

**THE CONTROL OF CONCENTRATIONS
BETWEEN ENTERPRISES LAWS 1999 TO 2000**

Notification of a concentration between the companies Agusta Westland S.p.A and OJSC OPK Oboronprom for the creation of the joint venture CJSC HeliVert.

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou, Chairperson
Mr. Andreas Karidis, Member
Mrs. Eleni Karaoli, Member
Mr. Charis Pastellis, Member
Mr. Christos Tsingis, Member

Date of decision: 19 September 2013

SUMMARY OF THE DECISION

I. OBJECT OF THE CONCENTRATION

This transaction was based on an agreement dated [...] 2011 for the creation of the joint venture CJSC HeliVert (hereinafter the «HeliVert») between Agusta Westland S.p.A (hereinafter the «Agusta Westland»), OJSC OPK Oboronprom (hereinafter the «Oboronprom»), LLC International Helicopter Programs (hereinafter the «IHP») and HeliVert.

II. UNDERTAKINGS CONCERNED

Agusta Westland S.p.A. is a company duly registered in accordance with the provisions of the laws of Italy. Agusta Westland is a member of the Helicopter division of a capital group controlled by Finmeccanica S.p.A based in Rome, Italy. Finmeccanica Group main activities are focused in the aerospace, defence, and security sectors. Moreover, the Finmeccanica Group operates satellite services, and it is also active in the power generation system component and global transport sectors.

OJSC OPK Oboronprom is a company duly registered in accordance with the provisions of the laws of the Russian Federation and is active in the helicopter

* In the published summary of this decision, some information concerning business and/or professional secrets and other confidential information has been omitted. The omissions are shown thus [...].

manufacturing, engine building and air defence and complex radio-electronic systems sectors. Oboronprom is solely controlled by the Russian Federation represented by the Federal Agency for the Management of State Property and the State Corporation Rostekhnologii.

CJSC HeliVert is registered in accordance with the provisions of the laws of the Russian Federation. HeliVert was created to form the joint venture between Oboronprom and Agusta Westland, that will produce and sale the civil helicopter AW139.

III. BACKGROUND

On the 24th of April 2013, the Commission for the Protection of Competition (hereinafter the «Commission») received a notification of a proposed concentration on behalf of Oboronprom and Agusta Westland, concerning the creation of the joint venture HeliVert, in accordance with the provisions of the Control of Concentrations between Enterprises Law 22(I)/99, as amended (hereinafter the “Law”).

On the 10th of May 2013, the Commission decided that the concentration was compatible with the conditions of the competitive market¹.

The Service of the Commission during the examination of the notification, realised that the undertakings concerned conducted an agreement dated in 2011 where Agusta Westland on the one hand would have acquired the 50% of the share capital of HeliVert from IHP and on the other would have secured its 50% share capital in HeliVert.

On the 18th of June 2013 the Service submitted a written report in respect to the alleged prima facie infringement of the Section 13(1) (a) of the Law.

The Commission in its meeting on the 21st of June 2013, after taking into consideration the above report of the Service, focused its attention on the following:

- The parties involved notified the merger on the 24th of April 2013. The parties considered that the transaction is based on the Amendment and Restatement Agreement of 2013 dated on [...] 2013, among Agusta Westland S.p.A., OJSC OPK Oboronprom, LLC International Helicopter Programs and CJSC HeliVert which terminated and replaced the agreement of 2011.

¹ Decision No. 37/2013.

- The Commission found that the intention of the founding companies to establish the joint venture was sealed by signing the Joint Venture Agreement of 2011, whereas the Amendment and Restatement Agreement of 2013 was signed on the [...] 2013 is a development of the Joint Venture Agreement of 2011 the absence of which there would be no Amendment and Restatement Agreement.

The Commission, regarding the material that was before it, as well as the report of the Service, and having taken into account all the documents and information contained in the administrative file of the case, in conjunction with the provisions of Section 13(1)(a) of the Law, considered that such material justified the preparation of a Statement of Objections regarding the alleged prima facie infringement of Section 13(1)(a) of the Law for failure of the companies Agusta Westland and OJSC Oboronprom, as the undertakings responsible under Section 13(2) of the Law, to notify the transaction within the specified time limit set by the Law.

The Commission in its meeting on 25/06/2013 examined the draft Statement of Objections submitted by the Chairperson and decided to adopt and approve it, and at the same time notify Agusta Westland and OJSC Oboronprom.

The Statement of Objections was notified to Agusta Westland and OJSC Oboronprom on the 28/06/2013. On the 19/07/2013, the parties through their lawyer, submitted written observations on the objections raised against the companies and on the 22/7/2013 they appeared in front of the Commission.

The Commission in its meeting of the 25/7/2013, after examining all the information before it concluded that there was an infringement of the Section 13(1) (a) of the Law and on the 31/7/2013 the Commission notified to the parties its intention to impose an administrative fine, giving them thirty (30) days to submit their comments regarding the Commission's decision.

The parties submitted their comments on the 6/9/2013.

