



## **DETERMINATION OF MERGER NOTIFICATION M/07/058 – EUROCOPTER/MCALPINE**

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### **Section 21 of the Competition Act 2002**

#### **Proposed acquisition by Eurocopter S.A.S. of McAlpine Helicopters Limited**

**Dated 18/10/2007**

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### **Introduction**

1. On 28 September 2007 the Competition Authority (the “Authority”), in accordance with Section 18(1)(a) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposed acquisition by Eurocopter S.A.S. (“Eurocopter”) of 90 per cent of the share capital of McAlpine Helicopters Limited (“McAlpine”). Eurocopter currently owns 10 per cent of the share capital of McAlpine.

### **The Undertakings Involved**

#### ***The Acquirer***

2. The Eurocopter Group is a global helicopter manufacturing and support company. There are three major entities in the group: the parent company, Eurocopter; its German subsidiary, Eurocopter Deutschland; and its Spanish subsidiary, Eurocopter España. The Eurocopter Group is a wholly owned subsidiary of European Aeronautic, Defence and Space Company, one of the three largest aerospace groups in the world.
3. Eurocopter is involved in the purchase, sale, design, building, manufacture, maintenance, repair and installation of any and all equipment in the field of helicopters or their derivatives in the worldwide civil and military sectors, and any and all equipment for the aerospace sector.
4. In the State, Eurocopter’s civil (including para-civil) helicopters are distributed exclusively through McAlpine. With regard to the military helicopter market, Eurocopter sells directly to customers. Eurocopter last sold military helicopters to customers in the State in the year 2002/03 when it sold [...].
5. Eurocopter’s worldwide turnover for the year ended 31 December 2006 was €2,238 million. Eurocopter’s turnover in the State for the year ended 31 December 2006 was approximately [...] million, which was largely derived from the sale of spare replacement parts for EC135 helicopters owned by the Irish Air Corp. This turnover figure does not include wholesale sales to McAlpine (Eurocopter’s exclusive distributor

of onshore civil helicopters in the State), which are attributed to Eurocopter's UK turnover.<sup>1</sup>

### **The Target**

6. McAlpine, which specialises in the bespoke completion of helicopters and its in-house engineering capabilities include design, production, installation, flight test and certification, is 10% owned by Eurocopter and 90% owned by McAlpine Air Services Limited. McAlpine Air Services Limited is in turn a wholly owned subsidiary of Newarthill Limited, a private company with interests in construction, renewable energy, PFI and property.
7. McAlpine's worldwide turnover for the year ended 31 October 2006 was €76.1 million. McAlpine's turnover in the State for the year ended 31 October 2006 was [...] million.

### **Analysis**

8. There is no horizontal overlap between the activities of Eurocopter and McAlpine in the State. However, there is a vertical overlap with respect to Eurocopter's exclusive arrangement with McAlpine for the sale and distribution of onshore civil helicopters in the State.
9. The European Commission (the "Commission") has previously considered mergers in the helicopter sector.<sup>2</sup> During the course of its investigations, the Commission has distinguished different relevant markets for military and civil helicopters given the differences that exist between civil and military helicopter programmes with regard to product characteristics, the structure of demand and conditions of competition.
10. In its investigations of the helicopter sector, the Commission has also considered the product support segment, which includes airframe and components maintenance and repair, helicopter specific equipment maintenance and repair, spare parts supply, technical assistance, training and maintenance support and helicopter upgrade support engineering services. In its decisions to date, the Commission has indicated that product support does not constitute a separate product market as such activities depend on a manufacturer's fleet being in service and thus on the sale of helicopters.
11. The parties submit that the relevant product market in this case is the market for the sale of civil helicopters and that the relevant geographic market is worldwide, as per past Commission decisions.
12. The parties submit that the market for civil helicopters is characterised by intense competition driven by mission suitability, budget availability, cost of ownership, resale value, short lead time, innovative design, customer support reputation, and brand loyalty.
13. In the market for civil helicopters, customers can be broadly split into three groups: (a) para-civil customers, e.g. the Gardaí; (b) commercial

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<sup>1</sup> This is because Eurocopter is generally not aware of the identity of the final client when helicopters/production slots are originally purchased by McAlpine.

