

Enterprise Act 2002 Undertakings

ACQUISITION OF AGUSTAWESTLAND N.V. BY FINMECCANICA S.p.A.

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

FINMECCANICA S.p.A., A COMPANY INCORPORATED IN ITALY WHOSE REGISTERED OFFICE IS AT PIAZZA MONTE GRAPPA 4, 00195, ROMA, ITALY (No. 00401990585) ("Finmeccanica"); and

WESTLAND HELICOPTERS Ltd, INCORPORATED IN ENGLAND AND WALES WHOSE REGISTERED OFFICE IS AT LYSANDER ROAD, YEOVIL, SOMERSET, BA20 2YB, UK (No. 00604352) ("Westland")

WHEREAS:

- (A) On 26 May 2004 Finmeccanica announced its proposal to acquire GKN's entire shareholding in AgustaWestland N.V. ("the Transaction");
- (B) The Transaction was notified to the European Commission on 16 August 2004 as a concentration falling within Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ("ECMR");
- (C) The European Commission has sole jurisdiction to investigate the competition aspects of the Transaction under the ECMR, 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) On 20 August 2004 the Secretary of State issued a European Intervention Notice to the OFT pursuant to section 67 of the Act;
- (E) On 29 September 2004, the OFT reported to the Secretary of State in accordance with article 4(2) to (5) of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 ("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 under paragraph 3(2) of Schedule 2 to the Order; and
- (G) The Secretary of State considers the Security Undertakings given below by Finmeccanica 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.

Finmeccanica and Westland therefore give to the Secretary of State the following Security Undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which may be expected to result from the creation of the European relevant merger situation.

1. INTERPRETATION

In these Security 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 Security Undertakings;
- 1.4 "Act" means the Enterprise Act 2002;
- 1.5 "AgustaWestland" means AgustaWestland N.V. a company incorporated in the Netherlands whose registered office is at Locatellikade 1, Parnassusustoren, 1076 AZ Amsterdam, registered with the trade register of the Chamber of Commerce for Amsterdam under file number 34137209;
- 1.6 "Classified" means requiring protection in the interests of national security and so designated by the application of a national security classification or protective marking;
- 1.7 "Compliance Officer" means a competent person appointed in accordance with clause 2.8;
- 1.8 "Customer" means the Ministry of Defence both when it is an immediate buyer from any of the UK Companies and when it is the ultimate user of their products or services procured on its behalf by someone else;
- 1.9 "Effective Date" means the date on which, having been signed by Finmeccanica, these Security Undertakings are accepted and dated by the Secretary of State, except where the Transaction is not completed, in which case these Security Undertakings shall not take effect;
- 1.10 "Finmeccanica" means Finmeccanica S.p.A, a company incorporated in Italy whose registered office is at Piazza Monte Grappa 4, 00195, Roma, Italy (no. 00401990585);
- 1.11 "Military Programmes" means any defence-related programmes in relation to which any of the UK Companies enters into or has entered into contracts with the Ministry of Defence;
- 1.12 "Ministry of Defence" means the United Kingdom Secretary of State for Defence;
- 1.13 "OFT" means the Office of Fair Trading;
- 1.14 "Secretary of State" means the Secretary of State for Trade and Industry;

- 1.15 "Security Undertakings" means the Security Undertakings given in clause 2;
- 1.16 "Subsidiary" has the meaning ascribed to it in Section 736 of the Companies Act 1985 as amended but additionally a company ("A") shall be a subsidiary of another company ("B") if B has joint control (with one or more other undertakings) of A. "Joint control" has the meaning ascribed to it in the European Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (98/C 66/02);
- 1.17 "UK Companies" means the Subsidiaries of AgustaWestland that are incorporated in England and Wales at the Effective Date.
- 1.18 "UK Military Capability" means the capability immediately prior to the Effective Date within the UK Companies to carry out Military Programmes and to perform any contracts (including those entered into after the Effective Date) relating to Military Programmes. 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 Finmeccanica is in any doubt it 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;
- 1.21 "US Protected Material" means information, software, hardware and equipment relating to Military Programmes and protectively marked in accordance with the system of protective marking defined in the appropriate US Government Executive Orders, Directives or Instructions as amended from time to time. For the avoidance of doubt this includes Classified and other non-Classified controlled information, software, hardware and equipment including that which is marked 'For Official Use Only', that which is marked with an Export control warning notice, and that which is marked with a distribution limitation marking.
- 1.22 "Westland" means Westland Helicopters Ltd, incorporated in England and Wales whose registered office is at Lysander Road, Yeovil, Somerset, BA20 2YB, United Kingdom (no. 00604352)

