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*Case No IV/M.368-  
SNECMA / TI*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 17.01.1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.01.1994

MERGER PROCEDURE  
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.368 - SNECMA / TI

Notification of 9.12.1993 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 9th December 1993, Group SNECMA ("SNECMA") and TI Group ("TI") notified jointly the creation of a new joint venture company Messier-Dowty International Ltd ("MD") to which the aircraft landing gear business of TI's Dowty Aerospace Division and SNECMA's Messier-Bugatti subsidiary will be transferred.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

## **I THE PARTIES**

3. SNECMA is a large French group, active internationally in the manufacture and maintenance of aircraft engines and landing gear, and related areas.
4. TI is a UK-based specialised engineering group active internationally in aircraft landing gear and other aircraft components, engineered sealing systems and fluid carrying systems.

## II THE OPERATION

5. The parties will establish a new 50/50 holding company called Messier Dowty International Limited (MD). This company will hold 90 % of the share capital of Dowty Aerospace Landing Gear Limited (the remaining 10 % being held by Dowty<sup>1</sup>), 80 % of the share capital of Dowty Canada Limited (the remaining 20 % being equally held by Dowty<sup>2</sup> and SNECMA) and 90 % of the share capital of ERAM SA, a subsidiary of SNECMA, the holding company which controls Messier-Bugatti (the remaining 10 % being held by SNECMA). Dowty Aerospace Landing Gear Limited, Dowty Canada Limited and ERAM SA have been previously restructured so as to be active only in the design, production and sale of landing gear.

## III JOINT VENTURE

6. The equity of MD will be held equally. TI and SNECMA will each have equal voting rights. Any further contribution of finance of any nature to MD will be made by each of the parties in the same amount, at the same time and on the same terms.

7. The Board of directors of MD will have responsibility for running the business. It will be composed of eight directors of whom four will be nominated by TI and four by SNECMA. The first eight directors have nevertheless been mutually agreed by the parties. The Board will take its decisions by simple majority vote. If the parties are not represented at a meeting by an equal number of directors, one of the directors nominated by the party represented by the fewest directors will have additional votes so that each party have an equal number of votes.

8. { . . . }<sup>3</sup>

9. The top management of MD will consist of a Chief Executive, a Managing Director, a Finance Director and a Deputy Finance Director who do not need to be members of the Board. { . . . }<sup>4</sup>

10. In practice, it will be MD which will take operational decisions and not the operating subsidiaries. In any case, the minority interests retained by each of the parties in the operating subsidiaries are balanced. Furthermore, they will not operate as independent voting interests because, unless the board of MD decides otherwise, each party will exercise its votes in the same manner as the votes exercised by MD itself. In addition, the parties have agreed that neither will exercise its votes in the operating subsidiaries without first consulting the other.

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<sup>1</sup> Material error: read "TI".

<sup>2</sup> Material error: read "TI".

<sup>3</sup> Future appointment of the Chairman confirms joint control.

<sup>4</sup> The way they are appointed confirms joint control.

#### **IV CONCENTRATIVE JOINT VENTURE**

##### **A Joint venture performing on a lasting basis all the functions of an autonomous economic entity**

11. MD will be a full self-financing entity with its own research and development, design, manufacturing, marketing, sales and product support capabilities. All the necessary intellectual property rights will be assigned or licensed to it. MD will have the possibility to contract for the supply of certain components from the parent's other business but these components can be obtained from a number of alternative suppliers. In addition, these components currently represent only 5 % of the sales value of the landing gear. Finally, with respect to certain services rendered by the parents or the use of certain premises, the relationships will be regulated by specific contracts in order to guarantee the independence of MD.

MD has been created for an indefinite period of time

##### **B Absence of coordination**

12. The parties will transfer all their landing gear business to MD. The only exception will be the { . . }<sup>5</sup> which will be transferred gradually for practical reasons and will act as a subcontractor to MD in the meantime. TI and SNECMA have undertaken not to compete with MD in the landing gear business. In the case of an acquisition by TI or SNECMA of an undertaking partially involved in the landing gear business, the acquiring party will offer the competing business to MD at a price equivalent to the price paid. It can therefore be concluded that SNECMA and TI have withdrawn from the landing gear business with no realistic prospect of reentering it.

13. The parties remain active in three principal businesses related to landing gear : repair and overhaul, wheels and brakes and certain hydraulic components. Repair and overhaul is a separate activity carried out independently from the manufacturing and supply of original equipment. It involves different customers (the airlines) and competitors (major airlines, independent companies). The same applies for wheels and brakes which in addition involve different technology and require separate certification procedures. Finally, hydraulic components are very often supplied independently of the landing gear, at the discretion of the aircraft manufacturer. In the case of the parties, only 5 % for SNECMA and 15 % for TI by value is supplied to their respective landing gear businesses.

