BAE SYSTEMS REMEDY REVIEW

Advice to the Secretary of State

23 November 2026



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Advice to Secretary of State

Introduction

1. On 15 October 2026 the Competition and Markets Authority (**CMA**) launched a review of the undertakings given by British Aerospace plc, now BAE Systems plc (**BAE Systems**) arising from its acquisition of the Marconi Electronic Systems business of GEC on 29 November 1999. The CMA invited views on its intention to readopt its 2017 advice to release the undertakings, following a request from BAE Systems to release the remedy, received in July 2026.

2. The CMA has a statutory duty, by virtue of paragraph 13 of Schedule 24 to the Enterprise Act 2002 as amended by the Enterprise and Regulatory Reform Act 2013, to keep under review the carrying out of undertakings accepted under section 75G of the Fair Trading Act 1973.[1] From time to time, the CMA must consider whether, by reason of any change of circumstances, an undertaking is no longer appropriate and either:

   (i) one or more of the parties to it can be released from it, or

   (ii) it needs to be varied or to be superseded by a new undertaking.

3. If it appears to the CMA that any person can be so released or that the undertaking needs to be varied or superseded, the CMA has a duty to give such advice to the Secretary of State as it may think proper in the circumstances.

Background to the request

4. This transaction was assessed by the Office of Fair Trading (**OFT**) under the merger provisions of the Fair Trading Act 1973. To address competition and other public interest concerns arising from the transaction, British Aerospace plc gave undertakings, in lieu of a reference to the Monopolies and Mergers Commission, to the then Secretary of State for Trade and Industry on 28 March 2000.

5. The undertakings included measures to safeguard competition at prime contractor and sub-contractor level and to address national security concerns arising at the time within the defence sector.

[1] Direct responsibility for the majority of undertakings and orders made under the Fair Trading Act 1973 were transferred from the Secretary of State to the OFT, then the CMA, by orders made under Schedule 24 to the Enterprise Act 2002; however this was not one of those remedies, see the CMA's Mergers orders and undertakings register - GOV.UK, for more information. In this case the Schedule 24, *Transitional and transitory provisions and savings*, to the Enterprise Act 2002, makes saving provision that 'the old law shall continue to apply', and for the CMA to operate the 'saved' functions of the Director General of Fair Trading to give advice to the Secretary of State in respect of the 'old law'.

6. The undertakings have been subject to four reviews to date. On 10 January 2002, BAE Systems was released from one of the obligations in the undertakings which had become redundant. On 29 September 2005, the undertakings were varied again to allow for the extension of the then Compliance Officer's appointment. A further review was conducted in 2006 which led to a further variation, with most of the obligations in the undertakings being removed on 2 February 2007. Revised undertakings were issued that were based on the remaining obligations. In addition, the CMA reviewed the remaining obligations in 2017 and provided its advice to the Secretary of State concluding that BAE Systems should be released from the undertakings.[2]

The Undertakings

7. The remaining obligations in the undertakings consist of two provisions:

(a) The appointment of a Compliance Officer – BAE Systems is obliged to appoint a Compliance Officer to facilitate and oversee compliance with the undertakings, including through annual reports to the OFT (now CMA) and the Ministry of Defence (**MOD**); and

(b) Access by Prime Contractors to BAE Systems In House Suppliers – to make available on request and on fair, reasonable and non-discriminatory terms access to its capabilities 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 CMA) before entering into certain teaming agreements involving another BAE Systems company.

BAE Systems request

8. On 27 July 2026, the CMA received a letter from BAE Systems requesting release from the undertakings (the **BAE Systems Request**). BAE Systems' view is that the undertakings are obsolete given the market changes. In addition, it noted that the undertakings impose a continuing administrative burden upon BAE Systems to which it must dedicate internal resource and senior management resulting in a material annual compliance cost.[3]

9. In its 2017 advice to the Secretary of State, the CMA noted that the MoD objected to the release of the undertakings on the basis that the undertakings provided a beneficial negotiation lever.[4] The BAE Systems Request states that the 'primary (and possibly the only) reason for their retention at that time [ie at the time of the

[2] BAE Systems undertakings review: Advice to the Secretary of State, June 2017, paragraphs 8.1 - 8.2.
[3] BAE Systems Letter to the CMA, July 2026, paragraph 5.
[4] BAE Systems undertakings review: Advice to the Secretary of State, June 2017, paragraph 1.39.

CMA's 2017 review], the MoD's objection, has now been removed'.[5] The BAE Systems Request also contained a Letter of Support from the MoD dated 8 July 2026, expressing its support for the BAE Systems Request that it should be released from the remaining undertakings.

10. The BAE Systems Request and Support Letter can be viewed on the case page.[6]

The 2017 advice

11. The CMA conducted a review of the undertakings in 2017 where it noted that it 'has seen no evidence that the Undertakings have been used to protect competition. The majority of access requests recorded by BAE Systems 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 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 BAE Systems as a subcontractor.'[7]

12. The CMA found that there had been a change of circumstances which meant that it is no longer appropriate to retain the undertakings. The CMA advised the Secretary of State that BAE Systems should be released from the undertakings.[8]

Consultation

13. On 15 October 2026, the CMA published the BAE Systems Request letter alongside the Letter of Support from the MoD, inviting comments from interested parties to give their views on the CMA's proposal to readopt the 2017 advice to release BAE Systems from the undertakings.

14. The CMA consulted from 15 October 2026 until 5 November 2026 and did not receive any responses to its consultation.

15. The CMA therefore continues to be of the view that it should readopt its 2017 advice that BAE Systems be released from the undertakings.

[5] BAE Systems Letter to the CMA, July 2026, paragraph 6.
[6] BAE Systems undertakings review (2026) - GOV.UK.
[7] BAE Systems undertakings review: Advice to the Secretary of State, June 2017, paragraph 1.15.
[8] BAE Systems undertakings review: Advice to the Secretary of State, June 2017, paragraphs 1.41-1.42.

CMA Advice to the Secretary of State

16. For the reasons set out above, the CMA has decided to readopt it 2017 advice to the Secretary of State that there have been relevant changes of circumstances such that the undertakings are no longer appropriate. Accordingly, the CMA's advice is that BAE Systems should be released from the undertakings.

Joel Bamford

Executive Director for Mergers,

exercising the saved function of the Director General of Fair Trading,

for and on behalf of the CMA Board.

23 November 2026