

BAE SYSTEMS

REQUEST TO UK COMPETITION AND MARKETS AUTHORITY FOR MERGER UNDERTAKINGS RELEASE

BAE Systems Plc (**BAES**) makes this submission to the Competition and Markets Authority (**CMA**) as a formal request for a full and final release from the remaining two undertakings (and associated administrative provisions) stemming from the 1999 merger with Marconi Electronic Systems (the **Undertakings**). We request that the CMA advises the Secretary of State for Business and Trade (**SoS**) to grant this release.

1. Introduction and Background

This letter follows recent correspondence with both the CMA and the Ministry of Defence (**MoD**) signalling our intention to make this request. As you are aware, [REDACTED] first noted this in the cover letter to the annual compliance report on 5 May 2026. Subsequently, our Group Chief Executive, Dr. Charles Woodburn, wrote to the CMA Chairman on 11 May 2026, confirming our plan to first "engage direct with the MoD... to explore the possibility of making an application with MoD support."

This engagement has now taken place. Attached for your reference is a letter from Mr Jim Carter, Director General Commercial and Industry, National Armaments Director Group, MoD, confirming the MoD's support for BAES's release from the Undertakings, enclosed as Annex 1.

This request is based on the logical conclusion of the comprehensive review the CMA conducted in 2016-2017 (**CMA's Advice to the SoS**).¹ As you know, that review resulted in the unambiguous advice that, due to changes in circumstances, "BAES should be released from the Undertakings."²

The SoS at the time chose not to accept this recommendation,³ a decision we believe was based primarily on representations from the MoD. The decision was explicitly temporary, with a commitment to a further review after two years which, to the best of our knowledge, was never conducted. The MoD's letter of support now removes the obstacle that prevented the implementation of the CMA's correct and well-evidenced advice in 2017.

2. The 2016-2017 CMA Review

The CMA's Advice to the SoS in May 2017 concluded as follows:

We have seen no evidence that the Undertakings have been used to protect competition. The majority of access requests recorded by BAES have been in relation to small contracts. The requests in respect of larger contracts appear not to have played a role in enabling other prime contractors to compete for MOD contracts. We

¹ CMA, *BAE Systems Undertakings Review – Advice to the Secretary of State* (12 May 2017), [BAE Systems undertakings review: Advice to the Secretary of State](#).

² Ibid, para 8.2

³ Department for Business, Energy & Industrial Strategy, *BEIS Secretary of State Decision on the BAE Systems Undertakings* (6 November 2017), [Two BAE Systems plc merger undertakings - GOV.UK](#). See in particular: 'The Secretary of State sought further representations from interested parties. After consideration of these additional representations, he has decided to maintain the undertakings on BAE Systems for the next two years and review it at that point.'

*have also not received any evidence that, as a result of the operation of the Undertakings, the MOD has awarded a contract to an alternative prime contractor which used BAES as a subcontractor. We sought evidence of examples of occasions when the Undertakings have enabled other prime contractors to bid and thereby led to competition which would otherwise not have occurred. No such evidence was received.*⁴

This conclusion from 2017 remains entirely valid today. As we detail below, the experience of the subsequent years has only reinforced the basis for finding that the Undertakings no longer provide any discernible benefit to competition.

3. The Remaining Undertakings and Their Practical Application

The two remaining undertakings⁵ are as follows:

- (a) Appointment of Compliance Officer:** As you are aware, [X] is the appointed Compliance Officer for the Undertakings and provides the required annual report to the CMA. Provision of the report is supported by internal audit activity.
- (b) Access by Prime Contractors to BAES In-house Suppliers:** This is the sole remaining substantive Undertaking: *BAES is obliged to make its resources available on request and on fair, reasonable and non-discriminatory terms to other actual or potential third party prime contractors to permit them to bid for or undertake work on MOD programmes and, relatedly, to seek the prior written consent of the OFT (now the Competition and Markets Authority (CMA)) before entering into certain teaming agreements involving more than one BAES company.*⁶

Our records indicate that since 2017 there have been no instances of a prime or potential prime referring to the Undertakings in any request for assistance and no instances of the Undertakings being deployed if BAES elected not to bid. To provide further context:

- BAES continually receives requests from actual and potential prime contractors in the ordinary course of bidding, subcontracting, support and framework arrangements. These requests are made entirely independent of, and without reference to, the Undertakings.
- BAES frequently responds positively and contracts on the basis of such requests. Conversely, BAES declines such requests on the basis of objective justification, such as a lack of capability. A common example occurs under MoD framework agreements that are administered by a 'thin prime', where requests go to all framework participants regardless of their specific expertise.

