

Enterprise Act 2002 Undertakings

ACQUISITION OF SMITHS AEROSPACE BY GENERAL ELECTRIC COMPANY

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY BY

THE GENERAL ELECTRIC COMPANY, A COMPANY INCORPORATED UNDER THE LAWS OF NEW YORK, USA, WHOSE REGISTERED OFFICE IS AT 3135 EASTON TURNPIKE, FAIRFIELD, CONNECTICUT, 06431 USA ("GE") AND

SMITHS AEROSPACE GROUP LIMITED, A COMPANY INCORPORATED UNDER THE LAWS OF ENGLAND AND WALES, WHOSE REGISTERED OFFICE IS AT 765 FINCHLEY ROAD, LONDON NW11 8DS ("SMITHS AEROSPACE")

WHEREAS:-

(A) On 15 January 2007, Smiths Group plc, the parent company of Smiths Aerospace, and GE announced proposals for GE to acquire Smiths Aerospace (the "Transaction");

(B) The Transaction was notified to the European Commission on 14 March 2007 as a concentration falling within Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "ECMR");

(C) The European Commission has sole jurisdiction under the ECMR to investigate the competition aspects of the Transaction, but the Secretary of State may nevertheless take appropriate measures to protect the legitimate interest of public security by virtue of Article 21(4) of the ECMR;

(D) In view of UK national security concerns, the Secretary of State issued on 20 March 2007 a European Intervention Notice to the OFT pursuant to section 67 of the Act;

(E) On 10 April 2007, the OFT reported to the Secretary of State in accordance with Article 4 of the Order, 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 European Intervention Notice;

(F) The Secretary of State has the power to refer the Transaction to the Competition Commission under Article 5 of the Order or may, instead of making such a reference, accept undertakings in lieu of reference under paragraph 3(2) of Schedule 2 to the Order;

(G) The Secretary of State considers that the undertakings given below are:

(a) appropriate measures to protect the public security legitimate interest and are compatible with the general principles and other provisions of Community law in accordance with Article 21(4) of the ECMR; and

(b) appropriate to remedy, mitigate or prevent the effects adverse to the public interest which may be expected to result from the creation of the European relevant merger situation.

GE and Smiths Aerospace therefore give to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which may be expected to result from the Transaction.

1. INTERPRETATION

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 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 shall be a reference to a clause within these undertakings;

1.4 "**Act**" means the Enterprise Act 2002;

1.5 "**Classified**" means protectively marked in accordance with the system of protective marking defined in the Government Manual of Protective Security;

1.6 "**Compliance Officer**" means a competent person appointed by GE in accordance with clause 2.9;

1.7 "**Effective Date**" means the date on which, having been signed by GE and Smiths Aerospace, these undertakings are accepted and dated by the Secretary of State, except where the Transaction is not completed, in which case these undertakings shall not take effect until the Transaction has been completed;

1.8 "**Military Programmes**" means any defence-related programmes in relation to which the UK Companies enter into or, prior to the Effective Date, have entered into:

(a) contracts with the Ministry of Defence; or

(b) sub-contracts with third parties who are contractors to the Ministry of Defence;

1.9 "**Ministry of Defence**" means the United Kingdom Secretary of State for Defence;

1.10 "**Prime Contractor**" means a UK company which is a supplier to the Ministry of Defence under Military Programmes, under a contract between the UK company in question and the Ministry of Defence;

1.11 "**OFT**" means the Office of Fair Trading;

1.12 "**Order**" means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003;

1.13 "**Secretary of State**" means the Secretary of State for Trade and Industry;

1.14 "**Security Undertakings**" means the security undertakings given in paragraph 2 below;

1.15 "**Subcontractor**" means a UK Company which is a supplier to a third party in connection with Military Programmes;

1.16 "**Subsidiary**" has the meaning ascribed to it in sections 736 and 736A of the Companies Act 1985 as amended;

1.17 **“UK Companies”** means Smiths Aerospace and those Subsidiaries of Smiths Aerospace that are incorporated in England and Wales at the Effective Date and any successor UK company resulting from any internal reorganisation of Smiths Aerospace in accordance with the terms of these undertakings;

1.18 **“UK Military Capability”** means the capability to carry out Military Programmes (including those entered into on or after the Effective Date). The Ministry of Defence shall be the sole arbiter in the event of any dispute as to what is to be construed as UK Military Capability, and where GE and/or the UK Companies are in any doubt they shall first consult the Ministry of Defence;

1.19 **“UK National Security Regulations”** means the regulations in relation to Classified material set out in the Government Manual of Protective Security as amended or supplemented from time to time;

1.20 **“UK Protected Material”** means information, software, hardware and equipment classified “Confidential” or above or to which access is otherwise similarly restricted in the interests of UK national security; and

1.21 **“US ITAR”** means the United States International Traffic in Arms Regulations.

2. SECURITY UNDERTAKINGS

GE and Smiths Aerospace undertake that:

Maintenance of strategic capabilities

2.1 We will procure that for so long as any of the UK Companies is a Prime Contractor or a Subcontractor on Military Programmes, except in so far as the Ministry of Defence has separately agreed otherwise in writing, a sufficient number of the directors of such a UK Company shall be UK security cleared British Citizens to enable security sensitive issues to be resolved at board level should the need arise.

2.2 We will procure that for so long as any of the UK Companies is a Prime Contractor or a Subcontractor on Military Programmes, those Military Programmes shall continue to be directly controlled, except insofar as the Ministry of Defence has separately agreed otherwise in writing, by a company or companies incorporated within the UK.

