

Aerostar – Mettis

A report to the Secretary of State for Business, Energy and Industrial Strategy on the anticipated acquisition of Mettis Aerospace Limited by Aerostar (directly or through Ligeance Aerospace Technology Co Limited)

13 February 2020

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1. Executive summary

- 1.1 On 20 December 2019, in exercise of her powers under section 42(2) of the Enterprise Act 2002 (the **Act**), the Secretary of State for Business, Energy and Industrial Strategy (**BEIS**) (the **Secretary of State**) gave a public interest intervention notice to the Competition and Markets Authority (**CMA**) (the **Notice**).¹ On the same day, for the purpose of preventing pre-emptive action, the Secretary of State issued the Public Interest Merger Reference (Mettis Aerospace Ltd.) (Pre-emptive Action) Order 2019 (the **Order**).²
- 1.2 The Notice relates to the proposed acquisition by a company known as Aerostar registered in the People's Republic of China (**Aerostar**),³ either directly or through Ligeance Aerospace Technology Co. Ltd, a company registered in the People's Republic of China and owned or controlled by Aerostar, or any other body corporate interconnected⁴ with Aerostar, of Mettis Aerospace Limited (**Mettis**) (the **Transaction**).
- 1.3 The Notice requires the CMA to investigate and report by midnight at the end of 17 March 2020.

Jurisdiction and competition assessment

- 1.4 In response to the questions required to be answered under sections 44(3)(a) and 44(4) of the Act, the CMA does not believe that it is or may be the case that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- 1.5 As set out in paragraph 2.8 below, during its investigation the CMA obtained evidence under section 109 of the Act (including internal documents of Mettis), created before and after the launch of the CMA's investigation. The conclusion reached by the CMA is based on this evidence, as well as signed assurances received by the CMA as described in paragraph 2.10.
- 1.6 In view of the CMA's conclusion that there is no relevant merger situation, it has not been necessary to assess whether the Transaction may be expected to result in a substantial lessening of competition, or whether any of the exceptions listed in sections 44(3)(c) to 44(3)(f) of the Act apply. It has also

¹ For the full text of the Notice, see:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854549/20191220_Mettis-Aerostar_PII_Notice.pdf.

² S.I. 2019/1515.

³ Paragraph 1 of the Notice.

⁴ As defined in s.129(2) Enterprise Act 2002.

not been necessary to establish whether the Transaction involves a “relevant enterprise” within the meaning of section 23(1)(b)(i) of the Act.

Public Interest considerations

- 1.7 The CMA is required by section 44(3)(b) of the Act to summarise representations received about the case which relate to the national security public interest consideration mentioned in the Notice.
- 1.8 In this case the CMA has not received any such representations.

2. Parties and transaction

- 2.1 The Transaction concerns the anticipated acquisition by Aerostar of the entire issued capital of Mettis.⁵
- 2.2 Mettis is a private company incorporated in England and Wales under company number 03292360, operating from a single site in Redditch, Worcestershire.⁶ Mettis provides precision-forged and machined components in titanium, aluminium and special steels on a global basis.⁷ Mettis is an indirect, wholly-owned subsidiary of SSCP Titan TopCo Limited (the **Seller**), which is majority-owned and controlled by SSCP Titan Holdings Limited, which is itself majority-owned by Stirling Square Capital Partners Third Fund A LP and Stirling Square Capital Partners Third Fund B LP, two private equity funds under common management.⁸
- 2.3 Aerostar is a company registered in the People’s Republic of China, which owns and controls Ligeance Aerospace Technology Co. Limited, a company registered in the People’s Republic of China.⁹

⁵ Annex 5 [REDACTED] submitted in response to the CMA’s s.109 Notice of 9 January 2020. [REDACTED]

⁶ Response of SSCP Titan Topco Limited to the CMA’s s.109 notice of 9 January 2020.

⁷ For further information on Mettis, see: <https://www.mettis-aerospace.com> (accessed by the CMA on 10 February 2020).

