

Anticipated acquisition by FN Herstal S.A. of Manroy plc

ME/6441/14

The CMA's decision on reference under section 33(1) given on 1 July 2014. Full text of the decision published on 17 July 2014.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Summary

1. FN Herstal S.A (FNH) is proposing to acquire Manroy plc (Manroy) (the Parties) (the Merger). The Competition and Markets Authority (CMA) considers that the Parties will cease to be distinct, that it has jurisdiction on the basis of the share of supply test and that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
2. The Parties overlap in the manufacture and supply to the UK's Ministry of Defence (MoD) of:
 - Heavy Machine Guns (HMGs);
 - General Purpose Machine Guns (GPMGs);
 - Tripods and mountings;
 - Barrel conversion kits;¹ and
 - Accessories.
3. As a result of its market testing the CMA is aware that the MoD does not plan to hold a competitive tender for either HMGs or GPMGs (together referred to as MGs) in the short to medium term. However, the MoD will, if it deems it operationally necessary, hold an open competition and would consider a wide range of possible suppliers, including a number of suppliers from, [redacted]. The MoD stated that it is not concerned about the Merger as it considers that that there is a worldwide market for MGs which will remain competitive after the Merger. The MoD also submitted that it has buyer power, and would be able to

¹ FNH manufactures but does not currently supply barrel conversion kits to the UK's MoD.

invoke contractual mechanisms to protect its position as a significant purchaser.²

4. Third parties that do not currently supply MGs to the MoD, but are nevertheless established manufacturers of MGs that are used in other countries, have commented that they were interested in taking part in any future competition to supply the MoD.
5. The CMA considers that in light of the overall evidence, and in particular the points above, no realistic prospect of a substantial lessening of competition will arise as a result of the Merger in respect of the supply of HMGs and GPMGs to the MoD in the UK.
6. With regard to tripods and mountings for machine guns, the Parties submitted that a greater number of suppliers produce these products than there are suppliers of the weapons discussed above. This has been confirmed by third parties. Overall, the CMA considers that the Merger would not give rise to competition concerns in relation to the separate sale of tripods and mountings.
7. With regard to the supply of barrel conversion kits for HMGs, the MoD submitted that HM Armed Forces' entire fleet of HMGs, across all three services, was composed entirely of Quick Change Barrel (QCB) variants. It therefore has no current requirement to procure more. Further, in the unlikely event that additional QCB HMGs were required, the MoD would procure them [X] to avoid mixed fleets of weapons and any complications in training users where mixed fleets of weapons are used. This would also enable the MoD to maintain configuration control and management. The CMA considers that the Merger would not give rise to competition concerns in this product segment, given that the MoD is unlikely to procure any further barrel conversion kits and, even if it did, the evidence shows that there would be a sufficient number of credible alternative suppliers.
8. The final area of overlap includes ammunition and spare parts for the weapons in question. Other than blank ammunition, which is supplied by Manroy, the MoD has exclusive contracts with other suppliers for its ammunition requirements and would not have obtained these from the parties in any event. While many spare parts would be sourced from the original manufacturer, the MoD confirmed that it would also consider procuring less complex spare parts, as well as repairs and maintenance, from third-party suppliers and through its

² For example; the MoD pointed to its supply arrangements including a contractual term that allows the MoD to take ownership of the so-called 'Technical Design Package' and to give this Technical Design Package to a potential manufacturer in order to realise the MoD's requirements.

own in-house capabilities. Further, through its contractual arrangements, the MoD has the ability to request the usage rights for the production of spare parts. Overall, in particular as a result of these factors, the CMA considers that the Merger would not give rise to competition concerns in relation to the manufacture and supply of ammunition, spare parts for the weapons in question to the MoD.

Decision

9. This merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the Act).

Assessment

Parties

10. FN Herstal S.A. (FNH) is a wholly owned subsidiary of Herstal S.A. (the Herstal Group), a Belgium based holding company of businesses involved in the design, manufacture and distribution of firearms and related accessories. FNH designs, manufactures and distributes a range of firearms, complementary accessories and spare parts for defence and law enforcement organisations world-wide. In the UK, FNH supplies the MoD.
11. Manroy plc (Manroy) is a UK based defence contractor specialising in the supply of weapons systems. Manroy is publicly listed on AIM, and is an approved supplier to the MoD. Manroy's UK turnover for the year ended 30 September 2013 was £1.6 million.