14. It follows from the above that the joint venture will not result in the coordination of the competitive behaviour of the parties.

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<sup>5</sup> Deleted business secret.

## **V COMMUNITY DIMENSION**

15. The enterprise concerned have a combined aggregate worldwide turnover in excess of 5.000 million ECU. Both SNECMA and TI have Community-wide turnover in excess of 250 million ECU, but do not achieve more than two-thirds of this turnover in one and the same Member State. Thus the operation has a Community dimension.

## **VI THE RELEVANT MARKET**

### **A The relevant product market**

16. The proposed concentration affects the aircraft landing gear market.

17. The landing gear of an aircraft forms part of the structure of the aircraft. There are three principal components of a landing gear system: nose gear, main gear and, if required on large aircraft, centreline. Each of these differs in design and role from the others. Their combined function is to enable an aircraft to move on the ground, to take off and to absorb impact on landing.

18. Landing gear is designed, developed and manufactured on an application specific basis for each type of aircraft, no two types of aircraft have identical landing gear. Accordingly, landing gear is manufactured across a spectrum of sizes depending on a number of factors, principally the size and weight of the aircraft.

19. Given these characteristics of landing gear, there is no substitute for landing gear in a functional sense. Further, although at the design stage different solutions may be proposed, once the aircraft manufacturer has awarded the original equipment manufacturer a contract for the landing gear for an aircraft model, there is effectively no substitute for the landing gear for that particular model. Normally the landing gear manufacturer will be contractually committed to supplying spare parts for the useful life of the aircraft.

20. As the design and manufacture of landing gear are necessarily tied to the particular aircraft for which they are supplied, the aircraft manufacturer will have a substantial input in the design and development of the landing gear. The landing gear market is divided into two customer segments, civil and military. Both customer segments are highly concentrated, there being three major civil customers, and one major military customer, the US military (see below under section VII).

### **B The relevant geographic market**

21. The market for landing gear for civil applications is worldwide. The aircraft manufacturers commission and purchase civil aircraft components world-wide and in a single currency (US \$). For example, Menasco, one of the world's major landing gear manufacturers, has been chosen to supply the landing gear on the Fokker 100/130, and Messier-Bugatti has recently obtained a sub-contract for the Boeing 777 through Menasco. The global nature of the aircraft manufacturer's businesses is also reflected in the operation of aircraft of multiple origin by each of the world's major airline companies.

22. With regard to the market for landing gear for military applications, purchases are influenced by nationality considerations. Markets for defence-related equipment within and outside the Community tend to remain closed to foreign suppliers and therefore remain national where a domestic supplier exists. However, where there is no domestic supplier, then, subject to other barriers such as export restrictions and national preferences, military landing gear suppliers compete with each other worldwide.

## VII COMPATIBILITY WITH THE COMMON MARKET

### A Market position of the joint venture

23. The estimated market shares of the global landing gear market (both civil and military applications) in 1993 if the concentration had already been put into effect are as follows :

Supplier	Units %	Value %
MD <sup>6</sup>	{ . . . }	{ . . . } <sup>7</sup>
CPC (US)	{ . . . }	{ . . . } <sup>8</sup>
Menasco (US)	{ . . . }	{ . . . } <sup>9</sup>
Others	{ . . . }	{ . . . } <sup>10</sup>
Total	100	100

(The units calculation has been weighted according to the physical weight of the aircraft for which the landing gear is supplied in order to take into account the greater size and complexity of landing gear units supplied for larger aircraft).

24. A separate examination of 1990-1993 market shares by EU Member State for military applications only, reveals the continuation of national buying preferences, Messier-Bugatti and Dowty being predominant in France and the UK respectively. However the concentration will not lead to any overlap in any single Member State, since the military application sales of Messier-Bugatti and Dowty throughout the EU have been in different Member States.

25. It should be noted that market share figures for products such as landing gear should be viewed in the perspective of the long product life-cycles of the aircraft manufacturing industry (see below). Most of the available landing gear business for the next 3 or more

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<sup>6</sup> MD's market share may vary somewhat according to the extent to which the degree of "dressing" of landing gear is taken into account; if "dressing" is excluded, the unit and value percentage may be estimated at {business secret} and {business secret} respectively. The highest estimation of MD's 1993 market share of which the Commission is aware is about {business secret} (on a value basis).

<sup>7</sup> Less than 30%.

<sup>8</sup> Less than 40%.

<sup>9</sup> Less than 25%.

<sup>10</sup> Less than 20%.

years is already determined by existing contracts which have already been won by competitive tender. Future competition will be for new long-term contracts for new aircraft-specific landing gear units and existing market shares may only be a rough indicator of the relative competitive strengths of companies which will bid for those new contracts.