2. SECURITY UNDERTAKINGS

Finmeccanica and Westland undertake that:

Maintenance of strategic capabilities

2.1 We will procure that for so long as any of the UK Companies are a contractor or a sub-contractor 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 the UK Companies are a contractor or a sub-contractor on Military Programmes, those Military Programmes shall continue to be managed and controlled, except in so far as the Ministry of Defence has separately agreed otherwise in writing, by a company or companies incorporated within the UK under English law.

2.3 We shall provide to the Ministry of Defence copies of the Articles of Association of the UK Companies.

2.4 We shall ourselves, or shall procure that the relevant UK Company shall, 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 (which for the avoidance of doubt, includes disposal to Finmeccanica or its Subsidiaries, other than the UK Companies) of any significant defence related asset of the UK Companies (the Ministry of Defence shall be the sole arbiter in the event of any dispute as to what is to be construed as a significant defence related asset and where Finmeccanica or the relevant UK Company is in any doubt it shall first consult the Ministry of Defence);

(ii) the voluntary winding-up or dissolution of any of the UK Companies; or

(iii) running down or affecting adversely in any material way the UK Military Capability within the UK Companies.

2.5 The UK Companies shall ensure continuity of development and/or supply of all goods and services for Military Programmes, for which the Ministry of Defence is a Customer, subject to the Ministry of Defence acting reasonably and offering to place contracts in the future.

Protection of Classified 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 the 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 security clearance shall have access to UK Protected Material or US Protected Material;

(iii) no UK Protected Material or US Protected Material shall be passed to the boards of directors of Finmeccanica or its Subsidiaries (except the UK Companies) without the prior written approval of the Ministry of Defence for UK Protected Material or the US Government for US Protected Material.

(iv) no transfer or disclosure by whatever means of UK Protected Material, and no other Classified information which is owned by a third party or country, to

Finmeccanica or its Subsidiaries based overseas, or locations outside of the UK shall be made without the prior written approval of the Ministry of Defence; and

(v) no transfer or disclosure by whatever means of US Protected Material to Finmeccanica or its Subsidiaries based overseas, or locations outside of the UK shall be made without the prior written approval of the US Government.

Intellectual Property Rights

2.7 We shall ensure that AgustaWestland and the UK Companies are aware of, and bound by, obligations between the Ministry of Defence and any of AgustaWestland and the UK Companies regarding confidentiality of and limitations on use of intellectual property. We shall also ensure that AgustaWestland and the UK Companies shall continue to respect any levy obligations between the Ministry of Defence and any of AgustaWestland and the UK Companies in effect at the Effective Date.

Compliance

2.8 We shall provide the Ministry of Defence with such information as it may from time to time reasonably require to ascertain that Finmeccanica and Westland are fulfilling the Security Undertakings. If Finmeccanica and Westland are unable to comply with any of the Security Undertakings, they shall provide full reasons for the non-compliance within one month of becoming aware of the non-compliance.

2.9 As well as appointing a 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), Finmeccanica and Westland shall, within one month of 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 the UK Companies, 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 representative shall be entitled to all such information as they may reasonably require.

3 PROVISION OF INFORMATION

We shall provide the OFT with such information as it may reasonably require for the purpose of ascertaining that these security Undertakings are being or have been complied with.

4 DIRECTIONS FROM THE OFT

Finmeccanica and Westland shall comply with such written directions as the OFT may from time to time give to take such steps within its competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Security Undertakings.

Signed

For and on behalf of Finmeccanica

Signed

For and on behalf of Westland