⁸ Annex 2 (structure chart), submitted in response to the CMA’s s.109 Notice of 9 January 2020, and email from Dickson Minto dated 20 January 2020. The Funds are managed [REDACTED]

⁹ Paragraph 1 of the Notice. [REDACTED]

[REDACTED]

[REDACTED]

- 2.6 On 20 December 2019, the CMA commenced its investigation.
- 2.7 On 23 December 2019, following the issue of the Notice, the Secretary of State and the CMA received a letter from the legal representatives of Mettis and the Seller stating that the discussions between Mettis, the Seller and Aerostar regarding a potential sale of the Mettis to Aerostar had come to an end.¹²
- 2.8 Mettis later provided written evidence to the CMA supporting its submission, including:
- (a) Confirmation of the expiry of [REDACTED];¹³
 - (b) Internal authorisation for the issuance by Mettis of a public announcement¹⁴ in January 2020¹⁵ which confirms that the Transaction would not take place;
 - (c) [REDACTED];¹⁶
 - (d) A letter to BEIS confirming that the Transaction would not take place;¹⁷

¹⁰ Annex 3 – [REDACTED] submitted in response to the CMA's s.109 Notice of 9 January 2020.

¹¹ Annex 5. The CMA notes that neither Aerostar nor Mettis had committed to enter into any agreement or transaction under [REDACTED] within the prescribed period.

¹² Email from Dickson Minto (legal advisers to Mettis and the Seller), received by the CMA on 23 December 2019. See footnote 19 below.

¹³ According to Mettis's submission in response to the CMA's Notice under section 109 of the Act of 9 January 2020, [REDACTED].

¹⁴ Annex 7 – Mettis public announcement.pdf, submitted in response to the CMA's Notice under section 109 of the Act of 9 January 2020.

¹⁵ The CMA received a document copy of the public announcement dated 10 January 2020. The CMA accessed the website with the public announcement on 13 January 2020.

¹⁶ Annex 6 – [REDACTED], submitted in response to the CMA's Notice under section 109 of the Act of 9 January 2020.

¹⁷ Letter dated 23 Dec 2019.pdf, addressed to BEIS, received by BEIS and the CMA on 23 December 2019.

[REDACTED]

[REDACTED]

- 2.9 Mettis also told the CMA that Aerostar's interest in Mettis constituted an inbound enquiry which was in no way solicited by Mettis or any of its affiliates. Mettis told the CMA that no information memorandum, sale information brochure or similar document had been prepared by Mettis or any of its affiliates or representatives in relation to the Transaction.
- 2.10 In addition, on 29 January 2020, Mettis and the Seller provided the CMA with written assurances confirming that the Transaction had been abandoned. The assurances were in a form specified by the CMA, signed by the relevant individuals in charge of the strategic and commercial decision-making, and who were authorised to sign on behalf of the relevant entities.²⁰

3. Jurisdiction

Legal Framework

- 3.1 This section outlines the legal framework applicable to the CMA's assessment of whether it is or may be the case that a relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation under section 33 of the Act, which is relevant to the Secretary of State's decision as to whether to make a reference under section 45.²¹

¹⁸ Annex 8 – [REDACTED] submitted in response to the CMA's Notice under section 109 of the Act of 9 January 2020.

¹⁹ Annex 9 – [REDACTED] submitted in response to the CMA's Notice under section 109 of the Act of 9 January 2020.

²⁰ The CMA received signed assurances dated 28 January 2020 from: [REDACTED]

²¹ Section 44(3)(a) of the Act.

Relevant Merger Situation

- 3.2 In the case of an anticipated transaction, a relevant merger situation is created when:
- (a) arrangements are in progress or in contemplation which will lead to two or more enterprises²² ceasing to be distinct;²³ and
 - (b) either the thresholds under sections 23(1) (the turnover test) or 23(2) (the share of supply test) of the Act are satisfied.

Enterprises ceasing to be distinct

- 3.3 Two enterprises will cease to be distinct if they are brought under common ownership or control.²⁴

Turnover thresholds and “relevant enterprise”

- 3.4 Section 23(1)(b)(ii) of the Act provides that the test is met where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.
- 3.5 On 11 June 2018, the Act was amended to introduce different turnover thresholds for certain mergers. These amendments, set out in section 23(1)(b)(i) of the Act, provide that the turnover test is met where:
- (a) the value of the turnover in the UK of the enterprise being taken over exceeds £1 million; and
 - (b) in the course of enterprises ceasing to be distinct, a person or group of persons has brought a “relevant enterprise” under the ownership or control of the person or group.²⁵

Assessment

- 3.5 An assessment of the CMA’s jurisdiction in accordance with the legal framework outlined above is provided below.