## **B Evaluation of the competitive situation**

### **(i) Supply - demand relationships**

26. The major aircraft manufacturers normally manufacture the aircraft fuselage and wings themselves, then buy the landing gear, engines, and electronic and other operational systems, from outside suppliers, and assemble the final product. As already stated, the aircraft manufacturing industry is characterised by long product life-cycles. A particular model of aircraft (eg. a boeing 737) once designed, manufactured and launched successfully on the market, may have a life-cycle of ten to twenty years. Further, as stated earlier, a landing gear unit is designed, developed and manufactured on an application-specific basis for each model of aircraft; no two models have identical landing gear, the main two variables being weight and volume (when retracted). Thus a landing gear manufacturer who obtains a contract for supplying units for a new aircraft model will in turn be supplying a specific product (and necessary spare parts) for the useful life of the aircraft.

27. Competition in the landing gear market therefore takes the form of competitive bidding for long-term contracts to supply specifically designed units over the life cycle of a particular aircraft. The bidding process, from initial studies, short-listing, formal invitations to tender, tender evaluation, and contract award may take up to four years. The landing gear supplier to whom an aircraft-specific contract is awarded may or may not choose to work in collaboration with another supplier or to sub-contract work, in order to fulfill the contract.

28. The relationship between aircraft manufacturers and landing gear suppliers has in recent years become increasingly characterised by "co-development" or even "co-makership". Aircraft constructors will look to the landing gear supplier to share the risk of a new model development by :

- bearing the whole of the landing gear supplier's own fixed costs associated with the design, development and production of the new gear, leaving those costs to be recovered (it is hoped) out of subsequent sales by the landing gear supplier linked to successful sales of the aircraft over its useful life.
- making a positive contribution to the development costs incurred by the aircraft manufacturer - a sort of "launch aid" recoverable (again it is hoped) by the landing gear supplier through a fixed payment by the aircraft manufacturer to the landing gear supplier per aircraft subsequently sold.

29. The aircraft constructor may adopt a "target pricing" system, which consists of analysing what the customer (the airline operator) is willing to pay compared to

competitors, and then working backwards together with landing gear and other key component suppliers, to cost every component so that the aircraft can be profitably sold at the target price.

30. It seems reasonable to assume that in such a situation a particular aircraft constructor will prefer to form close long-term relationships with a smaller number of large (though still inter-competing) landing gear suppliers, since, given the high development costs and long product life-cycles involved, this will be more cost-efficient than a procurement policy based on inviting competitive bids from a larger number of financially and technologically weaker suppliers, who may be unable to share development risks, or guarantee supplies of units and spares over the useful life of a particular aircraft.

31. This is confirmed by the answers supplied to the Commission by the large aircraft manufacturers which have not expressed complaints about the concentration, and in some cases have even expressed a favourable opinion. Furthermore, the manufacturers have strongly suggested that the concentration is likely to augment the rate of technical innovation, which is of great importance in the aeronautical sector.

32. It may be noted that the "co-makership" tendency does not seem to extend further up the manufacturing chain to the relationship between Dowty and Messier-Bugatti on the one hand, and their component suppliers on the other. Both Dowty and Messier-Bugatti procure components from a wide range of suppliers, none of whom depend to a large extent on their sales to either Dowty or Messier-Bugatti. Moreover, only one of these suppliers is common to both companies. Therefore no supplier will be dependent on its sales to the new joint venture.

(ii) Supply structure

(a) Actual competition

33. As indicated by the market shares given above, MD will have about { . . . }<sup>11</sup> of the global landing gear market. As such, it will be in a position roughly equivalent to the two major US-based suppliers, Menasco Aerospace Ltd and Goodrich Aerospace Cleveland Pneumatic Corporation (CPC), who are currently seeking to extend their geographic spread (particularly in Europe) and extend the range of their landing gear downwards to commuter and regional aircraft (for example, in 1990 Menasco gained the contract for the Fokker F100/130 displacing Dowty which had traditionally supplied Fokker landing gear). The British company AP Precision Hydraulics (with about { . . . }<sup>12</sup> of the global market) also now supplies the full range of landing gear from large civil aircraft to military. At the smaller end of the market, other significant competitors are Magnaghi (Italy) and Servo Hydraulic Lod (Israel)

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<sup>11</sup> Less than 30%.

<sup>12</sup> Less than 10%.



## (b) Potential competition

34. New entry into the landing gear market frequently occurs in stages. For example, a company may start by manufacturing under licence arrangements or as a sub-contractor for landing gear components, and, with the benefit of the experience, begin to compete as a prime contractor for subsequent projects.