Accordingly, the CMA's 2017 finding that "*We have seen no evidence that the Undertakings have been used to protect competition*" remains entirely valid today. Our analysis below demonstrates that market developments in the intervening years have only strengthened the case for release.

⁴ Ibid, paras 1.15-1.16.

⁵ BAES, *Undertakings*: <https://www.baesystems.com/en/our-company/undertakings>

⁶ CMA, *BAE Systems Undertakings Review – Advice to the Secretary of State* (12 May 2017), [BAE Systems undertakings review: Advice to the Secretary of State](#), para 2.15(a).

4. Market Developments Since 2017

Our below assessment focuses on Warships and Submarines, Combat Air, and Munitions—the same sectors the MoD and BAES guided the CMA to review in 2016-2017.

4.1 Warships and Submarines

(a) Warships

The CMA's 2017 analysis correctly identified that the Undertakings were only potentially relevant for complex warships. The developments since then have proven this conclusion to be correct and have further demonstrated the lack of utility in retaining the Undertakings.

BAES is the prime contractor for the Type 26 programme, which is currently operating at a high tempo in the build phase, with the first in class in final fit out. This arrangement is the result of a deliberate MoD procurement strategy.

The MoD did in fact compete the Type 31 Frigate. This provides a real-world test case for the Undertakings. Three different bidder groups were involved in the final phase, including one involving BAES. The other two competing groups did not request or require access to BAES capabilities and ultimately the Babcock team was successful. This outcome directly validates the CMA's 2017 assessment that it had seen "*no evidence that BAES has essential resources to which an alternative prime contractor would require access*" for the Type 31 programme.⁷ The competition proceeded without any reliance on the Undertakings.

In addition, there is now a third naval prime in the UK following the Navantia purchase of Harland & Wolff. Navantia is engaged as prime contractor for the Fleet Solid Support Ship Programme, a position it secured following a MoD competition. BAES, along with Babcock International, Cammell Laird and Rolls Royce, tendered unsuccessfully for this work under the banner of Team UK. This demonstrates a more competitive UK landscape than existed even at the time of the CMA's Advice to the SoS.

Finally, it should be noted that BAES competed for, and was unsuccessful in securing, selection as the Combat Management System provider for both the Type 31 and Fleet Solid Support Ship programmes. This, combined with the successful prime-level competition for the Type 31 frigate and the emergence of new UK naval primes, conclusively demonstrates that a dynamic and competitive market now exists in which BAES has no ability to foreclose.

(b) Submarines

The long-term landscape for submarines is already set, with BAES as the prime contractor for the Astute and Dreadnought classes. The future attack submarine capability will be delivered via Pillar 1 of the tri-national AUKUS partnership, cementing an international approach where the Undertakings have no role.

It is expected that the hybrid navy concept will feature a range of autonomous surface and sub-surface platforms. This is a dynamic and competitive segment with a multiplicity of alternative domestic and international suppliers available (who would not be reliant on BAES capabilities). In making this observation it should also be kept in mind that the Undertakings

⁷ Ibid, para 1.23.

were designed to address competition concerns arising from the 1999 merger, not all subsequent general developments in the field of defence technology that have emerged decades later.

4.2 Combat Air

The CMA's Advice to the SoS was particularly clear on combat air, concluding it was "*not persuaded that there is a reasonable prospect that MOD policy will shift towards onshore procurement*" and that BAES was therefore "*unlikely... to have the ability to foreclose*".⁸ Every major development since 2017 has reinforced this conclusion.

It remains the case that MoD is currently purchasing F-35 combat aircraft. Here the position is reversed, in that BAES is a sub-contractor to Lockheed Martin. The Undertakings are therefore irrelevant to the UK's current primary programme.

In addition, the course is set for the next generation combat aircraft via GCAP (the Global Combat Air Programme). This is a formal international partnership (with Treaty status) between the UK, Japan and Italy, now encompassing the GCAP International Government Organisation, the Edgewing joint venture and additional industry teams for key capabilities including sensors and engines. [X]. This confirms the CMA's prediction that international alliances, not domestic competition, would define future programmes.

Regarding support, it remains the case that contracts are primarily delivered by the relevant Original Equipment Manufacturer. In the trainer aircraft space, there is a range of alternative suppliers for a future replacement of Hawk.

