect upon the Effective Date and shall continue in force until they are released by the Secretary of State or as provided in clause [4.2];
- 4.2. The obligations of the Transaction Parties under these undertakings shall terminate in full when:
 - 4.2.1. Meggitt ceases to be Controlled by Parker and/or any of its Affiliates pursuant to a bona fide transaction or series of transactions; or
 - 4.2.2. the Relevant Agreements are no longer in force and no Critical Meggitt Capability is required to be retained in the UK pursuant to clause [2.9].

5. GOVERNING LAW

- 5.1. These undertakings shall be governed by and construed in accordance with the laws of England and each party hereby irrevocably submits to the exclusive jurisdiction of the English courts.

Signed


For and on behalf of Parker

Signed

For and on behalf of Meggitt



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Signed

For and on behalf of Parker

Signed



For and on behalf of Meggitt

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Confidential Appendix 1

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Confidential Appendix 2

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Confidential Appendix 3

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Confidential Appendix 4 [Redacted]

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