SLAUGHTER AND MAY/

NEWSLETTER

13 - 26 JULY 2022

ISSUE 14

COMPETITION & REGULATORY NEWSLETTER

QUICK LINKS

Meggitt/Parker-Hannifin cleared by UK government

BACKGROUND

On 19 July 2022 the Secretary of State of the Department for Business, Energy and Industrial Strategy (BEIS) cleared the £6.3 billion acquisition of UK aerospace company Meggitt plc by Parker-Hannifin Corporation, a US-listed company which supplies components to the mobile, industrial and aerospace markets globally.

This follows the Secretary of State having issued a public interest intervention notice on 18 October 2021 to intervene in the proposed transaction on national security grounds. The CMA was required to report to the Secretary of State by 18 March 2022.

CMA REPORT

On 18 March 2022 the CMA presented its Phase 1 report to the Secretary of State. The report set out the CMA's assessment of whether the acquisition would result in the creation of a relevant merger situation and whether it may be expected to result in a substantial lessening of competition, as well as a summary of the representations it received on the issue of national security.

The CMA found that Parker and Meggitt overlap in the supply of several components used in the aerospace manufacturing industry, and that the transaction would give rise to a realistic prospect of a substantial lessening of competition in relation to the worldwide supply of aircraft wheels and brakes (AWB).

The CMA indicated that the 'hypothetical remedy' which had been outlined by the parties (namely, structural divestment of Parker's entire AWB business) may be able to comprehensively address the concerns identified. Conversely the CMA did not consider that a remedy involving something other than the divestment of one of the parties' AWB businesses would be sufficiently clear-cut and comprehensive to satisfy the requirements for a remedy at Phase 1.

MOD INVESTIGATION

The Ministry of Defence (MOD) advised on the national security implications of the transaction. The MOD established that Meggitt is an important supplier as a subcontractor on various defence programmes, and that Parker is also a notable defence contractor since it supplies the MOD with certain chemicals and remotely piloted air system hydraulics equipment and is active within the supply chain. The MOD raised three broad risks relating to the transaction:

- Security of supply: A failure to meet existing contractual commitments to supply components for UK MOD platforms could cause a disruption to the UK's defence capability.

For further information on any EU or UK Competition related matter, please contact the Competition Group or your usual Slaughter and May contact.

Square de Meeûs 40
1000 Brussels
Belgium
T: +32 (0)2 737 94 00

One Bunhill Row
London EC1Y 8YY
United Kingdom
T: +44 (0)20 7600 1200

- Information security: Structural changes to the Meggitt business could lead to a breach of conditions established under Facility Security Clearance arrangements which regulate the handling of sensitive UK government information, or a failure to abide by legal obligations around such information which could place certain MOD capabilities at risk.
- Sovereign UK capabilities: The acquisition of Meggitt by Parker could also lead to the introduction of personnel, IP, skill or knowhow which could cause Meggitt's products that are currently free from US International Traffic in Arms Restrictions (ITAR) to become affected by ITAR. Such restrictions could lead to a loss of UK 'freedom of operation' relating to certain critical capabilities.

The MOD informed the CMA that it was in discussions with the parties as to how to mitigate these risks.

OUTCOME

On the basis of the CMA's report and advice from the MOD, and following consultation (in which no representations were received), the Secretary of State accepted undertakings from the parties to mitigate national security risks and competition concerns.

NATIONAL SECURITY RISKS

The undertakings to mitigate the national security concerns were as follows:

- Security of supply: Parker committed to honour existing contracts while they are in place and to notify the MOD in advance if there is a material change to Meggitt's ability to supply the MOD.
- Information security: The parties affirmed a commitment to existing List X / Facility Security Clearance site security arrangements which protect sensitive government information in Meggitt. This included a requirement to retain a majority of the board of directors of Meggitt as UK nationals resident in the UK.
- Sovereign UK capabilities: Parker is required to institute a government-approved control plan to prevent ITAR controls applying to ITAR-free products designed and manufactured by Meggitt.

It is notable that, in its Rule 2.7 Announcement dated 2 August 2021, Parker had already committed to offering legally binding commitments to the UK Government in order to address any potential national security concerns arising from the transaction.

COMPETITION CONCERNS

In order to mitigate the competition concerns, the parties agreed to divest Parker's AWB business to a purchaser approved by the Secretary of State. Parker has already agreed to sell its AWB business to Kaman Corporation.

ECONOMIC UNDERTAKINGS

Distinct from the competition and national security issues, Parker also provided economic undertakings to the Secretary of State, including commitments that it would:

- Continue to use the Meggitt name in combination with its own and will retain its UK headquarters in Ansty Park and its centre for excellence for aerospace and advanced materials;
- Increase R&D activity including undertaking research and technology projects relating to sustainable aviation and net zero;
- Ensure that its contractual obligations in respect of goods and services with the government continue to be met;
- Commit to maintaining sustainability targets; and
- Ensure that the number of technical jobs is maintained above an agreed amount and increase apprenticeships.

The Secretary of State highlighted that these undertakings, which were voluntarily provided by Parker (and referred to in its Rule 2.7 Announcement), would secure the future of Meggitt and the important role it plays in the UK aerospace sector.

