

ATLAS ELEKTRONIK UK PROPOSED ACQUISITION OF THE UNDER WATER SYSTEMS DIVISION OF QINETIQ - NOTICE OF PROPOSED MODIFICATIONS TO DRAFT STATUTORY UNDERTAKINGS

In July, BIS undertook a consultation on draft statutory undertakings to be provided by Atlas Elektronik UK and Atlas Elektronik GmbH to protect national security interests that arise in relation to their proposed acquisition of the under water systems division of QinetiQ. We received one response to that consultation. The relevant third party welcomed the measures being proposed to protect national security interests but suggested that the language in clauses 2.7 and 2.8 of the draft undertakings was insufficiently specific in some areas.

Having consulted the MoD on this matter, we believe it is appropriate to make the modifications to the draft undertakings set out below.

The modifications we are proposing should help ensure the requirements on the acquirer are sufficiently specific, compelling and enduring to avoid any misinterpretation or scope for withdrawal from the commitments being entered into. In particular, the modifications reinforce the undertakings by emphasising:

- the applicability of separate MoD requirements governing the protection of third party information, in particular the obligations imposed by intellectual property law along with the specific contract-by-contract requirements that are contained in standard MoD Defence Conditions of contract (Defcons) and Defence Forms;
- the reasons for concern about possible conflicts of interest (Atlas's significant manufacturing capability);
- the need for Atlas's conflict of interest process to conform with MoD's published policy statement in this area, handled by both the company and MoD on a case-by-case basis, and based on the creation of appropriate firewalls between teams of staff.

Interested parties are invited to make their views known on the proposed modifications to the draft undertakings in writing to the Department by 3 September 2009.

A further announcement will be made after any representations have been considered.

Proposed modifications to clauses 2.7 and 2.8 of draft undertakings to be provided by Atlas Elektronik (changes shown in italics)

2.7 They shall adhere to the following principles to prevent conflicts of interest, in relation to *consultancy* and *research-linked consultancy* advice carried out by Atlas Elektronik UK in support of the Ministry of Defence, namely that:-

- (i) Atlas Elektronik UK's independent advice and specialist services to the Ministry of Defence shall be impartial and objective;
- (ii) *Atlas Elektronik UK will comply with legal and, as included in contracts, MOD Defcon and DEFFORM requirements, for the protection of 3rd party proprietary information to which it is granted access;*
- (iii) Atlas Elektronik UK and Atlas Elektronik GmbH shall avoid or manage conflicts of interest, *for example those that may arise as a result of Atlas Elektronik UK's control by a major supplier of defence goods or services, on a case-by-case basis by agreement with the Ministry of Defence, in particular, where approved, by the creation of appropriate firewalls between business compartments,* in a manner compliant with proposals that are to be developed pursuant to Clause 2.8 and that are entirely satisfactory to the Ministry of Defence.

2.8 For the purposes of demonstrating their adherence to the principles described in Clause 2.7 above, Atlas Elektronik UK and Atlas Elektronik GmbH will *agree with the Ministry of Defence appropriate arrangements conforming with the published Ministry of Defence commercial policy for handling conflicts of interest* prior to the Effective Date of these Undertakings.