The Commission after having examined the above mentioned matter, in addition with the statements of parties' lawyer both orally and in writing, and after going through the administrative file of the case, focused its attention on the following:

IV. INVOLVED PARTIES COMMENTS

The parties in their written comments as well as in their oral comments did not accept that they were in violation of Section 13(1) (a) of the Law due to the fact that the Joint Venture Agreement of 2011 was not the final document for the utilization of this transaction.

V. INFRINGEMENTS OF THE LAW

A. Section 13(1) (a) of the Law

The Commission focused on Section 13(1) (a) of the Law.

«The acts of concentration of major importance to which this Law applies shall be notified to the Service in writing within one week at the latest -

(a) in relation to the concentrations referred to in section 3(2)(a), from the date of conclusion of the relevant agreement or the publication of the relevant offer of purchase or exchange or the acquisition of a controlling interest, whichever of the said events occurs first

(b)»

On the basis of the information and data in the administrative file of the case, the date of the initial agreement was [...] 2011. The notification of the concentration concerned was submitted by Agusta Westland and OJSC Oboronprom on 24/04/2013.

The Commission after taking into consideration the data set before it, finds that the parties' intention was to create a new company under the trade name HeliVert with the joint venture agreement of 2011. In addition, the time for completion of the Agreement and/or the acquisition of 50% of the share capital of Helivert from Agusta Westland cannot differentiate in any way the fact that the Agreement for the establishment of joint ventures has concluded on 21/6/2011.

Finally, the Commission considers that the fact that since 2011 the parties did not proceed with any step whatsoever to complete the conditions of the Agreement and / or to put the concentration into effect is irrelevant as to their obligation to notify the Commission. Accordingly, the Commission rejects the position presented by the parties.

Therefore, Agusta Westland and Oboronprom which are the parent companies of the joint venture under the name HeliVert had a legal obligation to notify the

concentration to the Service of the Commission within a week of the date of conclusion of the Agreement in 2011.

From the above facts, the Commission finds that the parties did not notify the concentration within the timed period set by the Law, since the notification was submitted on the 24th of April 2013. Accordingly, the Commission unanimously decided that the obligated to notify companies have acted in breach of Article 13 (1) (a) of the Act.

VI. ADMINISTRATIVE FINE

In accordance with the provisions of Section 52(1) of the Law, the Commission may impose fines to the participants in a concentration or to persons who violate or fail to comply with the provisions of the Law.

The Commission, when considering the nature and gravity of the infringement and by extension the level of the fine, took into account the following mitigating and aggravating circumstances:

- Nature of infringement

The establishment of the joint venture HeliVert by the companies Agusta Westland SpA and OJSC OPK Oboronprom based on the joint venture agreement dated [...] 2011 between the parties, constituted a concentration which should had been notified to the Service pursuant to Section 13 (1) (a) of the Law.

The parties did not admit that their notification was not within the time limit set by the Law. They noted that the agreement was subject to change and was not final. They argued that in 2013 the agreement was amended and replaced with the joint venture agreement of 2013 which was notified to the Commission.

In addition the parties argued that no actions were made for putting into effect the concentration based on the joint venture agreement of 2011.

The Commission, as regards the nature of the infringement, notes that this is in contrary to the essential rules of the Law designed to prevent permanent damage to competition on structural operations that fall within the scope of the Law.

The Commission is of the view that the time for completion of the Agreement and / or the acquisition of the 50% shares of Helivert from Agusta Westland cannot be differentiated in any way by the fact that the Agreement for the establishment of joint venture has concluded in 2011.

In addition, the Commission considers the fact that since 2011 the parties did not get any step whatsoever to complete the conditions of the Agreement and / or to put the concentration into effect is irrelevant as to their obligation to notify the Commission.

Gravity of infringements

The parties noted that the transaction was notified to the Commission in good faith considering the ongoing chances of the joint venture agreement of 2011.

The Commission considering the arguments set by the layer's parties notes that the Section 13(1)(a) of the Law refers to the conclusion of the relevant agreement without differentiated in the event an agreement amends.

The Commission underlined that Section 13(a) of the Law states that the transaction must be notified on week at the latest from the date of conclusion of the relevant agreement and it is the involved parties obligation to examine whether a transaction is notifiable to the Commission.

The Commission also considered the following:

- (a) The breach of the notification time, based on the evidence before the Commission does not seem to harm the competition since no complaint for anti-competitive behavior of the companies involved was submitted to the Commission,
- (b) This infringement constituted the first violation of the participating companies,
- (c) Despite the fact that the participating companies submitted the notification with a delay, they did not admit that they violated the Law,
- (d) The delay in notifying the concentration was more than one year,
- (e) The participating parties are large companies with international presence and should be aware of the provisions of national legislation anywhere they are active.

Taking into account all of the above, the Commission, with regard to the nature and gravity of the infringements in accordance with the procedures laid down in Section

52 (2) of the Law, and the necessity to prevent repetition of infringements, unanimously decided with regard to the infringement of Section 13(1)(a) of the Law, the imposition of an administrative fine, under Section 52(1)(a) of the Law, of €7,000 (seven thousand Euro) imposed to Agusta Westland SpA and OJSC OPK Oboronprom.

Loukia Christodoulou

Chairperson of the Commission for the Protection of Competition