2.3 We will provide to the Ministry of Defence a copy of the Articles of Association of each of the UK Companies.

2.4 We will procure that the relevant UK Company will inform the Ministry of Defence in writing and thereafter consult with the Ministry of Defence at least 6 months prior to:

- (i) disposal or substantive alienation of any defence related asset (whether tangible or intangible) of the UK Companies which is material to the UK Military Capability within the UK Companies; or
- (ii) the voluntary winding up or dissolution of any of the UK Companies; or
- (iii) materially running down or affecting adversely in any material way the UK Military Capability within the UK Companies.

2.5 We will provide the Ministry of Defence with all reasonable assistance to mitigate the impact of material running down or adverse effects on UK Military Capability. This shall mean that we will ensure that the relevant UK Company shall:

- (i) offer to meet with the Ministry of Defence within seven calendar days of informing the Ministry of Defence of our intention pursuant to paragraph 2.4;
- (ii) within a further 14 calendar days provide the Ministry of Defence with a list of potential alternative sources of supply;
- (iii) offer to provide the Ministry of Defence with contact details and a personal introduction to any of the suppliers provided under (ii) above;
- (iv) provide the Ministry of Defence with a transition plan; and
- (v) fulfil our contractual supply obligations during the period of consultation.

Protection and Exploitation of Technology and Information

2.6 Except in so far as the Ministry of Defence has separately agreed otherwise in writing, all matters relating to Military Programmes and security within the UK Companies shall be maintained in line with UK National Security Regulations, including the security of work areas subject to special physical ring-fencing and in particular:

- (i) the operational management of Military Programmes by the UK Companies shall be by personnel with the appropriate UK security clearances, with security procedures meeting UK National Security Regulations and any other such requirements as deemed necessary from time to time by the Ministry of Defence;
- (ii) only personnel with appropriate UK security clearance shall have access to UK Protected Material;
- (iii) no transfer or disclosure by whatever means of UK Protected Material shall be made outside the UK Companies or outside the UK;
- (iv) the originals of all information and material generated by the UK Companies pertaining to Military Programmes shall remain in the United Kingdom;
- (v) the UK Companies shall use their reasonable endeavours to obtain within 14 calendar days of the Effective Date any approvals that they require under US ITAR as a result of the acquisition of Smiths Aerospace by GE in order to meet their existing contractual obligations under any Military Programme in place at the Effective Date;
- (vi) prior to incorporating, after the Effective Date, any information or material which is subject to US ITAR into any Military Programme for which any of the UK companies is a Prime or Sub-contractor, GE shall obtain written approval from the Ministry of Defence; and
- (vii) to the extent that any future change in US ITAR requires the UK Companies to have additional approvals in order to supply any Military Programme, the UK Companies shall apply promptly for those approvals so as to minimise any adverse impact on supply for UK Military Programmes. GE shall support

those applications and the UK companies shall keep the Ministry of Defence informed as to the progress of those applications.

Intellectual Property Rights

2.7 We will ensure that the UK Companies are aware of, and bound by, obligations between the Ministry of Defence and any of the UK Companies regarding confidentiality of information and limitations on the rights of use of intellectual property. We will have due regard to the Export Control Act 2002. We will also ensure that the UK Companies shall continue to respect any levy obligations between the Ministry of Defence and any of the UK Companies in effect at the Effective Date.

Compliance

2.8 We will provide the Ministry of Defence with such information as it may from time to time reasonably require to ascertain that GE and Smiths Aerospace are fulfilling the Security Undertakings. If GE or Smiths Aerospace is unable to comply with any of the Security Undertakings, or becomes aware of any non-compliance, it will provide full reasons for the inability to comply or the non-compliance within one month of becoming aware thereof.

2.9 As well as appointing a UK security cleared security officer responsible for facilitating and overseeing the compliance with UK National Security Regulations and the Security Undertakings at the premises of the UK Companies (as required by UK National Security Regulations), GE and Smiths Aerospace will, as soon as reasonably practicable after the Effective Date and following consultation with the Ministry of Defence, appoint a Compliance Officer who shall be responsible for providing to the Ministry of Defence:

- (i) an annual report within three months of the end of the financial year of Smiths Aerospace, as well as any other such information as the Ministry of Defence may from time to time require, to verify compliance with the Security Undertakings, including any measures taken or proposed by the UK Companies so as to ensure compliance with the Security Undertakings and to prevent any breach of them; and
- (ii) full particulars of any failure to comply with the Security Undertakings immediately upon such failure becoming apparent.

2.10 For the purpose of checking compliance with the Security Undertakings, representatives of the Ministry of Defence shall be entitled to enter and inspect any premises used by the UK Companies which are in any way connected with Military Programmes and inspect any document or thing in any such premises which is concerned with such Military Programmes. Such representatives shall be entitled to all such information as they may reasonably require.

3. PROVISION OF INFORMATION

GE and Smiths Aerospace shall provide the OFT with such information as it may reasonably require for the purpose of ascertaining that these undertakings are being or have been complied with.

4. DIRECTIONS FROM THE OFT

GE and the UK Companies will comply with such written directions as the OFT 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. GE and the UK Companies will 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. GE and Smiths Aerospace will procure that the UK Companies comply with these undertakings as if the UK Companies themselves had given them.

5. TERMS OF THIS UNDERTAKING

These undertakings shall take effect upon the Effective Date and shall continue in force until released by the Secretary of State.

6. GOVERNING LAW

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

7. EXISTING AGREEMENTS

For the avoidance of doubt, these undertakings shall be without prejudice to the rights and obligations of the parties to previous and existing contracts between the Ministry of Defence and the UK Companies.

Signed



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For and on behalf of the General Electric Company



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For and on behalf of Smiths Aerospace Group Limited

Date:

30 April 2007