Transaction

12. The Merger is a recommended cash offer by FNH for the entire issued and to be issued share capital of Manroy. The offer became unconditional as to acceptances (that is 90% of shareholders have accepted the offer) on Friday 16 May 2014. The CMA received a satisfactory statutory merger notice on 6 May 2014, and the statutory deadline for a decision by the CMA is 2 July 2014.

Jurisdiction

13. As a result of the Merger, the enterprises of FNH and Manroy will cease to be distinct. The Parties overlap in the supply of MGs to the MoD, with a combined share of supply of some [35 to 45]% (increment of around [5 to 15]%). The CMA therefore considers that the share of supply test in section 23 of the Enterprise

Act 2002 (the Act) is met in this case. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Product frame of reference

14. The Parties overlap in the in the manufacture and supply of:
 - Heavy Machine Guns (HMGs);
 - General Purpose Machine Guns (GPMGs);
 - Tripods and mountings;
 - Barrel conversion kits; and
 - Accessories.

15. A machine gun (MG) is a fully automatic mounted or portable firearm, usually designed to fire bullets in quick succession, typically at a rate of several hundred rounds per minute. Depending on the intended application, MGs are operated using different accessories, such as mountings and tripods, and different types of ammunition.

16. Depending on their calibre and construction, MGs have different weights, fire rates and firepower, specifically adjusted for their intended application. They may also be subdivided into 'light',³ 'general-purpose' or 'heavy' MGs. This classification appears to be standard within the industry, and is used both in the parties' product catalogues and by the MoD (as well as by competitors and foreign armed forces).

Product scope

HMGs

17. A HMG is a large-calibre MG designed to provide increased range, penetration and destructive power beyond the calibres used in GPMGs or LMGs.⁴ The Parties both manufacture and supply 12.7mm HMGs based on the M2 Browning.⁵

18. HMGs for airborne applications may have a higher-rate of fire and may be otherwise optimised for use on aircraft (for example, weight, safety and other requirements of the airworthiness certificate required by the MoD).

³ Light machine guns (LMGs) are considered as an infantry support weapon.

⁴ HMG used in the British Army: calibre 12.7mm, 38.15kg weight.

⁵ The M2 Browning is a model of HMG, first produced in the 1920s and used during the Second World War.

19. Due to their weight and recoil, HMGs are intended for mounted use. In the British Army, HMGs are used on a ground-mount tripod or fitted to a vehicle. In the Royal Air Force (RAF), HMGs are used mounted on helicopters where they are attached to a mount fixed to the aircraft that permits them to swivel. HMGs are also used in the Royal Navy in similar applications.
20. The Parties submitted that on the demand side, HMGs and GPMGs are not substitutable as GPMGs are more versatile and offer extensive tripod and vehicle mounting options but also lower power; and LMGs and HMGs are not substitutable due to the differences in power and application described above. The MoD confirmed that different machine gun types serve specific, but in some applications overlapping, purposes.
21. Further, the Parties submitted that on the supply side, there is no substitutability between the production of HMGs and GPMGs (or LMGs) as cost and time required for manufacturers of either GPMGs or LMGs to switch to producing HMGs are significant. The Parties note that Manroy invested [£] and spent two years to develop its HMG.
22. The CMA considers that, for the purpose of its analysis, it does not need to conclude whether weapons below or above the capabilities of HMGs could be considered as substitutes for HMGs, since no competition concerns arise in any event.
23. In addition, the Parties submitted that HMGs for airborne and non-airborne applications are not substitutable. They submitted that FNH's airborne HMG product was specifically designed for this purpose and that the MoD requires manufacturers to obtain an airworthiness certificate for these products. In particular, FNH's airborne HMG differs from other HMGs by, among other characteristics, a higher-rate of fire and lighter weight.
24. The Parties' view that airborne and non-airborne HMGs are not substitutable was not supported by third parties. The MoD commented that the FNH M3N HMGs it procures for helicopters in the UK is similar to the Manroy equivalent product, which the MoD procures for non-airborne use. It also noted that elsewhere in the world the FNH M3N is used for land based vehicles. Other third parties commented that there are slight differences between the use of airborne HMGs and non-airborne HMGs but that materially they are similar. This is illustrated, for instance, by the fact that airborne and non-airborne HMGs may be the same when used on helicopters, while other types of aircraft would use more specialised guns - cannons, with high-rates of fire, and finally HMGs of the same calibre can be used for both airborne and non-airborne applications, with the difference in the mounting on the platform.

