
STATUTORY INSTRUMENTS

2019 No. 1515

COMPETITION

The Public Interest Merger Reference (Mettis Aerospace Ltd.) (Pre-emptive Action) Order 2019

<i>Made</i>	- - - -	<i>at 9.15 a.m. on 20th December 2019</i>
<i>Laid before Parliament</i>		<i>at 2.00 p.m. on 20th December 2019</i>
<i>Coming into force</i>	- -	<i>at 9.20 a.m. on 20th December 2019</i>

The Secretary of State has reasonable grounds for suspecting that it is or may be the case that, as a result of the proposed acquisition of Mettis Aerospace Limited by the company known as Aerostar and registered in the People's Republic of China, 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 interconnected with Aerostar, arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct.

An intervention notice in respect of the relevant merger situation concerned, given by the Secretary of State on 20th December 2019 under section 42 of the Enterprise Act 2002(1), is in force.

In the opinion of the Secretary of State the exercise of the powers as set out in this Order is required for the purpose of preventing action which might prejudice a reference of the matter to the Competition and Markets Authority under section 45 of the Enterprise Act 2002(2) or impede the taking of any action under Part 3 of that Act which may be justified by the Secretary of State's decisions on the reference.

The Secretary of State, for the purpose of preventing pre-emptive action(3), in exercise of the powers conferred by sections 86(1) and (3), 87(1) and (3) and 124(2)(b) of, and paragraph 2(2) of Schedule 7 to, the Enterprise Act 2002(4), makes the following Order:

(1) [2002 c.40](#); section 42 was amended by paragraphs 59 and 82 of Schedule 5, and paragraphs 15 and 21 of Schedule 15, to the Enterprise and Regulatory Reform Act 2013 (c. 24) and [S.I. 2011/1043](#); it is also prospectively amended by [S.I. 2019/93](#).

(2) Section 45 was amended by paragraphs 59 and 85 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013; there is another amendment to section 45 but it is not relevant to this Order.

(3) "Pre-emptive action" is defined in paragraph 2(12) of Schedule 7 to the Enterprise Act 2002 (paragraph 12(2) was inserted into Schedule 7 by paragraphs 1 and 4 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013).

(4) Paragraph 2(2) of Schedule 7 was amended by paragraphs 59 and 160 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

Citation and commencement

1. This Order may be cited as the Public Interest Merger Reference (Mettis Aerospace Ltd.) (Pre-emptive Action) Order 2019 and comes into force at 9.20 a.m. on 20th December 2019.

Interpretation

2.—(1) In this Order—

“the Act” means the Enterprise Act 2002;

“Aerostar” means the company known as Aerostar registered in the People’s Republic of China;

“the Aerostar group” means Aerostar, Ligeance and any other body corporate which is interconnected with Aerostar (other than Mettis) and references to “members of the Aerostar group” are to be construed accordingly;

“the Aerostar business” means any enterprises carried on by a member of the Aerostar group;

“Ligeance” means Ligeance Aerospace Technology Co. Ltd, a company registered in the People’s Republic of China and owned or controlled by Aerostar;

“Mettis” means Mettis Aerospace Limited, a company incorporated in England and Wales (registered number 03292360);

“the Mettis business” means any enterprises carried on by Mettis;

“key staff”, in relation to an enterprise, means—

- (a) staff in positions of executive or managerial responsibility or whose performance affects the viability of the enterprise; or
- (b) staff whose work for the enterprise involves creating, developing, understanding, using or applying any of the information referred to in article 7;

“the ordinary course of business” means matters connected to the day-to-day supply of goods or services by Mettis and does not include matters involving significant changes to the organisational structure of the Mettis business or related to the integration of the Mettis business and the Aerostar business;

“SSCP Titan” means SSCP Titan Holdings and SSCP Titan Topco;

“SSCP Titan Holdings” means SSCP Titan Holdings S.C.A, an entity registered in Luxembourg (registered number B201970);

“SSCP Titan Topco” means SSCP Titan Topco Limited, a company incorporated in England and Wales (registered number 09888577);

“working day” means any day which is not—

- (a) a Saturday, a Sunday, Good Friday or Christmas Day, or
- (b) a day which is a bank holiday in England and Wales.

(2) For the purposes of this Order, one person (A) is an “affiliate” of another person (B), if any enterprise that A carries on from time to time and any enterprise that B carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act (enterprises ceasing to be distinct enterprises).

Interim provisions

3. Mettis and SSCP Titan must ensure that—

- (a) the Mettis business is maintained as a viable going concern; and
- (b) ownership or control of the Mettis business is not transferred to any other person.

4. Sections 26(2) to (4) and 127(1), (2) and (4) to (6) (associated persons) of the Act⁽⁵⁾ apply for the purposes of article 3(b) as they do for the purposes of section 26 of the Act.

