ACQUISITIONS (AEROSPACE): THE GE / HONEYWELL CASE

Subject: Acquisitions
Prohibitions

Industry: Aerospace, avionics, aircraft engines and components

Parties: General Electric Company
Honeywell Inc

Source: Commission Statements IP/01/939, dated 3 July 2001, and IP/01/855, dated 18 June 2001

(Note. Significant features of this case are, first, the fact that it is one of the relatively rare cases in which a proposed acquisition or merger has been prohibited outright; second, that it is a case involving two American corporations; third, that it is only the second case in which a proposal exclusively involving American firms has been prohibited; fourth, that the United States and European authorities disagreed on the merits of the proposal; and, fifth, that the Commission felt it necessary to issue a statement, only two weeks before the decision was made, denying that the decision would be politically motivated. The statement was somewhat disingenuous: any political consultant to the companies concerned would have been likely to advise them that the merger would be politically unacceptable. From the point of view of the United States, and indeed of any trading blocks or countries outside the European Union, this case may prove to be a dangerous precedent.)

The Commission has decided to prohibit the proposed acquisition by General Electric Co. of Honeywell Inc. This follows an in-depth investigation in the markets for aero-engines, avionics and other aircraft components and systems. In adopting this decision, the Commission concluded that the merger would create or strengthen dominant positions on several markets and that the remedies proposed by GE were insufficient to resolve the competition concerns resulting from the proposed acquisition of Honeywell.

According to the Commission, the merger between GE and Honeywell, as it was notified, would have severely reduced competition in the aerospace industry and resulted ultimately in higher prices for customers, particularly airlines. However, there were ways of eliminating these concerns and allowing the merger to proceed; but the companies were not able to agree on a solution which would have met the Commission's competition concerns.

Mr Monti, the Commissioner responsible for Competition Policy said, in relation to the co-operation with the US antitrust authorities, that the Commission and the United States Department of Justice had worked in close co-operation during this investigation. It was unfortunate that, in the end, we reached different conclusions, but each authority had to perform its own assessment and the risk of

dissenting views, although regrettable, could never be totally excluded. This did not mean that one authority was doing a technical analysis and the other pursuing a political goal, as some might pretend, but simply that we might interpret facts differently and forecast the effects of an operation in different ways. The GE/Honeywell proposal was a rare case in which the transatlantic competition authorities had disagreed. Bilateral co-operation needed to be strengthened in the future to try to reduce this risk.

GE and Honeywell notified their merger agreement for regulatory clearance in Europe on 5 February this year. On March 1, the Commission started an in-depth investigation which demonstrated that GE alone already had a dominant position in the markets for jet engines for large commercial and large regional aircraft. Its strong market position, its financial strength and its vertical integration into aircraft leasing were among the factors which led to the finding of GE's dominance in these markets. The investigation also showed that Honeywell was the leading supplier of avionics and non-avionics products, as well as of engines for corporate jets and of engine starters, which are a key input in the manufacture of engines.

The combination of the two companies' activities would have resulted in the creation of dominant positions in the markets for the supply of avionics, non-avionics and corporate jet engines, as well as to the strengthening of GE's existing dominant positions in jet engines for large commercial and large regional jets. The dominance would have been created or strengthened as a result of horizontal overlaps in some markets as well as through the extension of GE's financial power and vertical integration to Honeywell activities and of the combination of their respective complementary products. Such integration would enable the merged entity to leverage the respective market power of the two companies into the products of one another. This would have the effect of foreclosing competitors, thereby eliminating competition in these markets, ultimately affecting adversely product quality, service and consumers' prices.

On 14 June, GE proposed a number of undertakings intended to address these concerns which were considered insufficient to remove the competition problems identified by the Commission. On 28 June, well beyond the deadline for the submission of undertakings, GE proposed a new set of remedies. This new package could not be accepted either, because it did not resolve the problems identified in a sufficiently clear way at such a very late stage in the procedure.

Given the nature of the competition concerns resulting from the proposed merger and the fact that the GE was unable to propose undertakings that would have removed all competition concerns, the Commission had no choice but prohibit the merger.

This is only the fifteenth time the Commission has blocked a merger since September 1990, when it became the clearing-house for mergers and acquisitions requiring regulatory approval in the European Economic Area; that is, the Member States of the European Union and Norway, Iceland and Liechtenstein.

It is only the second time it has prohibited a merger involving only American firms.

Prior Statement by the Commission

Two weeks before the decision was announced, the Commissioner had made a brief statement on the case. "In the last few days," he said, "the Commission's review of the proposed merger between General Electric and Honeywell has been the subject of critical comment. This criticism is not only unjustified but also hard to understand since the case has not been decided yet. I deplore attempts to misinform the public and to trigger political intervention. This is entirely out of place in an anti-trust case and has no impact on the Commission whatever. This is a matter of law and economics, not politics.

"The Commission has been reviewing mergers and acquisitions for over ten years and each time it has applied the same basic principles and the same market dominance test, namely, whether or not the market would remain sufficiently competitive so that consumers would continue to have products to choose from at competitive prices. The nationality of the companies and political considerations have played and will play no role in the examination of mergers, in this case as in all others."

Mr Monti stressed that the merger of GE and Honeywell would combine GE's strong position in the aircraft engine markets with Honeywell's similarly strong position in avionics and non-avionics such as weather turbulence detection products, collision avoidance and flight management systems and so-called black boxes. To this powerful combine, one must also add GE's leasing and financial arms, respectively GECAS the largest purchaser of aircraft, ahead of any airline -- and GE Capital. This could lead to less competition in the engine and in the aerospace sectors and result in higher prices for customers in the medium term.

The merger has raised strong concerns among suppliers and customers, i.e. airlines, on both sides of the Atlantic. Several US firms have complained and took an active role at a hearing organised by the Commission at the end of May. On the other hand, and contrary to some statements reported in the media, the large aircraft manufacturers Boeing and Airbus have not been particularly active in the proceedings.

During intensive and constructive discussions with the parties the Commission offered guidance on the identification of undertakings which could solve the competition concerns. In particular, the Commission explored commitments with the parties which would have entailed smaller divestments in the aerospace industry than originally envisaged by the parties, complemented, however, by a structural commitment to modify the commercial behaviour of GECAS, without puttting in question the control by GE. The Commission regrets that this avenue has not been pursued. ■