

APPENDIX 5.1
(referred to in paragraphs 5.76(b) and 5.82)

Assurances and undertakings given by GEC to the MoD

Letter of 26 October 1994 from Mr M Lester, GEC, to Dr M K McIntosh, MoD

1. My colleagues and I have been discussing with you and your staff the position of the Secretary of State for Defence in respect of his rights as the holder of the Special Share in VSEL in the event that GEC should decide to make an offer to acquire VSEL.

2. Before such an acquisition could be completed, the Articles of Association of VSEL would need to be amended, since these at present do not allow any one person to own more than 15 per cent of the ordinary shares of the company. This provision cannot be amended without the consent of the Special Shareholder.

3. It is our understanding that the Secretary of State would be prepared to give his consent to the necessary amendment to the VSEL Articles of Association, provided that:

- it was also approved by the shareholders of VSEL;
- the acquisition received the relevant regulatory approvals, which would have to be dealt with in the usual way by the appropriate authorities; and
- he was assured that his other concerns at present protected by his other rights as Special Shareholder would continue to be protected, either by means of a continuance of the Special Share or of satisfactory legally binding undertakings.

4. The continuing rights about which he would wish to be assured are as follows:

- (a) that the Secretary of State will retain the right to prevent foreign persons from obtaining ownership or control of the facilities associated with the production of nuclear submarines;
- (b) that there shall be no closure, decommissioning or disposal of the whole or a material part of such facilities without the approval of the Secretary of State;
- (c) that only persons with MoD approved security clearances will have access to nuclear submarine technology; and
- (d) that there shall continue to be restrictions as to the nationality of certain Directors, equivalent to those currently provided by the Special Share in VSEL.

5. We shall be grateful if you will confirm that the foregoing accurately reflects the position of the VSEL Special Shareholder.

Letter of 28 October 1994 from Dr M K McIntosh, MoD, to Mr M Lester, GEC

Thank you for your letter of 26 October, following the discussions there have [been] about the position of the Secretary of State for Defence in respect of his rights as the holder of the Special Share in VSEL in the event of an offer by GEC to acquire VSEL.

I confirm that the Secretary of State would be prepared to give his consent to the amendment to the VSEL Articles of Association which would be required to permit the acquisition, provided that:

- it was also approved by the shareholders of VSEL;

- the acquisition received the relevant regulatory approvals; which would have to be dealt with in the usual way by the appropriate authorities; and
- he was assured that his other concerns at present protected by his other rights as Special Shareholder would continue to be protected, either by means of a continuance of the Special Share or of satisfactory legally binding undertakings.

I also confirm that paragraph 4 of your letter accurately summarises the continuing rights about which the Secretary of State would wish to be assured.

Letter of 7 November 1994 from Mr B H Saunders, GEC-Marconi, to Mr A T Phipps, MoD

Further to our meeting on 1 November, at which we discussed the rules to be applied to the Batch 2 Trafalgar Competition in the event that the GEC plc acquisition of VSEL goes ahead:-

- (a) GEC accepts that until the competing bids for VSEL are resolved, GEC will have no access whatsoever to details of the VSEL bid f or B2TC.
- (b) GEC-Marconi will do all it can to enter into risk sharing joint venture agreements with major partners/subcontractors in respect of both B2TC bids such that the major partners/subcontractors will have a major stake and hence a real interest in ensuring the success of their respective bids. You will appreciate that our ability to achieve this objective is also dependent on the partners/subcontractors wishes. We have no knowledge of the current arrangements for the VSEL bid.
- (c) GEC confirms that the two bid teams will remain entirely independent until six months after submission of the bids or until such earlier time as the MoD may otherwise agree. During this period, GEC will not require VSEL to report details of its bid to any GEC Head Office. This does not preclude GEC placing its own management in VSEL to ensure the integrity of the business as a whole.
- (d) GEC confirms that it will not effect any rationalisation as between GEC-Marconi and VSEL until after the bids are submitted. This would not preclude continuation of any rationalisation already planned by VSEL.
- (e) GEC agree to provide full visibility of the make-up of both bids to assist the MoD in their evaluation. Full SC43 equality of information facilities shall be offered to MoD to allow price verification.
- (f) The terms and conditions of contract to result from this competition should be agreed between GEC-Marconi and MoD and should be based on Invitation to Tender [ITT] Number NSM708/1048 dated 14 July 1994. This agreement should be reached as soon as possible and before bids for B2TC are submitted.
- (g) You requested us at the meeting to provide maximum prices for the initial batch of three boats as defined in Items 1, 2 and 3 of the ITT reference NSM708/1048 dated 14 July 1994 and the optional 4th and 5th boats. These prices and their associated assumptions are detailed in Attachment 1 to this letter.
- (h) The prices set out in paragraph 1 of the Attachment hereto are maximum prices and reflect the early stage of the work completed on our proposed bid.