35. For example, Sumitomo, the Japanese landing gear manufacturer, began by making landing gear under licence for Japanese military aircraft in 1956. It subsequently manufactured civil and military landing gear for Japanese aircraft. In 1986, on the basis of its accumulated experience, it bid for the first time as a prime contractor outside Japan to make both the nose and main landing gear for the ATR 72. This sort of leap forward could properly have been described as new entry in that, as a prime contractor, the manufacturer has full contractual responsibility for the design and development, must be geared up to supply all future spares and after-sales services and must be able to write the detailed manuals required by the ultimate customers and repair and overhaul companies.

36. Several large aircraft manufacturers have indicated in answers supplied to the Commission that they expect new landing gear competitors to emerge in the medium to long term, in Japan or Eastern Europe, for example.

## (c) Oligopolistic market structure

37. Although the three largest landing gear suppliers, MD, CPC and Menasco may be expected to account for some { . . . }<sup>13</sup> of the global market (see table at 'A' above), there would seem to be no possibility that the current operation would increase the risk of oligopolistic dominance. Actual competition between these three companies does not seem likely to diminish, in view of the considerable buying power of the major customers (see (iii) below) of the continuing emergence of potential competition (see (b) above), and of the non-transparent character of the competitive bidding process for new long-term contracts (see (i) above). Moreover, landing gear systems, as already explained, are heterogeneous products, specifically designed for specific aircraft models, and always subject to a substantial degree of innovation over time.

(iii) Demand structure

38. There are approximately thirty aircraft constructors world-wide. However, three constructors - Boeing, Mc Donnell Douglas and Airbus - account for approximately 80 % by value of all purchases of landing gear for civil applications. The US military alone accounts for { . . . }<sup>14</sup> by value of all purchases of landing gear for military applications. The aircraft manufacturers are confident of their ability to continue to be able to negotiate reasonable prices with their landing gear suppliers. The currently depressed state of the civil air travel market, which is resulting in fewer orders for new aircraft, may be

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<sup>13</sup> Between 75 and 85%.

<sup>14</sup> At least 70%.

expected to enhance the risk-sharing co-makership relationship between aircraft manufacturers and landing gear suppliers as described above. As far as the military sector is concerned, as already stated at 'A' above, even where national markets may continue to exist, the current operation will not lead to any overlap in any single Member State.

### **C. Conclusion**

39. In view of the existence of strong actual competition, of longer-term potential competition, of the concentrated buying power of major customers' and the latter's apparent preference for procurement policies based on long-term contracts with fewer suppliers, it does not seem likely that the concentration will create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market.

## **VIII ANCILLARY RESTRAINTS**

### Conduct of business up to completion and tax affairs

40. TI and SNECMA respectively accept certain restrictions on the conduct of Dowty and Messier-Bugatti's activities which only apply prior to the completion of the Formation Agreement setting up the joint venture. TI and SNECMA agree that the businesses of Dowty and Messier-Bugatti will be conducted in the ordinary and normal course and that their prior consent will be required for certain major decisions or major changes in connection with these businesses. Additionally, TI and SNECMA agree not to take actions concerning pre-completion tax affairs which could adversely affect the joint venture. These provisions are necessary to the implementation of the concentration, given the gap between contract and completion.

### Non-competition clause

41. As already mentioned, TI and SNECMA have undertaken not to compete with MD in the landing gear business. This clause reflects the definitive withdrawal of the parties from the market and can therefore be seen as a restriction directly related and necessary to the implementation of the concentration.

### Intellectual property rights and trade marks

42. According to clause 8.6 of the Formation Agreement, the intellectual property rights owned by the parties which have direct application to the landing gear business but can be used for other business will be fully licenced to MD. This clause is intended to ensure the independence of MD and it directly related and necessary to the implementation of the concentration.

43. It can be considered that clause 8.4, which requires MD to licence back to the parties the intellectual property rights used exclusively for the landing gear business, is covered by the present decision, insofar as the intellectual property rights involved are used for purposes other than the manufacture of landing gear. The same applies to clauses 8.9 and

8.10. Clause 8.8, which allows MD to use the trade marks of its parents, is in line with Commission Notice of 14.10.1990 and can therefore be accepted.

#### Service agreements

44. According to certain clauses of the Formation Agreement and other agreements certain administrative, professional and commercial services will continue to be provided to MD by the parties. Equally, MD will provide certain limited services locally to its parents. These services will be regulated by specific contracts and will in most cases give rise to a remuneration. These clauses are intended to ensure the independence of MD and are therefore an integral part of the concentration.

#### Exclusive supply agreement { . . . }<sup>15</sup>

45. The exclusive supply agreement by which { . . . }<sup>16</sup> will act as a sub-contractor of MD for the production of landing gear reflects the withdrawal of the parties from the market. It is therefore an integral part of the concentration.

46. { . . . }<sup>17</sup>

### **IX CONCLUSION**

47. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

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For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

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<sup>15</sup> Deleted business secret.

<sup>16</sup> Deleted business secret.

<sup>17</sup> Deleted business secret.