25. Therefore, on a cautious basis, the CMA has considered, for the purpose of this analysis, the manufacture and supply of all HMGs without distinguishing between applications. However, the CMA has excluded any specialist guns which might be categorised as HMGs, such as electrical driven HMGs or aircraft cannons.⁶

GPMGs

26. GPMGs are air-cooled, belt-fed firearms with a quick change barrel that can be used in a variety of roles, from bipod-or tripod-mounted infantry support, to deployment as a helicopter door gun, or a vehicle-mounted support weapon. The Parties both supply 7.62mm GPMGs.
27. GPMGs are an intermediate weapon between LMGs and HMGs and may be used in different roles. In the British Army, GPMGs are used as a light weapon and in a sustained fire role.⁷ Versions of the GPMG are also mounted on most British Army vehicles and some helicopters. The Parties submitted that LMGs and HMGs are not substitutable with GPMGs on either the supply or demand side.
28. On its website the British Army notes that GPMGs can be carried by foot soldiers and employed as a LMG.⁸ Therefore, depending on the role, there may be a degree of substitutability with LMGs, although most GPMGs used in a LMG role have been replaced by LMGs.
29. However, the CMA has considered, for the purpose of this analysis, and on a cautious basis, the manufacture and supply of all GPMGs (separate from HMGs and LMGs) and does not conclude whether weapons below or above the capabilities of GPMGs could be considered as substitutes since no competition concerns arise even on this narrower basis in any event.

Mountings and tripods

30. Mountings and tripods are components to affix firearms for stabilisation. There are different types of mountings, static and portable, of which tripods fall into the portable category. The Parties manufacture and supply lightweight tripods

⁶ The difference between machine guns and auto cannons is based on calibre, with auto cannons using calibres larger than 16 mm, and whether the gun fires conventional bullets or explosive rounds. An aircraft cannon is that the latter are designed to fire shells (that is explosive rounds), whereas MGs are designed to fire bullets. Electrically driven MGs such as those manufactured by Rheinmetall are designed to operate in remote weapons systems through remote control. Unlike the standard HMG, these electrically operated MGs require a constant electrical power source, and are therefore not exact demand side substitutes with the standard HMG.

⁷ GPMG model used in the British Army: calibre 7.62mm, 13.85kg weight.

⁸ [British Army](#)

for the M2 Browning and M3 HMGs and for GPMGs. However, the Parties submitted that it is not FNH policy to supply mountings and tripods without also supplying the MGs. Manroy also sells tripods in the UK together with the HMG and will also supply them separately. The Parties submitted that there is a degree of compatibility between tripods and MGs from different manufacturers. The Parties also submitted, and it has been confirmed by third parties, that more suppliers produce mountings and tripods than there are suppliers of the weapons in question.

31. When secondary (or aftermarket) products are those that are purchased only as a result of the customer having purchased a primary product, the CMA may consider combining the primary and secondary products in the same relevant product market.⁹ However, the CMA does not need to conclude whether to combine MGs and tripods as being in the same product market as no competition concerns arise on any basis. Given that suppliers of MGs are active in the supply of mountings and tripods and there are also numerous additional suppliers of the latter, the CMA considers that, if no concerns arise in the supply of MGs, no concerns are likely to arise in the supply of mountings and tripods. Therefore, in the absence of competition concerns in the supply of MGs, as outlined below, the supply of mountings and tripods have not been assessed separately and is not considered further.

Barrel conversion kits

32. These conversion kits convert a standard weapon to enable faster barrel changes. As explained above, MGs are designed to fire bullets in quick succession; with some models firing more than 1000 rounds per minute. Due to the higher-rate of fire, barrels must be allowed to cool regularly to avoid malfunction and accidents. Consequently, a weapon may have either a barrel cooling system or a removable barrel system which allows hot barrels to be replaced. Barrel conversion kits provide a conversion for existing HMG systems to a 'quick change barrel' configuration. The Parties submitted that both manufacture and supply barrel conversion kits for standard M2 12.7mm calibre HMGs. While there are no substitutes on the demand side, on the supply side a manufacturer with capabilities in the production of HMG barrels may switch production easily to barrel conversion kits. The Parties submitted that post-Merger both General Dynamics and US Ordnance would compete for the supply of barrel conversion kits,¹⁰ and that, in addition, there were a range of small competitors who, in the opinion of the Parties, were capable of manufacturing these kits.