<sup>2</sup> Case No. IV/M.0017 - *Aerospatiale/MBB*, Commission Decision of 25 February 1991; Case No. COMP/M.1745 - *EADS*, Commission Decision of 11 May 2000; Case No. COMP/M.1501 - *GKN Westland/Augusta /JV*, Commission Decision of 22 November 2000.

operators; and (c) corporate customers. Approximately two thirds of Eurocopter's sales in the State are to the corporate customer segment.

14. In the worldwide market for civil helicopters, Eurocopter's market share is estimated to be [...] in units (total market based on 678 units in 2006) and [...] in value. In the State, the total civil helicopter fleet currently comprises of approximately 169 helicopters. The [relevant] manufacturers [are]:
  - Robinson - [...]
  - Bell - [...]
  - Agusta - [...]
  - Eurocopter - [...]
  - Sikorsky - [...]
  - [...] Westland, Enstrom, MD and Schweitzer.
15. Although sales outlets vary worldwide, all manufacturers of civil helicopters use some form of agent in most countries, including in the State. For example, Robinson is represented by Sloane Helicopters and HeliAir in the State while Agusta is also represented by Sloane Helicopters in the State. The main agent for Bell in Ireland is an individual called Terry Burnell but it is understood by the parties that Patriot Aviation may be about to gain a Distributorship Agreement with Bell.
16. As noted in paragraph 4 above, McAlpine is currently Eurocopter's exclusive distributor of onshore civil helicopters in the Republic of Ireland, UK, the Channel Islands and the Isle of Man and does not sell helicopters produced by any other manufacturer.
17. In analysing the non-horizontal effects of a merger, the key question is whether or not either of the undertakings involved has market power in any of the vertically related markets in which they operate. Such market power is necessary but is not in itself a sufficient "pre-requisite for competitive harm from foreclosure."<sup>3</sup>
18. An anticompetitive effect of the transaction is only present if the merged entity has the ability and incentive to foreclose a product/service from its competitors and if this results in demonstrable harm to consumers. Two separate types of foreclosure may arise: input foreclosure and customer foreclosure. In this case, the Authority has examined customer foreclosure, i.e. where the merged entity is an important customer in the downstream market and the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.
19. The Authority considers that given that McAlpine does not sell helicopters produced by any manufacturer other than Eurocopter in the State, there is no concern that Eurocopter will be in a position post-

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<sup>3</sup> Economic Advisory Group for Competition Policy, 2006, *Non-Horizontal Mergers Guidelines: Ten Principles*, Brussels: the Commission, p.4. This may be accessed at [www.ec.europa.eu/dgs/competition/eagcp.htm](http://www.ec.europa.eu/dgs/competition/eagcp.htm).

acquisition to foreclose access to a sufficient customer base to its competitors. As outlined in paragraph 14 above, there are many manufacturers of civil helicopters that make sales in the State. Out of the current civil helicopter fleet of approximately 169 helicopters in the State, Eurocopter's share of total sales is approximately [...]. Post-acquisition, customers in the State will continue to have a wide choice of manufacturers from which to purchase civil helicopters.

20. The Authority therefore considers that the proposed transaction does not raise competition concerns in the State.

#### **Ancillary Restraints**

21. The Authority also reviewed the restrictive arrangements agreed by the parties in their Share Purchase Agreement and referred to in the notification of the merger. The arrangements provide for a 3-year non-compete restriction on McAlpine Air Services Limited not to engage or be concerned or interested in any business in the UK or the State which competes with, or is likely to compete with, McAlpine.
22. The Authority considers that the 3-year non-compete restriction is directly related and necessary to the implementation of the merger because it protects the value of both the goodwill and the confidential know-how of McAlpine. McAlpine's business is reliant on the development and retention of very significant and valuable confidential know-how regarding developments and trends in the market for civil helicopters. The vendor has (through McAlpine's activities) accumulated very significant and valuable know-how regarding customer preferences and the individual specifications sought by McAlpine's customers. In the absence of a 3-year non-compete restriction, the parties submit that the integrity and value of McAlpine's business would be significantly compromised.

#### **Determination**

The Competition Authority, in accordance with Section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Eurocopter S.A.S. of 90 per cent of the share capital of McAlpine Helicopters Limited will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

#### **For the Competition Authority**

Dr Paul K. Gorecki  
Member of the Competition Authority