²² “Enterprise” is defined in section 129 of the Act as the activities, or part of the activities, of a business. See also paragraph 3.2.2 of the *Merger Assessment Guidelines*.

²³ Section 33(1)(a) of the Act and Section 23 of the Act.

²⁴ Section 26 of the Act.

²⁵ Section 23A of the Act includes a definition of a “relevant enterprise”.

Relevant Merger Situation

The Parties' views

- 3.6 Mettis and the Seller submitted that the Transaction does not result in a relevant merger situation because it has been abandoned. Mettis provided the CMA with documentary evidence that the Transaction had been abandoned (as described at paragraphs 2.8 – 2.10 above). This evidence included both contemporaneous internal documents and documents created since the Notice had been issued.
- 3.7 The CMA has not received any representations regarding the Transaction directly from Aerostar. The CMA has considered evidence provided by Mettis which relates to Aerostar and which supports the submission by Mettis that the Transaction had been abandoned. This includes email exchanges between the Parties' respective legal representatives referred to in paragraph 2.8(f) of this Report.

CMA's assessment

- 3.8 The CMA, having had regard to all the evidence referred to at paragraphs 2.8 – 2.9, and the assurances provided by the relevant individuals described in paragraph 2.10, is satisfied that there are no arrangements in progress or in contemplation which, if carried into effect, may or will result in the creation of a relevant merger situation.
- 3.9 Were new arrangements or plans for a subsequent anticipated transaction to develop in the future, that would require a separate assessment of whether arrangements are in progress or in contemplation which, if carried into effect, may or will result in the creation of a relevant merger situation.

Other relevant matters

- 3.10 As required by section 44(3)(a) of the Act, the CMA does not believe that it is or may be the case that a relevant merger situation has been created, or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- 3.11 Accordingly, the CMA has not had to consider whether Mettis is a "relevant enterprise" such that the amended turnover threshold applies.
- 3.12 In addition, it has not been necessary to conclude on whether it is or may be the case that any such merger situation may be expected to result in a substantial lessening of competition within a market or markets in the United

Kingdom for goods or services, nor to assess whether any of the exceptions to the duty to refer apply in this case.

Conclusion on Jurisdiction

- 3.13 On the basis of the above, the CMA does not believe that it is or may be the case that a relevant merger situation has been created, or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

4. Public interest considerations

Summary of interested parties

- 4.1 Section 44(3)(b) of the Act requires the CMA to provide a summary of representations it has received which relate to the public interest consideration in question, national security, and which are or may be relevant to the Secretary of State's decision as to whether to make a reference for a Phase 2 assessment.
- 4.2 In this case the CMA received no third-party representations concerning competition and/or public interest considerations.²⁶

Ministry of Defence

- 4.3 In view of the CMA's conclusions set out above, the CMA has not received representations from the Ministry of Defence in this case.
- 4.4 The Secretary of State has not received further representations from the Secretary of State for Defence as regards the national security implications of the merger.

5. Assessment and advice to the Secretary of State

- 5.1 The CMA produces this report to the Secretary of State pursuant to its duty under section 44(2) of the Act, following its investigations carried out under section 44(7).
- 5.2 This report contains advice on considerations relevant to the making of a reference under section 33 of the Act which are also relevant to the Secretary

²⁶ On 20 December 2019, the CMA published a case page inviting comments on the impact of the Transaction from any interested party on competition and public interest considerations with responses by 10 January 2020: <https://www.gov.uk/cma-cases/aerostar-mettis-merger-inquiry>.

of State's decision as to whether to make a reference under section 45 of the Act, namely that the CMA does not believe that it is, or may be, the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

- 5.3 This report does not contain advice or recommendations on the public interest consideration under section 44(6) of the Act.

Alex Olive, Director



13 February 2020