

## **Enterprise Act 2002 Undertakings**

### **ACQUISITION OF ALVIS PLC BY GENERAL DYNAMICS CORPORATION**

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

**GENERAL DYNAMICS CORPORATION, A COMPANY INCORPORATED IN USA WHOSE REGISTERED OFFICE IS AT 2941 FAIRVIEW PARK DRIVE, FALLS CHURCH, VIRGINIA 22042-4513, USA (“General Dynamics”)**

#### **WHEREAS:**

- (A) On 11 March 2004 General Dynamics announced a recommended public offer to acquire Alvis ("the Transaction");
- (B) The Transaction was notified to the European Commission on 20 April 2004 as a concentration falling within Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, as amended by Council Regulation (EC) No 1310/97 (“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(3) of the ECMR;
- (D) On 26 April 2004 the Secretary of State issued a European Intervention Notice to the OFT pursuant to section 67 of the Act;
- (E) On 20 May 2004, the OFT reported to the Secretary of State in accordance with article 4(2) to (5) 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 under paragraph 3(2) of Schedule 2 to the Order;
- (G) The Secretary of State considers that the Security Undertakings given below by General Dynamics 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(3) 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.

General Dynamics therefore gives 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 AND DEFINITIONS

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 "Alvis" means Alvis plc (registered no. 731159) a company incorporated in England and Wales whose registered office is at 34 Grosvenor Gardens, London, SW1W 0AL, United Kingdom;
- 1.6 "Classified" means material requiring protection in the interests of national security and is so designated by the application of a national security classification or protective marking;
- 1.7 "Compliance Officer" means a competent person appointed by General Dynamics in accordance with clause 2.11;
- 1.8 "Contractor" means any company or other undertaking that is participating, or seeks to participate, in an MoD Programme, whether as a prime contractor or as a sub-contractor;
- 1.9 "Customer" means when the Ministry of Defence is either an immediate buyer from Alvis or its UK Subsidiaries or the ultimate user of the products or services that may have been procured by another for the Ministry of Defence;
- 1.10 "Effective Date" means the date on which, having been signed by General Dynamics, 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;
- 1.11 "General Dynamics" means General Dynamics Corporation, a company incorporated in the State of Delaware, USA whose registered office is at 2941 Fairview Park Drive, Suite 100, Falls Church, Virginia 22042-4513, USA;
- 1.12 "General Dynamics Company" means General Dynamics and any company or other undertaking that is a Subsidiary of General Dynamics, including Alvis and its UK Subsidiaries;
- 1.13 "Military Programmes" means any defence-related programmes in relation to which Alvis, or any of its UK Subsidiaries, enters into or has entered into contracts or obtains or has obtained any Classified information with the intention of entering into or deciding whether to enter into contracts with the Ministry of Defence;
- 1.14 "Ministry of Defence" means the United Kingdom Secretary of State for Defence;
- 1.15 "MoD Programme" means any future programme initiated by the Ministry of Defence for any or all of the concept, assessment, development, manufacture, supply or support of military

vehicles to the Ministry of Defence, including without limitation that programme presently known as Future Rapid Effects System;

- 1.16 "OFT" means the Office of Fair Trading;
- 1.17 "Order" means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003;
- 1.18 "Secretary of State" means the Secretary of State for Trade and Industry;
- 1.19 "Security Undertakings" means the Security Undertakings given in clause 2;
- 1.20 "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);
- 1.21 "UK Subsidiaries" means the Subsidiaries of Alvis that are incorporated in England and Wales at the Effective Date;
- 1.22 "UK Military Capability" means the capability immediately prior to the Effective Date within Alvis and its UK Subsidiaries 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 General Dynamics is in any doubt it shall first consult the Ministry of Defence; and
- 1.23 "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.

## **2. SECURITY UNDERTAKINGS**

General Dynamics undertakes that:

### **Maintenance of strategic capabilities**

- 2.1 General Dynamics will procure that for so long as Alvis or its UK Subsidiaries 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 under English law.
- 2.2 General Dynamics shall provide to the Ministry of Defence copies of the Articles of Association of Alvis and its UK Subsidiaries.
- 2.3 General Dynamics shall itself, or shall procure that Alvis or its UK Subsidiaries shall, inform the Ministry of Defence in writing and thereafter consult with the Ministry of Defence at least 3 months prior to:
- (i) the disposal or substantive alienation (which, for the avoidance of doubt, includes disposal to General Dynamics or its Subsidiaries, other than Alvis and its UK Subsidiaries) of any significant defence related asset of Alvis or its UK Subsidiaries (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 General Dynamics, Alvis or the relevant UK Subsidiary is in any doubt it shall first consult the Ministry of Defence);