CONCLUSION

Tom Williams, Parker's chair and chief executive has said that the new, combined group will be a "*world-class provider of engineered aerospace solutions*". In the same announcement Parker stated that it continued to expect the acquisition to close in the third quarter of 2022.

OTHER DEVELOPMENTS

ANTITRUST

FINES IMPOSED ON HONG KONG TOUR AGENCY AND HOTEL OPERATOR AFTER SETTLEMENT WITH HONG KONG COMPETITION COMMISSION

On 14 July 2022 Hong Kong tour agency Gray Line Tours and InterContinental Grand Stanford hotel's owner Tak How Investment were ordered by the Hong Kong Competition Tribunal (Tribunal) to pay fines of HK$4.18 million (approximately £444,000/€521,000) and HK$1.6 million (approximately £170,000/€200,000) respectively, for their involvement in fixing prices of tourist attractions and transportation tickets sold at the premises of various hotels in Hong Kong between May 2016 and May 2017, in contravention of Hong Kong's First Conduct Rule. Gray Line's managing director, Michael Wu, was also disqualified from acting as a director of any company for three years.

The orders were granted based on joint applications filed with the Tribunal by the Hong Kong Competition Commission (HKCC), Gray Line and Tak How to dispose of the proceedings by consent. Gray Line and Tak How received a 25 per cent and 20 per cent discount on their respective fines for their cooperation in the matter, which involved admitting liability and cooperating during the investigation, which resulted in the saving of public funds.

This is part two in a three-part hybrid case. Gray Line and Tak How were not part of the initial cooperating parties who were issued with an Infringement Notice (and thus escaped being fined) in February 2021 (as reported in a previous edition of this newsletter). Another Tribunal case remains with the non-settling parties, Harbour Plaza 8 Degrees Limited, Harbour Plaza Hotel Management Limited, and Prudential Hotel (BVI) Limited, and it will be interesting to note what bearing the admissions of liability already obtained by the HKCC and the consent proceedings will have on the Tribunal's consideration of the substantive issues.

GENERAL COMPETITION

BEIS PUBLISHES NATIONAL SECURITY AND INVESTMENT ACT GUIDANCE NOTES

On 19 July 2022 BEIS published market guidance notes to the National Security and Investment Act 2021 (NSIA), which introduced a new national security screening regime for transactions in the UK.

The guidance notes are based on BEIS' analysis of notifications received since the NSIA entered into effect on 4 January 2022 as well as feedback from stakeholders, and follows the publication of the regime's first annual report, covered in a Slaughter and May briefing published last month.

The notes clarify that the following may constitute a 'qualifying acquisition' requiring mandatory notification under the NSIA:

- The appointment of a liquidator or receiver - for example, if a liquidator receives voting rights previously held by the liquidated entity in a company who carries on activities in one of the 17 sensitive areas of the economy;
- An indirect acquisition of control in a "qualifying entity", through the acquisition of an unbroken chain of majority stakes down to the "qualifying entity"; and

- An internal corporate reorganisation involving an acquisition of control over a "qualifying entity", even where the ultimate beneficial owner of the "qualifying entity" remains unchanged.[1]

The notes also provide new guidance and examples on how to answer certain questions in the notification form, including:

- Which sectors are relevant to a notification;
- Which "qualifying acquisition" applies;
- How to submit entity or asset structure charts; and
- How to make the declarations which must accompany a notification.

Further, the notes clarify that a single notification form will be accepted for acquisitions of multiple "qualifying entities" or assets where these are acquired by a single acquirer from a single seller, or the acquisition involves the internal restructuring of an entity or corporate group where there is no overall change in ultimate ownership.

COUNCIL OF THE EUROPEAN UNION APPROVES THE DIGITAL MARKETS ACT

On 18 July 2022 the Council of the European Union announced that it had given its final approval to the Digital Markets Act (DMA), in response to a perceived need for further regulation in the digital sector.

The political agreement between the European Parliament and the Council of the European Union on the text of the DMA was covered in an April 2022 edition of this newsletter. The DMA will enter into effect after it is published in the *Official Journal of the European Union*, likely by the end of 2022. Once adopted, the regulation must be implemented across the EU within six months.

Under the DMA, large online platforms identified as 'gatekeepers' must comply with new *ex ante* rules to guide market conduct. In particular, gatekeeper platforms will need to ensure interoperability and data portability, and refrain from collecting user data across platforms. Violations of the DMA may attract fines of up to 20 per cent of global turnover for repeated infringements, as well as behavioural or structural remedies, which may include prohibiting merger and acquisition activity for a limited period.

Ivan Bartoš, Deputy Prime Minister for Digitisation in the Czech Republic, which currently holds the Presidency of the Council of the European Union, stated that the adoption of the DMA will "*change the online space worldwide*" and "*ensure fair competition online, more convenience for consumers and new opportunities for small businesses*". However, others have expressed concern that the new rules could reduce innovation and choice in Europe.

[1] Conversely, the granting of share security will not constitute a qualifying acquisition.

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650