5. Mettis and SSCP Titan must ensure that no step is taken to integrate the Mettis business with the Aerostar business.

6. Without limiting article 5, Mettis and SSCP Titan must, so far as it is within their respective powers to do so, ensure that—

- (a) the Mettis business is carried on separately from the Aerostar business and the Mettis business's separate sales and brand identity is maintained;
- (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Mettis business;
- (c) the nature, description, range and quality of goods and services supplied by the Mettis business are maintained and preserved;
- (d) except in the ordinary course of business—
 - (i) all of the assets of the Mettis business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Mettis business is disposed of; and
 - (iii) no interest in the assets of the Mettis business is created or disposed of;
- (e) no steps are taken to integrate the information technology systems of the Mettis business with those of the Aerostar business, and the software and hardware platforms of the Mettis business remain unchanged, except for routine changes and maintenance;
- (f) the customer and supplier lists of the Mettis business are operated and updated separately from those of the Aerostar business and, in particular—
 - (i) any negotiations with any existing or potential customers or suppliers in relation to the Mettis business are carried out by Mettis alone and without any assistance from any member of the Aerostar group; and
 - (ii) Mettis does not enter into any joint agreements with members of the Aerostar group and existing or potential customers or suppliers of the Mettis business;
- (g) subject to paragraph (h), all contracts awarded to the Mettis business continue to be serviced by that business;
- (h) Mettis does not perform or continue to perform any existing agreement between it and any member of the Aerostar group (including any joint agreement between Mettis, any member of the Aerostar group and any other person);
- (i) no key staff are removed from their positions within the Mettis business;
- (j) no key staff are transferred between the Mettis business and the Aerostar business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Mettis business.

7. No trade secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the Mettis business may be disclosed or transferred, directly or indirectly, by Mettis (or any of its employees, directors, agents or affiliates) to any member of the Aerostar group (or any employees, directors, agents or affiliates of a member of the Aerostar group).

(5) Section 127 was amended by paragraph 168 of Schedule 27 to the Civil Partnership Act 2004 (c. 33); there is another amendment to section 127 but it is not relevant to this Order.

Compliance

8.—(1) Within the period of 10 working days beginning with the date on which this Order comes into force and, subsequently, at intervals of not more than 10 working days, Mettis and SSCP Titan Topco must each give the Secretary of State a compliance statement.

(2) A compliance statement is a statement in writing confirming that Mettis or SSCP Titan, as the case may be—

- (a) is in compliance with the requirements of this Order, and
- (b) has at all times since the coming into force of this Order been in compliance with those requirements.

(3) A compliance statement must be signed by the chief executive, a director, or senior manager of the body giving the statement.

(4) In paragraph (3), “senior manager”, in relation to a body, means a person who plays a significant role in—

- (a) the making of decisions about how the whole or a substantial part of the body’s activities are to be managed or organised, or
- (b) the actual managing or organising of the whole or a substantial part of those activities.

9. At all times, Mettis and SSCP Titan Topco must keep the Secretary of State informed of any material developments relating to the Mettis business, including—

- (a) details of key staff who leave or join the Mettis business;
- (b) any interruption of the Mettis business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
- (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Mettis business including any substantial changes in customers’ demand;
- (d) substantial changes in the Mettis business’s contractual arrangements or relationships with key suppliers.

10. If Mettis or SSCP Titan Topco has any reason to suspect that this Order might have been contravened it must immediately notify the Secretary of State in writing.

11.—(1) The Secretary of State may give directions in writing falling within paragraph (2) to—

- (a) a person specified in the directions; or
- (b) to the holder for the time being of an office so specified in any body of persons corporate or unincorporate.

(2) Directions fall within this paragraph if they are directions—

- (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
- (b) to do or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

(3) The Secretary of State may vary or revoke any directions given under this article.

12. For the purposes of paragraph 2(2C) of Schedule 7 to the Act(6), the Secretary of State is not to be treated as having consented to the taking of action or action of a particular description which would otherwise constitute a contravention of this Order unless the consent is in writing.

(6) Paragraph 2(2C) was inserted by paragraphs 1 and 4 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013.

At 9.15 a.m. on 20th December 2019

Andrea Leadsom
Secretary of State for Business, Energy and
Industrial Strategy
Department for Business, Energy and Industrial
Strategy

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

The Secretary of State has given the Competition and Markets Authority an intervention notice on public interest grounds in respect of the anticipated acquisition of Mettis Aerospace Limited by the company known as Aerostar and registered in the People's Republic of China, 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 interconnected with Aerostar. This Order is made for the purpose of preventing action which might prejudice a reference of the matter to the Competition and Markets Authority under section 45 of the Enterprise Act 2002 (c. 41) or impede the taking of any action under Part 3 of that Act which may be justified by the Secretary of State's decisions on the reference.

Articles 3 to 7 of the Order prevent completion of the anticipated acquisition and require Mettis Aerospace Limited (and its owners) to maintain its business separately from that of Aerostar and any body corporate interconnected with Aerostar and impose obligations in relation to the carrying on of the business and the safeguarding of assets. Articles 8 to 10 impose reporting obligations on Mettis Aerospace Limited (and its owners) and article 11 allows the Secretary of State to give directions for the purpose of ensuring compliance with the Order.

This Order, unless previously revoked, will cease to have effect if the Secretary of State accepts an undertaking under paragraph 3 of Schedule 7 to the Enterprise Act 2002 instead of referring the merger to the Competition and Markets Authority under section 45 of that Act or when the intervention notice otherwise ceases to be in force in accordance with section 43 of that Act.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum is available alongside the instrument on the UK legislation website, www.legislation.gov.uk.