⁹ [Merger Assessment Guidelines](#), Paragraph 5.2.20

¹⁰ This view was supported by [REDACTED]

33. The MoD submitted that HM Armed Forces' fleet of HMGs, across all three services, was already composed entirely of Quick Change Barrel (QCB) variants, with the barrel conversion kits procured from [X]. So it had no current requirement to procure more. However, the MoD submitted that in the unlikely event that additional barrel conversion kits were required, the MoD would procure them [X] in order to maintain configuration control and management, to avoid mixed fleets of weapons and any complications in training users where mixed fleets of weapons are used.
34. In light of MoD's fully upgraded HMG fleet and the fact that the MoD considers [X] as the only possible supplier in any event, the CMA has not assessed further the supply of barrel conversion kits to the MoD.¹¹ The precise product scope in this regard is therefore left open.

Accessories

35. The final area of overlap relates to accessories including ammunition and spare parts for the weapons in question. The Parties submitted that Manroy only manufactures and supplies 12.7mm blank ammunition for its M2 blank firing system. In addition, the MoD uses other suppliers for its ammunition requirements with which it has exclusive contracts. The Parties supply various spare parts for their products and specialised toolkits.
36. The MoD noted that the cost of spare parts is taken into account in the tender process, as this may represent the majority of expenses over the lifetime of any weapon. The Parties submitted that a tender for a specific weapon includes an initial set of fundamental spare parts. The MoD would subsequently usually conduct a separate tender for any further supply of spare parts.
37. The MoD confirmed this and noted that subsequent requirements for important spare parts would usually be sourced from the original manufacturer. The MoD said that it would also consider procuring less complex spare parts, as well as repairs and maintenance, from third-party suppliers and its own in-house capabilities. The MoD also submitted that it can request the usage rights for the production of spare parts, if necessary.¹²

¹¹ There is no current overlap in supply to the MoD. The possibility of future supply is hypothetical, while the MoD has stated that it would procure barrel conversion kits from [X] in the unlikely event of a further procurement, third parties have supported the Parties submission that there are alternative suppliers of these kits other than the Parties post-Merger.

¹² Its ability to retain usage rights enables the MoD to source from a wider range of suppliers should it need to in the future.

38. When secondary (or aftermarket) products are those that are purchased only as a result of the customer having purchased a primary product, the CMA may consider combining the primary and secondary products in the same relevant product market.¹³ However, the CMA has not needed to conclude whether to combine MGs and their spare parts in one market, since no competition concerns arise on any basis. The CMA therefore has not considered further the impact of the Merger on the accessories product category.

Geographic frame of reference

39. The Parties submitted that a worldwide market was the appropriate geographic scope for the supply of each of the above products. This was on the basis that the Parties' main UK customer, the MoD, would consider sourcing machine guns from manufacturers based in NATO member states and other non-hostile countries around the world.

40. The Parties submitted that the products in question were high-value items with negligible transport costs.¹⁴ Further, of the Parties' sales of MGs, around 50% were to customers outside of the EU, which they considered to show a lack of material barriers to trade. Tender data submitted by the parties and public information about the suppliers of firearms to other armed forces also suggested that the markets in question were global in scope, according to the Parties.

41. The Parties identified a number of overseas manufacturers¹⁵ that have either competed with the Parties for sales or were in a position to supply weapons to the UK, and the MoD confirmed that for the products relevant to this analysis, it would consider suppliers from a wide range of non-hostile countries.

42. In the UK, the MoD is the primary customer for suppliers of the products listed.¹⁶ In this case, the competitive constraint on the Parties in the supply to the UK comes not only from competing suppliers, but also from the Parties' UK customers' (principally the MoD) willingness to award a contract to a rival, feasible supplier to the UK. In this sense, the most appropriate geographic scope is the UK. Suppliers in the market are those that sell, or are considered to be feasible suppliers, to customers in the UK.¹⁷

¹³ [Merger Assessment Guidelines](#), Paragraph 5.2.20

¹⁴ Under 5% of the value of the product.

¹⁵ Heckler & Koch, Rheinmetall, Israel Weapons Industries (IWI), Singapore Kinetics, Denel, Daewoo, ATK Defense Group (ATK), Barrett, Contract Fabrication & Design International (CFD), General Dynamics, and US Ordnance.

¹⁶ These products may also be supplied to law enforcement organisations and to manufacturers of equipment for the MoD which incorporates these products.

¹⁷ In cases where delivered prices are negotiated individually with customers, the geographic scope of a relevant market may be one aspect of the definition of a relevant customer market. Suppliers in this case can discriminate

Conclusion on the frame of reference

43. In light of the considerations above, the CMA has used the following product frames of reference for the purpose of its analysis:
- the manufacture and supply of HMGs to the UK;
 - the manufacture and supply of GPMGs to the UK.

Counterfactual

44. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (that is, the counterfactual). In practice, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, there is a realistic prospect of a different counterfactual.¹⁸ In this case, there is no evidence supporting a different counterfactual, and the Parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

Competitive assessment

Horizontal unilateral effects

45. Horizontal unilateral effects can arise where a firm merges with a competitor that previously provided a competitive constraint, and are more likely where the merger firms' products compete closely.¹⁹
46. The MoD has indicated that it is unlikely that it will hold a competitive tender for the overlap products in the short to medium term. Therefore, the CMA has considered unilateral effects that may arise from the Merger over a relatively long period. In undertaking such a long-term assessment, the CMA has also considered the horizontal effects that might arise from a hypothetical tender, if undertaken in the short-term, by the MoD for each of the products in paragraph 43 above and taken account, if applicable, of foreseeable changes that may occur beyond this short-term period.

on the basis of customer location (in the sense that the MoD is a UK customer). Geographic markets of this type encompass the region into which sales are made. Competitors in the market are those suppliers that sell to – or are considered feasible suppliers for – customers in the specified region. Some suppliers that sell into the relevant market may be located outside the boundaries of the geographic market. [See Merger Assessment Guidelines](#), paragraph 5.2.27.

¹⁸ [See Mergers Assessment Guidelines](#), paragraph 4.3.5 *et seq.*

¹⁹ *Ibid*, paragraph 5.4.6.

HMGs

Parties' views

47. The Parties submitted that they both compete for the supply of HMGs for land-based applications. Manroy is considered by the Parties to be a small supplier with limited resources in this market, whereas the Parties consider the other manufacturers to be very large companies with a wider range of products and greater resources. The Parties identified their main competitors as ATK (US), General Dynamics (US), Rheinmetall (DE), US Ordnance (US), and ST Kinetics (SG).
48. The Parties noted that General Dynamics had the biggest capacity to manufacture HMGs and that major current producers were US Ordnance General Dynamics and ATK.²⁰ The Parties further noted that companies in Asia (ST Kinetics, S&T Motiv) would produce 'copies'; that is, M2 Browning versions for which any Intellectual Property Rights (IPRs) have expired, although Manroy had not yet actively faced competition from ST Kinetics in Europe.
49. The comments received from the Parties suggest that for HMGs based on the M2 Browning model, post-Merger the remaining existing suppliers for the MoD would be the merged entity and US Ordnance²¹ with the MoD also pointing to [REDACTED], in principle, as a potential supplier. As noted above, Rheinmetall's and ATK's models are different to the standard model, while the Parties consider that producers in Asia, while competing, may provide less of a constraint than the companies listed above.
50. The Parties submitted that FNH has a large production capacity ([REDACTED]) and is relatively flexible in its ability to switch production from one type of HMG to another. The Parties consider that the larger manufacturers, such as General Dynamics, have similar production switching capabilities. Manroy, on the other hand, has a smaller capacity ([REDACTED]).

MoD's view

51. The MoD submitted that the current designs of HMGs were based on developments since the 1930s. The IPR s have expired meaning that such HMGs could be built from plans as build-to-print items by any light weapons

²⁰ The Parties submitted that ATK was the largest weapons and ammunitions business in the World. ATK's .50 MG is an electrical powered MG, which still has prototype status. Rheinmetall's RMG.50 MG is also electrically powered and can only be used in applications where sufficient electricity supply is available. The Parties submitted that the RMG.50 was also a prototype undergoing extensive testing.

²¹ US Ordnance supplied M60s HMGs for the RAF's Chinook fleet.

manufacturer or market entrant holding the necessary national Government certifications. The MoD submitted that in a number of defence markets the number of suppliers had reduced as a result in a reduction of demand, and in the case of MGs and HMGs in particular, its demand would no longer sustain multiple suppliers.

52. The MoD submitted that a competitive worldwide market would remain post-Merger. It also submitted that it has contractual mechanisms to protect its position and that it is not planning to buy any HMGs in the short term. Accordingly, while the Parties together supplied all the 12.7mm calibre HMGs to the MoD, it had no competition concerns.
53. The MoD submitted that in the hypothetical event that the MoD did require a further acquisition of HMGs before the currently planned Out of Service Date, [REDACTED], it would be likely to launch a competition for the equipment under the Defence and Security Public Contract Regulations.²² In carrying out such a procurement exercise the MoD would normally publish a request for 'Expressions of Interest' on an Internet platform and in the MoD Defence Contracts Bulletin. Such a competition would be open to worldwide suppliers and the MoD would entertain bids and invite tenders from overseas suppliers that registered interest, including from US-based suppliers [REDACTED].
54. The Parties submitted that the most recent HMG purchases by the MoD were for HMGs for the Army from Manroy for land-based use in 2010 and from FNH for airborne use in 2013. The MoD has also purchased M60D HMGs from US Ordnance for the RAF for its Chinook fleet to maintain availability of that weapon, as the Chinook had been supplied that weapon. The MoD also commented that Manroy had, in 2006/2007, approached General Dynamic to procure 400 of its HMGs for modification to the UK variant, mainly the introduction of the quick change barrel that General Dynamics did not offer. This was done to supplement its own capacities and to help meet delivery timelines for supplying the MoD.

Other third party views

55. Third parties that responded to the CMA's market testing considered that only FNH, General Dynamics, US Ordnance and Manroy currently competed to supply the UK. However, third parties also commented that there were a number of competitors capable of supplying MoD with HMGs including the Parties, US Ordnance, General Dynamics, ST Kinetics, and S&T Motiv

²² The EU Defence and Security Public Contracts Regulations (DSPCR) 2011

(Daewoo). Third parties also commented that any competition between the Parties was not considered to be very strong since Manroy supplies non-airborne HMGs and FNH supplies the airborne HMG.

56. These third parties indicated unanimously that there are no barriers to compete for the supply of HMGs in the UK other than the ability to meet the MoD's specifications.

Shares of supply

57. There is no publicly available market share data for HMGs supplied in the UK. The Parties provided shares of supply based on the number of HMG fleets in NATO member states, which did not provide an indication of the relative position of the manufacturers in this market segment as a majority of HMG (at least 75%) fleets consist of M2 variants for which the exact manufacturer was not reported.

Contracts won

58. The Parties provided data on a number of contracts won by each of them, which the CMA analysed in combination with publicly available data. The available evidence suggests that there are a number of internationally active manufacturers and the CMA has assessed which of these could be expected to take part in a hypothetical tender for the supply of HMGs to the MoD.
59. Manroy noted that, [§<], which may be an indication that there is an inverse relationship between the number of bidders and manufacturer margins in this auction market. The Parties were able to provide examples of 13 recent tenders for HMGs in EEA/NATO member states,²³ which showed that the Parties competed with each other in seven, with General Dynamics in five, and with US Ordnance in three. The CMA considers that this further supports the view that both General Dynamics and US Ordnance may be considered to be a feasibly strong competitor for future MoD contracts. No other suppliers were mentioned, although for some of these tenders, the Parties submitted that the other competitors were not known.
60. As mentioned above the MoD confirmed that in a hypothetical tender, it would advertise the supply opportunity widely and it would, following its internal rules, select three to four suppliers for the final round in the tender assessment

²³ The CMA considers that the supplier set for NATO and EEA member states tenders would represent the feasible supplier set that the MoD could potentially source from, since NATO and EEA Member States would have broadly similar requirements to the MoD.

process. The MOD has indicated that it believes the Merger will have no material effect on its ability to obtain sufficient supplier interest and competitive terms from bidding suppliers in such a tender process.

61. The available evidence suggests that in the UK the Parties compete. However, from its market testing, the CMA considers that, if the MoD were to go out to tender for HMGs, there would be other strong and credible competitors, in particular companies from the USA, who would be able to exert a sufficient competitive constraint on the Parties. The CMA therefore considers that it is likely that post-Merger there would be at least three competitors, with potentially more, for the supply of HMGs to the MoD. This is supported by the MOD who did not consider that the merger would materially reduce competition or lead to adverse effects on its purchasing terms for its supply of HMGs.

Conclusion

62. Accordingly, taking all these points into consideration, the CMA does not consider that the Merger gives rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of HMG to the UK.

GPMGs

Parties' views

63. The Parties submitted that they both compete for the supply of GPMGs, and that both Manroy and Heckler & Koch were relatively new entrants into this segment. The Parties consider that this segment is extremely competitive and that their competitors are of a greater competitive concern to the Parties than each other. The Parties identified US Ordnance (US), General Dynamics, (US), Colt (US), Heckler & Koch (DE), Denel (ZA), and Barrett (US) as their main competitors.²⁴
64. Although there have been no tenders for GPMGs in the UK since an open competition to supply the MoD in 2005/06 won by Heckler & Koch, the Parties submitted that US Ordnance had won tenders in Denmark, Brazil, and Turkey, where FNH competed, indicative of its competitive strength in supply to the UK. Heckler & Koch regularly bid against the Parties and has also won contracts in France, and Germany; Denel supplies countries in South America and the Middle East; and that Barrett may tender to supply GPMG in the future. The Parties also submitted that Israel Weapon Industries would be able to bid in the

²⁴ Although Manroy submitted that Denel, a South African Company, was not active in Europe.

European market if the tender volume was sufficiently high. Therefore, the Parties submitted, there were a number of alternative suppliers in this segment of the market.

65. The Parties provided information on five tenders for GPMGs in which they had competed to supply. Of these five, the parties competed with each other in three, with IWI in two, with US Ordnance in two, and with Colt Canada in one of the five tenders. No other suppliers are mentioned; although for some the other competitors were not known.
66. The Parties submitted that the MoD was currently running a competition to supply replacement bodies for GPMGs, and that it had received around 16 to 18 expressions of interest, although these were not just from weapons manufacturers. Six or seven of these had reached the pre-qualification stage. [REDACTED].

MoD's view

67. The MoD confirmed that its most recent tender for GPMGs was in 2005/06 when Heckler & Koch, Sabre Defense and the Parties submitted bids. As noted above the tender was won by Heckler & Koch. It submitted that Heckler & Koch supplied the majority of all belt fed machine guns procured by the MoD.²⁵ The MoD also submitted that, should it need to undertake a further acquisition of GPMGs before the currently planned Out of Service Date [REDACTED], it would launch a competition for the equipment as described above.²⁶ Given that any such competition would be open to worldwide suppliers and that the MoD would entertain bids and invite tenders from overseas suppliers that registered interest, and a number of such suppliers' existed, it had no competition concerns regarding the supply of GPMGs.
68. [REDACTED].²⁷ This is discussed further under countervailing buyer power below.

Other third party views

69. Third parties that responded to the CMA's market testing commented that there were a number of competitors for the supply of GPMGs.²⁸ One third party²⁹ considered that FNH and Manroy were not strong competitors in the supply of GPMGs in the UK since the MoD's GPMG was supplied by Heckler & Koch. A

²⁵ This includes both HMGs and GPMGs

²⁶ See paragraph 53

²⁷ [REDACTED].

²⁸ [REDACTED]

²⁹ [REDACTED]

third party,³⁰ which has started to produce GPMGs to MoD specifications, indicated that it would be interested in bidding in future tenders in the UK.

Shares of supply

70. There are no publicly available market shares available for the supply of GPMGs. The Parties supplied shares based on the number of GPMG fleets in NATO member states. However, this provides only a limited insight into the relative position of the manufacturers, as the award of manufacturing licenses appears to be a common practice in this industry, with one model being produced by several manufacturers. Therefore, an exact identification of manufacturers was not possible using this data.

Contracts won

71. The Parties provided data on a number of contracts for GPMGs won by the Parties, which the CMA analysed in combination with publicly available data. It appears that FNH supplies the majority of EEA member states (plus countries such as Australia, New Zealand and Canada) and that Heckler & Koch is the next most frequent supplier. US Ordnance also appeared as a supplier to EEA member states (GR, DK). Denel, Manroy and Colt Canada do not appear to have a strong presence in the countries analysed above.³¹
72. The available evidence suggests that, while there are a limited number of internationally active manufacturers of GPMGs, the number is greater than manufacturers of HMGs. The Merger results in a reduction from four to three suppliers in the narrowest set of credible suppliers, the suppliers of MGs to the UK. If the competitor set is broadened to include the current credible suppliers of machine guns to the MoD and other GPMG manufacturers who (to the CMA's knowledge) currently supply of other material to the MoD, the Merger results in a reduction from six to five suppliers.
73. The MoD has confirmed that if it were to go out to tender for GPMGs, there would be other credible competitors, in particular companies from the USA, who would be able to exert a sufficient competitive constraint on the Parties. In addition, third parties have suggested a greater range of suppliers for GPMGs than for HMGs. The CMA considers that it is unlikely that post-Merger the

³⁰ [REDACTED]

³¹ As above, the CMA considers that, given the limited competition taking in place in the UK (determined by the long term contract awards of the MoD) supply to these other countries can be indicative of the feasible suppliers available to the MoD in this case.

number of competitors for the supply of GPMGs to the UK would be fewer than five.

Conclusion

74. Taking these points in the round, the CMA does not consider that the Merger will give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of GPMGs to the MoD in the UK.

Countervailing buyer power

75. In the UK, the principal customer for the Parties' products is the MoD. There are only a limited number of other customers in the UK which have smaller requirements and either act as resellers or use the products as components in the production of other military equipment. Where a customer, through its procurement arrangements and its negotiating strength, is able to limit the ability of the merged entity to raise prices, this is referred to as countervailing buyer power.³²
76. The Parties submitted that the MoD will either hold an open tender or will request bids from selected suppliers for the supply of a specific category of MGs on an infrequent basis. The MoD's decision to procure new MGs and its choice of the type of weapon is primarily driven by military priorities according to the present and future requirements of HM Armed Forces.
77. The Parties commented that the MoD is very transparent with its potential suppliers (for example, any questions raised by one bidder are provided along with the MoD's answer to all bidders). The Parties also submitted that MoD's supply arrangements include a contractual term stating that where a supplier is unable or unwilling to supply products, the MoD may take ownership of the so-called 'Technical Design Package' and reserves the right to give this Technical Design Package to an alternative supplier in order to realise the MoD's requirements. For example, the Parties commented that the MoD is the owner of the Technical Design Package for the GPMG body currently going through a tender competition.
78. [REDACTED].
79. The MOD considers that it has sufficient buyer power post-Merger to fully protect itself [REDACTED] such that no adverse effects would arise as a result of the Merger. Further, the MoD believes that, as a result of its various contractual

³² [Merger Assessment Guidelines](#), paragraph 5.9.1.

mechanisms, it has buyer power. Other than the ongoing GPMG replacement body contract, the MoD does not anticipate a requirement for additional procurements of MGs in the short term and is therefore not concerned by this merger.

80. The UK defence industry is unusual in that the purchaser is a monopsonist, and there is little prospect of other potential customers that could suffer an adverse effect as a result of the merger. While the CMA acknowledges the Parties' and the MOD's submissions [redacted] – and the absence of concerns from the MOD – it is, in principle, hesitant to accept arguments over the ability of such contractual provisions to ensure independent setting of prices and other contractual terms post-Merger.
81. The CMA recognises that the MoD believes that it is able to exercise a degree of countervailing buyer power. However, it has not been necessary to conclude on the strength of any buyer power as no realistic prospect of a substantial lessening of competition arises as a result of the Merger in any of the relevant frames of reference.

Barriers to entry and expansion

82. Entry or expansion of existing firms can mitigate the initial effect of the Merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³³
83. The IPRs have expired and such HMGs could be built from plans as build-to-print items by any light weapons manufacturer or market entrant holding the necessary certifications. The MoD also noted that in a tender situation it would advertise widely, including via the OJEU, although it is not obliged to do so, to attract the greatest number of possible suppliers.
84. During the CMA's market testing, third parties all commented that there are no barriers to compete in the supply of MGs to the MoD in the UK other than whether a supplier could meet the specifications required by the MoD. In addition, a number of third parties that responded commented that either their product range could be expanded to supply HMGs or that they were already able to supply HMGs to the EEA and/or NATO. This is particularly the case because the start-up cost for production and most of the equipment for production would be the same whether for HMGs or GPMGs. In addition, a third

³³ [Mergers Assessment Guidelines](#), paragraphs 5.8.1 to 5.8.3

party commented that Manroy itself, had used open source information to enable it to enter the HMG market.

85. However, the CMA has not found it necessary to conclude on the ease of entry or expansion as no competition concerns arise on any basis.

Third party views

86. The CMA contacted 12 competitors, three customers, including the MoD. It received responses to its market testing from three competitors and two customers. Two competitors noted that the Merger reduced the number of bidders for MoD contracts for certain products within the UK, although neither pointed to this resulting in material adverse effects. No customers raised competition concerns. One competitor expressed support for the Merger.
87. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

88. Consequently, the CMA does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.
89. This merger will therefore **not be referred** under section 33(1) of the Act.

Nelson Jung
Director of Mergers
Competition and Markets Authority
1 July 2014