

Enterprise Act 2002 Undertakings

MERGER OF THE AVIONICS BUSINESSES OF BAE SYSTEMS PLC AND FINMECCANICA SpA

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**

**BAE SYSTEMS AVIONICS LIMITED, A COMPANY INCORPORATED IN ENGLAND
WHOSE REGISTERED OFFICE IS AT WARWICK HOUSE, PO BOX 87, FARNBOROUGH
AEROSPACE CENTRE, FARNBOROUGH, HAMPSHIRE, GU14 6YU, ENGLAND (No.
2426132) ("BAES Avionics")**

WHEREAS:

- (A) On 27 January 2005 Finmeccanica and BAE SYSTEMS announced agreement to the merging of their respective avionics businesses, Galileo Avionica SpA and BAES Avionics. Galileo Avionica SpA and BAES Avionics will be held by a newly incorporated Italian company which will be 75% owned by Finmeccanica and 25% owned by BAE SYSTEMS and which will be controlled by Finmeccanica. This transaction forms part of a larger transaction known as the Eurosystems transaction ("the Transaction");
- (B) The transaction was notified to the European Commission on 7 February 2005 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 7 February 2005 the Secretary of State issued a European Intervention Notice to the OFT pursuant to section 67 of the Act;
- (E) On 14 March 2005 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 and BAES Avionics 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 any of the effects adverse to the public interest which may be expected to result from the creation of the European relevant merger situation, in so far as it relates to the merger of Galileo Avionica SpA and BAES Avionics.

Finmeccanica and BAES Avionics therefore give to the Secretary of State the following Security Undertakings for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which may be expected to result from the creation of the European relevant merger situation, in so far as it relates to the merger of Galileo Avionica SpA and BAES Avionics.

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 **“BAE SYSTEMS”** means BAE SYSTEMS plc, a company registered in England and Wales whose registered office is at 6 Carlton Gardens, London, SW1Y 5AD, United Kingdom (No. 01470151);
- 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 the person appointed in accordance with clause 2.9;
- 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 and BAES Avionics, 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 **“Military Programmes”** means any defence-related programmes in relation to which any of the UK Companies enter into or have entered into contracts or obtain or have obtained any Classified information with the intention of entering into or deciding whether to enter into contracts with the Ministry of Defence;
- 1.11 **“Ministry of Defence”** means the United Kingdom Secretary of State for Defence;
- 1.12 **“OFT”** means the Office of Fair Trading;
- 1.13 **“Secretary of State”** means the Secretary of State for Trade and Industry;
- 1.14 **“Security Undertakings”** means the undertakings made at clause 2;
- 1.15 **“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);

- 1.16 **"UK Companies"** means BAES Avionics and the Subsidiaries of BAES Avionics that are incorporated in England and Wales at the Effective Date;
- 1.17 **"UK Military Capability"** means the capability immediately prior to the Effective Date within the UK Companies to carry out Military Programmes and the capability necessary 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 or any of the UK Companies are in any doubt they shall first consult the Ministry of Defence;
- 1.18 **"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;
- 1.19 **"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.

2. SECURITY UNDERTAKINGS

Finmeccanica and BAES Avionics undertake that:

Maintenance of strategic capabilities

- 2.1 We will procure that for so long as any of the UK Companies is 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 any of the UK Companies is 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.
- 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 UK Companies, 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 any of the UK Companies) of any significant defence related asset of any 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;
- (iii) no UK 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;
- (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.

Intellectual Property Rights

2.7 We shall ensure that the UK Companies are aware of, and bound by, obligations between the Ministry of Defence and the UK Companies regarding confidentiality of and limitations on use of intellectual property. We shall also ensure that the UK Companies shall continue to respect any levy obligations between the Ministry of Defence 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 the UK Companies are fulfilling the Security Undertakings. If Finmeccanica or the UK Companies are unable to comply with any of the Security Undertakings, or become aware of any non-compliance, they shall 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 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 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.

PROVISION OF INFORMATION

We shall co-operate with the OFT and provide it with such information as it may reasonably require for the purpose of any of its functions under section 92 of the Act in relation to these Security Undertakings.

DIRECTIONS FROM THE OFT

Finmeccanica and the UK Companies 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. Finmeccanica 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 Security Undertakings to refrain from doing or to do. Finmeccanica and BAES Avionics will procure that the UK Companies comply with these Security Undertakings as if the UK Companies themselves had given them.

Signed



Pier Francesco Guarguaglini
Chairman and Chief Executive Officer

For and on behalf of Finmeccanica

Signed



For and on behalf of BAES Avionics