(ii) the voluntary winding-up or dissolution of Alvis and its UK Subsidiaries;

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

- 2.4 General Dynamics shall ensure continuity of development and/or supply of all goods and services provided by Alvis or its UK Subsidiaries 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.
- 2.5 General Dynamics will procure that Alvis and its UK Subsidiaries will, if requested to do so in writing by an actual or potential Contractor and to the extent that Alvis and its UK Subsidiaries have available capacity (whether in terms of plant, machinery, personnel or otherwise), enter into good faith negotiations with the requesting Contractor to make available to that Contractor the UK Military Capability that is specifically requested by that Contractor and is objectively required by that Contractor in order for it to bid for or perform contracts for the purposes of an MoD Programme.
- 2.6 General Dynamics will procure that, in making available the UK Military Capability for the purposes of clause 2.5 above, Alvis and its UK Subsidiaries shall:
- (i) make such UK Military Capability available on fair and reasonable terms; and
  - (ii) not, in the absence of an objective justification, discriminate between a General Dynamics Company and the Contractor or unduly prefer a General Dynamics Company, whether in relation to the prices charged or quoted or to other terms and conditions applied or to be applied, service or support levels, standards of performance or otherwise.
- 2.7 For the avoidance of doubt, the provisions of clauses 2.5 and 2.6 above shall not apply so as to require Alvis or its UK Subsidiaries to make available to a team competing for an MoD Programme (“the requesting team”) that UK Military Capability that Alvis or its UK Subsidiaries have in compliance with generally applicable competition laws previously contracted to provide to another team competing for the same MoD Programme (“the original team”) , save that, where the original team is to include another General Dynamics Company, General Dynamics shall request the prior consent in writing (not to be unreasonably withheld) from the Ministry of Defence before General Dynamics, Alvis or its UK Subsidiaries (as the case may be) enters into such a contract.

### **Protection of Classified Information**

- 2.8 General Dynamics will procure that, except in so far as the Ministry of Defence has separately agreed otherwise in writing, all matters relating to Military Programmes and security within Alvis and its UK Subsidiaries 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 within Alvis and its UK Subsidiaries 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 material marked “Confidential” and above;
  - (iii) no material marked “Confidential” or above, or to which access is similarly limited, shall be passed to the boards of directors of General Dynamics or its non-UK Subsidiaries without the prior written approval of the Ministry of Defence. Transfers by whatever means

of Classified information to General Dynamics or its non-UK Subsidiaries or to foreign nationals or to locations outside the UK national jurisdiction shall only be conducted subject to the prior written approval of the Ministry of Defence;

(iv) no transfer or disclosure by whatever means of material marked "Confidential" or above, and no other Classified information which is owned by a third party or country, shall in any circumstances be disclosed to foreign or dual nationals, without the prior written approval of the Ministry of Defence.

### **Intellectual Property Rights**

2.9 General Dynamics shall ensure that Alvis and its UK Subsidiaries are aware of, and bound by, the rights of the Ministry of Defence at the Effective Date in respect of any intellectual property (including information, data packs, designs, drawings and software) and no rights in any Ministry of Defence intellectual property shall be passed to General Dynamics or its Subsidiaries (other than Alvis and its UK Subsidiaries), without the prior written authorisation of the Ministry of Defence. General Dynamics shall further ensure that Alvis and its UK Subsidiaries shall continue to respect any levy obligations to the UK Government in effect at the Effective Date.

### **Compliance**

2.10 General Dynamics shall provide the Ministry of Defence with such information as it may from time to time reasonably require to ascertain that General Dynamics is fulfilling the Security Undertakings. If General Dynamics is unable to comply with any of the Security Undertakings, it shall provide full reasons for the non-compliance within one month of becoming aware of the non-compliance.

2.11 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 Alvis and its UK Subsidiaries (as required by UK National Security Regulations), General Dynamics 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 Alvis, 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 Alvis and its UK Subsidiaries 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.

2.12 General Dynamics shall procure that, 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 Alvis and its UK Subsidiaries 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**

General Dynamics 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**

General Dynamics 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 General Dynamics Corporation

Date: [ ] [ ] 2004