Similarly to the Maritime domain, it is expected that the Combat Air domain will see a very significant increase in the use of drones, one-way effectors and unmanned collaborative air platforms to supplement manned combat aircraft. BAES is very active in this segment, but again there is also a multiplicity of alternative domestic and international suppliers. This dynamic and competitive new market falls clearly outside the scope of concerns related to the 1999 merger.

4.3 Munitions

In 2017, the CMA noted uncertainty surrounding what would happen after the MASS partnering agreement expired. The MoD's strategic choice was to sign the long-term NGMS (Next Generation Munitions Solution) partnering agreement with BAES in November 2021, which commenced in January 2023. This 15-year partnership secures national supply to the UK Armed Forces in certain product areas until 2037. As this is a strategic arrangement, the Undertakings have no function for this critical part of the market. Munitions not covered by the NGMS partnering agreement are sourced competitively from a range of suppliers, including overseas companies, with no reliance on BAES' capabilities.

5. The Compliance Burden

In light of all the above, the Undertakings essentially operate solely as a bureaucratic mechanism, not providing any substantive benefit to any party. Arguably, the Undertakings ironically now have an anti-competitive element, in that they impose a burden on BAES that does not apply to other competing domestic and international suppliers.

⁸ Ibid, para 1.30.

Specifically, the Undertakings impose a continuing administrative burden on BAES. This includes compliance oversight, yearly audits, maintenance of detailed registers and reporting obligations to the CMA. In addition, the Undertakings introduce an additional non-substantive procedural element into day-to-day commercial activity, requiring additional internal meetings and checks simply to document compliance when assessing and responding to requests from primes or potential primes. Taken together, these steps require dedicated internal resource and senior management involvement, representing a material ongoing compliance cost. These annual costs were estimated to be in the region of £500K in 2016 and can therefore now be expected to be significantly higher, if only by general inflation.

This stands in direct opposition to the Government's explicit strategic direction, as detailed in the recent Defence Industrial Strategy and Strategic Defence Review. These strategies are built on the ambition to create a more dynamic and competitive market by "cutting red tape," reducing "delay and complexity," and removing unnecessary "bureaucracy consuming precious time and effort."⁹ Retaining this piece of legacy regulation on a single UK supplier is fundamentally at odds with the stated goal of fostering a level and productive industrial base.

6. Conclusion and Formal Request

In the quarter of a century since the Undertakings were put in place, the defence industry and MoD procurement have changed beyond recognition. The CMA's own comprehensive review in 2016-2017 correctly identified that the Undertakings were obsolete. The primary (and possibly the only) reason for their retention at that time, the MoD's objection, has now been removed and indeed MoD support the discharge of the Undertakings.

The Undertakings impose a material compliance cost for no discernible benefit, running contrary to stated government policy. Given these clear and compelling changes of circumstances, BAES formally requests that the CMA advise the SoS to grant a full and final release from the Undertakings.

We welcome the opportunity to discuss this matter with you.

Yours faithfully,

[✂]

For and on behalf of BAE Systems plc

ANNEX 1

⁹ Ministry of Defence, *Defence Industrial Strategy: Making Defence an Engine for Growth* (8 September 2025), pp 6, 13; Ministry of Defence, *Strategic Defence Review: Making Britain Safer: secure at home, strong abroad* (2 June 2025), p. 33.

Annex 1

LETTER OF SUPPORT FROM THE MOD



**National Armaments
Director Group**

Jim Carter
Director General Commercial and
Industry

National Armaments Director Group
MOD Main Building, Whitehall, London
SW1A 2HB

Telephone: [REDACTED]

Email: [REDACTED]

Date: 8th July 2026

[REDACTED]
BAE Systems

Dear [REDACTED]

BAE Systems Merger Undertakings

With reference to our recent discussions, and the summary document received by my Office on 26th June regarding the final two undertakings associated with BAE Systems' acquisition of Marconi Electronic Systems, namely:

- Undertaking 1 – Appointment of Compliance Officer and**
- Undertaking 2 – Access by Prime Contractors to BAES In-house Suppliers**

I hereby confirm that, following internal commercial review, MOD will support any request made by BAE Systems to be released from these undertakings.

Please do not hesitate to contact me should you require anything further in this regard.

Yours sincerely,

[REDACTED]

Jim Carter
Director General Commercial and Industry