I trust the above provides the MoD with the necessary safeguards to ensure continuation of the competition for B2TC.

ATTACHMENT 1-maximum price for B2TC submarines

1. GEC-Marconi's maximum price for a batch of 3 boats as required by items 1, 2 and 3 as specified in ITT NSM 708/1048 dated 14th July 1994 is [] and is based on the assumptions shown below.
2. GEC-Marconi's maximum price for the additional boats 4 and 5 is [] assuming continuity of production with the first three boats and placement of a contract for both optional boats together.
3. These maximum prices are at April 1994 economic conditions subject to variation of price clause using standard indices with a minimum of 10% fixed element.
4. These maximum prices assume a mutually agreed stage payment plan. GEC-Marconi acknowledge that a reasonable retention may be required.
5. All reasonable endeavours will be used to meet the performance and requirements of the submarine when these have been established and agreed.
6. Spares, Availability Reliability and Maintainability Stage 2 and Stage 3 Acceptance prices will be provided when agreement on the requirements is reached.
7. It is assumed that the capital expenditure for Devonshire Dock Hall will be fully recovered prior to the Batch 2 Trafalgar programme.
8. VAT is excluded.
9. Validity of the prices in 1 above is until 30th June 1996. Validity of the prices in 2 above is until 30th June 2000.
10. GEC-Marconi will do its best to persuade any joint venture which may be formed for B2TC to accept the maximum prices.

Letter of 8 November 1994 from Mr A T Phipps, MoD, to Mr B H Saunders, GEC-Marconi

Thank you for your letter of 7 November which sets out the basis on which GEC plc would submit two independent bids for the Batch 2 Trafalgar Class (B2TC) requirement in the event that the Company were successful in its bid to acquire VSEL.

I confirm that the proposed arrangements would be satisfactory to MoD. I must however make it clear that our willingness to accept such arrangements does not imply or convey that the Ministry of Defence in particular, or Her Majesty's Government in general, has reached any view on the desirability or otherwise of GEC plc acquiring a controlling interest in VSEL. Nor does the willingness of GEC plc or companies in the GEC group to observe such arrangements commit the Ministry of Defence to the eventual placing of a contract for B2TC.

Letter of 4 November 1994 from Lord Weinstock, GEC, to the Secretary of State for Defence

This letter sets out GEC's position on the future of its subsidiary, Yarrow Shipbuilders Ltd (YSL), in the event of an acquisition by GEC of VSEL.

I have already given a commitment that a GEC acquisition of VSEL will guarantee value for money for the MoD on equipment supplied from Barrow and also YSL-which as part of GEC Naval Systems has been selected by the MoD as the lead yard for the Common New Generation Frigate, scheduled to enter service in 2002.

In the light of that commitment, I am prepared to give an assurance that, in the event of an acquisition by GEC of VSEL, the CNFG first of class will, as planned, be built at Yarrow which will of course maintain the necessary capability to carry out that task. GEC ownership of VSEL and YSL offers the best chance of a long term future of *both* yards.

I have no objection to the publication of this letter.

Letter of 8 November 1994 from Lord Weinstock, GEC, to the Secretary of State for Defence

Further to my letter of 4 November, I have already indicated that GEC intends to continue building frigates and smaller ships at Yarrow. Specifically, if we win the competition for the next Batch Type 23's, it is our intention to build them at Yarrow.

I have no objection to the publication of this letter.