



DETERMINATION OF MERGER NOTIFICATION M/16/019 - NAC TURBO/ALDUS

Section 21 of the Competition Act 2002

Proposed acquisition by NAC Turbo Limited of Aldus Aviation Limited

Dated 17 May 2016

Introduction

1. On 13 April 2016, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby NAC Turbo Limited (“NAC”) would acquire the entire issued share capital and, thus, sole control of Aldus Aviation Limited (“Aldus”).
2. The proposed transaction is to be implemented pursuant to a sale and purchase agreement dated 17 March 2016 (the “Sale and Purchase Agreement”) between NAC and the current shareholders in Aldus, namely, Philip Bolger, Andrew Richard Haig Cameron, Valentine Flynn, Stephen Gorman and Ciaran Redmond (the “Sellers”).

The Undertakings Involved

NAC

3. NAC is a private limited company incorporated in the State which is primarily active in the leasing of aircraft to airlines worldwide through various wholly-owned subsidiaries, including Nordic Aviation Capital A/S.¹ Airlines lease aircraft from NAC on a standalone basis and provide their own staff and fuel.
4. Each of NAC and Nordic Aviation Capital A/S are jointly controlled by EQT VI Limited (“EQT”) (which has an indirect [...] % shareholding) and Martin Møller Nielsen (who has an indirect [...] % shareholding). On 11 September 2015, the Commission cleared EQT’s acquisition of joint control, with Martin Møller Nielsen, of Nordic Aviation Capital A/S.² EQT is an investment fund launched in 2011 which makes investments primarily in Europe. EQT is advised by EQT Partners AB, its branches and/or its associates.
5. For the financial year ending 30 June 2015, NAC’s worldwide turnover was approximately €[...], of which €[...] was generated in the State.

¹ NAC and its subsidiaries owned [...] aircraft at the date of notification of the proposed transaction to the Commission.

² See merger determination M/15/043 – EQT VI/Martin Møller/NAC which can be accessed at <http://www.cpc.ie/enforcement/mergers/merger-notices/m15043-egt-vi-martin-moller-nac>



Aldus

6. Aldus is a private limited company incorporated in the State and is involved in the provision of aircraft lease management services.³ It is currently owned and controlled by five individuals as follows: Stephen Gorman ([...]), Philip Bolger ([...]), Ciaran Redmond ([...]), Andrew Richard Haig Cameron ([...]) and Valentine Flynn ([...]). Aldus provides aircraft lease management services to [...].⁴ [...].
7. The parties state in the notification that the relationship between Aldus and [...] is akin to an outsourcing arrangement. [...] own the aircraft which are then leased to various airlines, while lease management services in respect of those aircraft are outsourced to Aldus. The relationship between Aldus and [...] is purely contractual. Aldus does not own or control [...] and there are no corporate or other structural links between Aldus and [...]. Post-transaction, Aldus will continue to provide aircraft lease management services to [...] on a contractual basis.
8. For the financial year ending 31 March 2015, Aldus's worldwide turnover was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

9. The parties state in the notification:

“Following a strategic review, NAC intends to focus on geographic and technological diversification of its fleet and activities. NAC believes that [Aldus] provides an attractive platform to achieve such further diversification.”

Third Party Submissions

10. No submission was received.

Competitive Analysis

11. There is no horizontal overlap between the parties' activities with respect to the leasing of aircraft to airlines since Aldus is not involved in this business activity. There is, however, a horizontal overlap between the parties in the State with respect to the provision of aircraft lease management services.
12. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g., the provision of aircraft lease management services) or more broadly to encompass both the leasing of aircraft to airlines and the provision of aircraft lease management services. The precise product

³ These services include: fleet management services; assessing marketing opportunities; negotiating lease documentation; preparing aircraft for delivery; managing the lease during the contract term; accounting services; aircraft insurance management; aircraft marketing; securitisation reporting; and administration services.

⁴ The parties informed the Commission that [...].



market definition will not materially alter the Commission's assessment of the competitive impact of the notified transaction. In order, however, to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission assessed its impact on competition by reference to the provision of aircraft lease management services.

13. The Commission also does not need to come to a definitive view on the precise relevant geographic market in this instance since its assessment of the competitive impact of the proposed transaction will be unaffected whether the relevant geographic market is defined as national or is defined more widely than the State. In order, however, to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission assessed its impact on competition by reference to the narrowest possible relevant geographic market, namely the State.
14. For the reasons set out below, the Commission considers that the proposed transaction will not substantially lessen competition in the potential market for the provision of aircraft lease management services in the State.
15. First, neither NAC, EQT (including the portfolio companies it controls solely or jointly) nor Martin Møller Nielsen provide aircraft lease management services to any third parties in the State or worldwide. While NAC provides lease management services to its own fleet of aircraft, it does not provide such services to third parties. Second, there are a number of providers of aircraft lease management services currently active in the State who will act as a competitive constraint on NAC post-transaction, including GE Capital Aviation Services, AerCap and SMBC Aviation Capital.
16. There is also a potential vertical relationship between the parties in the State. As described above, Aldus currently provides aircraft lease management services to [...]. Aldus's aircraft lease management services could, post-transaction, be provided to other third parties and/or to NAC, hence a potential vertical overlap exists between the parties. However, given Aldus's relatively small turnover in the State and the fact that there are a number of providers of aircraft lease management services currently active in the State who will act as a competitive constraint on NAC post-transaction (e.g., GE Capital Aviation Services, AerCap and SMBC Aviation Capital), any potential vertical relationship between the parties is unlikely to raise any competition concerns in the State.
17. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

18. In the notification, the parties provided a copy of the Sale and Purchase Agreement, which contains a number of restrictive obligations on each of the Sellers. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.⁵

⁵ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



The Commission considers these restrictions to be directly related to and necessary for the implementation of the proposed transaction.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby NAC Turbo Limited would acquire the entire issued share capital and, thus, sole control of Aldus Aviation Limited will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission