

Completed acquisition by Cobham plc of Thrane & Thrane A/S

ME/5541/12

The OFT's decision on reference under section 22(1) given on 9 August 2012.
Full text of decision published 16 August 2012.

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

PARTIES

1. **Cobham plc (Cobham)**, based in Wimborne, Dorset is involved in the development, delivery and support of aerospace and defence technology and systems, including the supply of satellite communication systems to commercial customers in a number of sectors. Cobham's worldwide turnover in the financial year ending 31 December 2011 was £1.9 billion, of which approximately £171 million was achieved in the UK.
2. **Thrane & Thrane A/S (T&T)** is based in Lynby, Denmark. It provides global mobile communication solutions based on satellite and radio technology. In the financial year ending 30 April 2012, T&T generated worldwide revenues of DKK 1.1 billion, approximately £125 million, of which approximately £[] million was achieved within the UK.

TRANSACTION

3. The transaction consists of a combination of individual share purchases that have been made by Cobham as well as a public offer for the outstanding shares of T&T by Cobham's wholly-owned subsidiary, Lockman Electronic Holdings Limited (Lockman).
4. The transaction completed on 19 June 2012, and the statutory deadline for a decision is therefore 18 October 2012. The OFT examined this merger on its own-initiative. The administrative deadline is 20 August 2012. The

transaction was notified in Norway and Germany, and has received unconditional clearances in both countries.

JURISDICTION

5. Between 10 April 2012 and 8 May 2012 Cobham built up a 28.4 per cent shareholding in T&T¹ from a starting holding of 2.9 per cent. Following the public offer Cobham has acquired the entire issued share capital of T&T. The OFT has brought together the various transactions from 10 April 2012 and the public offering pursuant to section 29 of the Enterprise Act 2002 (the Act). As a result of these transactions Cobham and T&T have ceased to be distinct. The parties overlap in the supply of maritime satellite communication antennas in the UK creating a combined share of supply of around [40-50] per cent. Consequently, the share of supply test in section 23 of the Act is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

6. On a global basis the parties both manufacture and supply mobile communications equipment for three sectors; aeronautical, maritime, and land. However, the parties submitted, that while the parties are both active in these three areas their products are more complementary than directly overlapping. In particular, the majority of T&T's satellite communication (sat com) products operate on the L-band frequency via the Inmarsat satellite system, while Cobham's products operate on the Ku-band frequency via the VSAT satellite system, and these satellite systems offer different functionality to their customers. In the UK, by virtue of having a product that operates on the same frequency, the parties only directly overlap in maritime antenna.

¹ As T&T is a Danish company, special resolutions to change the name of a company, alter the memorandum or articles of association, or reduce the share capital of the company only require the support of two-thirds of shareholders. Therefore, a shareholder is unable to block these resolutions without a shareholding of greater than 33 per cent. The parties considered that Cobham's 28.4 per cent share holding without board representation or veto rights was therefore unlikely to confer material influence over T&T for the purposes of UK merger control.

Product scope

7. The European Commission considered the acquisition of Nera, by Thrane and Thrane, following an Article 22 referral by the OFT in 2007. The merger was cleared at Phase I.² The parties overlapped in the manufacture and supply of maritime satellite terminals and land earth stations. The main findings were that:
 - Maritime terminals may be divided into two categories: **legally required** and **operational** terminals. Vessels sailing at certain distances from the shore have legal obligations under the Safety of Life at Sea (SOLAS) Convention of the United Nations. Depending on the distance from shore, vessels have to be equipped with different types of communication equipment. Once legal requirements are fulfilled, ship owners need to then fulfil operational communications needs.
 - In respect of legally required maritime terminals, there is a separate market for Inmarsat-C communication equipment as it is obligatory to have this terminal on board in order to comply with Global Maritime Distress and Safety System (GMDSS) legal requirements.
 - Maritime terminals can be divided into two categories: low-end maritime terminals (regional coverage and/or low data rates) and high-end maritime terminals (global coverage and high data rates).
 - Different satellite systems have different coverage and different data transmission capacity. Inmarsat and Iridium have global coverage, VSAT has wide (but not global) coverage, and Globalstar, Asia Cellular Satellite, Thuraya and MSV provide regional coverage.
8. The parties submitted that, in-line with the Commission's findings in Thrane and Thrane/Nera; the market should be segmented by type of satellite service, rather than type of terminal, and then additionally according to application.

² [M.4465 THRANE & THRANE / NERA](#) - 21.03.2007

Segmentation by Satellite Service

9. The parties proposed that the product market could be segmented by the type of satellite service that their products use. Third parties have informed the OFT that L-band satellite services offer global coverage, and are cheap to install, but have very high running cost particularly for data. In contrast the Ku-band does not provide global coverage, is expensive to install, but has low running costs. Additionally, the parties have provided evidence to show that the data download speeds on Ku-band are substantially faster than on L-band.
10. One third party customer indicated that the ‘two sets of equipment are mutually exclusive. All our customers would install BOTH Ku and L band equipment because they both have separate uses on a yacht. The L-band is used for reliable (but expensive) voice, and for data when out of VSAT coverage. The Ku VSAT does fast and copious data and cheap but low-ish quality telephony.’
11. While the OFT will generally determine the relevant product market by reference to demand-side substitution alone,³ there are circumstances where it may be appropriate to aggregate a number of markets together, based on suppliers’ responses to a change in price. For example, if the products are manufactured in a similar way, such that a manufacturer would switch production to a different market in response to a five per cent price increase in that market, then due to supply side substitution the two products may be considered to be in the same market.
12. In this case, a third party competitor suggested it would take some 18 to 24 months to start producing the alternative type of equipment. The parties told the OFT that T&T had recently begun manufacturing a Ku-band satellite device. Internal documents provided to the OFT show that it took T&T around 18 months to introduce the Ku-band device to market, and it had to undergo extensive sea trials. Although the parties noted that the production assets used in making Ku and L-band equipment were the same, based on third party comments and T&T’s experience, the OFT considers that production assets cannot be shifted sufficiently quickly between Ku and L-band for the two types of equipment to be supply side substitutes.

³ OFT CC Joint Merger Assessment Guidelines, paragraph 5.2.17

Therefore, the OFT has examined the merger on the basis of maritime equipment for KU- and L-band separately.

Segmentation by Application

13. The Commission, in Thrane and Thrane/Nera, considered segmentation of the market by application, namely land, maritime and aeronautical equipment. It was considered that these three segments differed with regard to the equipment used both with regard to the technical aspects and with regard to legal requirements. Furthermore, equipment suppliers and their respective market strength differed throughout the three segments.
14. In this case the OFT has not been made aware of any evidence that the equipment aimed at one functional segment (maritime, land or aeronautical) is used in other segments. On a cautious basis the OFT has undertaken its analysis segmented by application.

Geographic scope

15. The Commission in Thrane & Thrane/NERA, considered that the markets for maritime sat com terminals were global in scope. The Commission's market investigation confirmed that these products were sold on a global basis and that transportation costs did not play a major role.
16. The parties agree with the Commission's assessment and consider that the supply of all aeronautical, maritime and land sat com equipment takes place on a global basis and that each of these markets is worldwide in scope. Supporting this view, the OFT notes that while T&T sells products in the UK, it does not employ any staff, nor have any manufacturing presence in the UK. Its products are solely distributed by independent partners and registered resellers in which it has no interest. In addition, Cobham's maritime sat com products are manufactured by its SeaTel subsidiary in California.
17. Third parties all indicated that they bought products from firms based outside the UK (counting Sea Tel as US based since it manufacturers there). However, they also indicated that some form of UK or EU presence would be required, with one customer indicating it is in their interest to use an EU based manufacturer.

Conclusion

18. The evidence received from third parties supports segmentation between L-band and Ku-band sat com equipment on the demand side for maritime products. While the OFT has not received any specific evidence supporting the segmentation by application, no third party respondents, (all respondents were in the maritime sector) indicated they would consider using a product designed for a different sector. Therefore, the OFT has analysed the transaction based on world-wide markets which are segmented by applications, with separate markets for L and Ku-band equipment for the maritime sector.

HORIZONTAL ISSUES

Market shares

19. **Maritime products** — include terminals, radios and antennas. The parties only overlap in relation to the supply of maritime sat com antennas operating on the Ku-band VSAT frequency. The parties supplied global shares of supply for Ku-band marine sat com antennas, which gives the parties a combined share of supply of [40-50] per cent, increment [0-10] per cent. Competitors include KVH, Orbit, Intellian and KNS with estimated global shares of supply of [15-25] per cent, [10-20] per cent, [five-15] per cent, and [0-10] per cent respectively. While the parties did not have detailed data for the UK, they considered that UK shares of supply would be similar to the global shares of supply.
20. **Aeronautical products** — include communication equipment for corporate jets and government owned aircraft. While both parties supply a range of aeronautical sat com terminals that operate on the L-band frequency globally, Cobham did not supply any of these terminals to UK based customers in 2011. The parties' combined global shares of supply were approximately [15-25] per cent, increment [0-10] per cent. In addition, while both parties are active in aeronautical L-band antennas, T&T does not manufacture these antennas and sources them from Cobham, although in the year to end of April 2012, T&T did not supply any of these antennas to UK customers.
21. **Land products** — include portable terminals and antennas. T&T supply both terminals and antennas that operate on the L-band frequency, while

Cobham supply terminals and antennas that operate on the Ku-band frequency. The parties submitted that for similar reasons as for maritime and aeronautical products there is no overlap between the products for L-band and products for the Ku-band frequencies. However, if the OFT were to consider L and Ku-band frequency products as being in the same market the parties would have a global combined share of supply of some [20-30] per cent, increment [five-15] per cent.

Closeness of competition

22. T&T is a recent entrant into Ku-band maritime equipment and as such has not yet established a significant share of the market. No third party indicated that the parties were considered as competitors as they believe that T&T focus on L-band products and Cobham Ku-band.
23. As previously noted, Cobham is not active in the supply of aeronautical terminals to UK customers, and therefore the merger may only cause a loss of potential competition for UK customers. In the global market, the merger brings together the number three and five competitors, with the leading supplier Honeywell having an estimated share of supply twice that of the merged entity. Post merger, the merged entity will still be third in terms of estimated share of supply. The other alternative companies are Rockwell and Thales.
24. The parties produce land satellite communication equipment for different purposes operating on different frequencies. Therefore, even if the OFT considered that the market was not segmented by frequency, the parties would be distant competitors.

Barriers to entry and expansion

25. The parties submitted that there are no material barriers to entry for existing manufacturers into the UK market, which is reflected in the geographic market definition.
26. Given the outcome of its competition assessment the OFT has not found it necessary to conclude on barriers to entry and expansion.

THIRD PARTY VIEWS

27. The OFT received a limited number of third party comments. These have been referred to above where relevant. In general third parties raised no concerns about the transaction.

ASSESSMENT

28. In the UK, the parties overlap in the supply of maritime sat com antennas. The parties have a worldwide combined market share of [40-50] per cent, increment [0-10] per cent, and have estimated that UK market shares would be similar. The Commission previously considered this market and concluded that the relevant geographical market is worldwide. The OFT has not received any evidence to counter this view.
29. The sat com equipment market can be segmented by type of application. For example, land, aeronautical and maritime, with the maritime sector, at least, further segmented by the frequency that the product operates on: L and Ku-band.
30. In the land sat com sector T&T supply both terminals and antennas that operate on the L-band frequency, while Cobham supply terminals and antennas that operate on the Ku-band frequency. The parties submitted that this sector should also be segmented by frequency, and thus the merger does not create an overlap in this sector. The OFT has not received confirmation on this point from third parties, however, following the maritime precedent it is likely that this is the case.
31. In the aeronautical sector there is no overlap between the parties in the UK.
32. Third parties do not consider the parties close competitors in any segment and did not raise concerns about the effect of the merger.
33. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

34. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.