

Enterprise Act 2002 Undertakings

ACQUISITION OF UWS WINFRITH DIVISION OF QINETIQ LIMITED BY ATLAS ELEKTRONIK UK LIMITED

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR BUSINESS INNOVATION AND SKILLS BY

ATLAS ELEKTRONIK UK (HOLDINGS) LIMITED, INCORPORATED IN ENGLAND AND WALES, WHOSE REGISTERED OFFICE IS AT MEADOWS RD, QUEENSWAY MEADOWS, NEWPORT NP19 4SS (NO. 05583682) ("ATLAS ELEKTRONIK UK HOLDINGS"); AND

ATLAS ELEKTRONIK UK LIMITED, INCORPORATED IN ENGLAND AND WALES, WHOSE REGISTERED OFFICE IS AT MEADOWS RD, QUEENSWAY MEADOWS, NEWPORT NP19 4SS (NO. 05582639) ("ATLAS ELEKTRONIK UK"); AND

ATLAS ELEKTRONIK GmbH, A COMPANY INCORPORATED UNDER THE LAWS OF THE FEDERAL REPUBLIC OF GERMANY, WHOSE HEADQUARTERS ARE SITUATED AT SEBALDSBRUECKER HEERSTRASSE 235, BREMEN ("ATLAS ELEKTRONIK GmbH")

WHEREAS:

- (A) On 14 May 2009, Atlas Elektronik UK announced its proposal to acquire by way of asset purchase the UWS Winfrith division of QinetiQ Limited, incorporated in England and Wales, whose registered office is at 85 Buckingham Gate, London SW1E 6PD (No. 03796233) ("UWS Winfrith") (the "Transaction");
- (B) On 15 May 2009, the Secretary of State issued a special intervention notice to the OFT pursuant to section 59(2) of the Act;
- (C) On 25 June 2009, the OFT reported to the Secretary of State in accordance with section 61(2) of the Act, which was within the period specified by the Secretary of State, summarising representations received by it relating to the national security public interest consideration specified in the special intervention notice;
- (D) The Secretary of State has the power to refer the Transaction to the Competition Commission under section 62(3) of the Act or may, instead of making such a reference, accept undertakings in lieu under paragraph 3(2) of Schedule 7 of the Act;
- (E) The Secretary of State considers the undertakings given below by Atlas Elektronik UK Holdings, Atlas Elektronik UK and Atlas Elektronik GmbH are appropriate to remedy, mitigate or prevent any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of the special merger situation and the Secretary of State shall in consequence not make a reference to the Competition Commission.

Atlas Elektronik UK Holdings, Atlas Elektronik UK and Atlas Elektronik GmbH therefore give to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of this special merger situation.

INTERPRETATION

In these undertakings:-

- 1.1 where reference is made to any company then in the event of any merger, joint venture or acquisition or internal re-organisation or sale either private or to the public, such reference shall be interpreted as applying to the equivalent or successor organisation in the new structure;
- 1.2 except where the context does not allow, the singular shall include the plural and the plural shall include the singular;
- 1.3 reference to a clause shall be a reference to a clause within these undertakings;
- 1.4 "**Act**" means the Enterprise Act 2002;
- 1.5 "**Classified**" means protectively marked in accordance with the system of protective marking defined in the HMG Manual of Protective Security;
- 1.6 "**Effective Date**" means the date on which these undertakings are accepted by the Secretary of State, except where the Transaction is not completed, in which case these undertakings shall not take effect until the date of such completion;
- 1.7 "**UWS Winfrith**" means the UWS Winfrith division that, prior to the Effective Date, was part of QinetiQ Limited;
- 1.8 "**Atlas Elektronik UK**" means Atlas Elektronik UK Limited, a company incorporated in England and Wales whose registered office is at Meadows Rd, Queensway Meadows, Newport NP19 4SS (no. 05582639) and for the avoidance of doubt shall not include the Atlas Elektronik UK facilities at Newport, Gwent and the business carried on there;
- 1.9 "**Atlas Elektronik UK Holdings**" means Atlas Elektronik UK (Holdings) Limited, a company incorporated in England and Wales, whose registered office is at Meadows Rd, Queensway Meadows, Newport NP19 4SS (no. 05583682);
- 1.10 "**Atlas Elektronik GmbH**" means Atlas Elektronik GmbH, a company incorporated under the laws of the Federal Republic of Germany and whose headquarters are situated at Sebaldsbruecker Heerstrasse 235, Bremen;
- 1.11 "**Military Programmes**" means any defence-related programmes in relation to which any of the UK Companies enters into or has entered into contracts with the Ministry of Defence or sub-contracts with third parties who are contractors to the Ministry of Defence;
- 1.12 "**Ministry of Defence**" means the United Kingdom Secretary of State for Defence;
- 1.13 "**OFT**" means the Office of Fair Trading;
- 1.14 "**Prime Contractor**" means a UK Company which is a supplier to the Ministry of Defence under Military Programmes, under a contract between the UK Company in question and the Ministry of Defence;
- 1.15 "**Secretary of State**" means the Secretary of State for Business Innovation and Skills;
- 1.16 "**Security Undertakings**" means the undertakings made in clause 2;
- 1.17 "**Subcontractor**" means a UK Company which is a contractor with a third party in connection with Military Programmes;

- 1.18 **“Subsidiary”** has the meaning ascribed to it in sections 736 and 736A of the Companies Act 1985 as amended;
- 1.19 **“UK Companies”** means Atlas Elektronik UK Holdings and those Subsidiaries of Atlas Elektronik UK Holdings that are incorporated in England and Wales at the Effective Date and any successor UK company resulting from any internal reorganisation of Atlas Elektronik UK in accordance with the terms of the Security Undertakings to the extent that any of the foregoing carry on the UWS Winfrith business; for the avoidance of doubt it excludes the Atlas Elektronik UK facilities at Newport, Gwent and the business carried on there;
- 1.20 **“UK Military Capability”** means the capability immediately prior to the Effective Date within the UK Companies to carry out Military Programmes and to perform any contracts or subcontracts (including those entered into on and after the Effective Date) relating to Military Programmes;
- 1.21 **“UK National Security Regulations”** means the regulations in relation to Classified material set out in the HMG Security Policy Framework as amended or supplemented from time to time;
- 1.22 **“UK Protected Material”** means information, software, hardware and equipment classified “Confidential” or above or to which access is otherwise similarly restricted in the interests of UK national security; and
- 1.23 **“Foreign export control regulations”** means the export control regulations and other regulations of the Federal Republic of Germany or of any other country in which Atlas Elektronik GmbH has interests on the Effective Date or thereafter that govern the export of sensitive technology.

2. SECURITY UNDERTAKINGS

Atlas Elektronik UK and Atlas Elektronik UK Holdings undertake that:

Maintenance of strategic capabilities

- 2.1 They will procure that for so long as any of the UK Companies is a Prime Contractor or a Subcontractor on Military Programmes, except in so far as the Ministry of Defence has separately agreed otherwise in writing, a sufficient number of the directors of such a UK Company shall be UK security cleared British Citizens to enable security sensitive issues to be resolved at board level should the need arise.
- 2.2 They will procure that for so long as any of the UK Companies is a Prime Contractor or a Subcontractor on Military Programmes, those Military Programmes shall continue to be directly controlled, except insofar as the Ministry of Defence has separately agreed otherwise in writing, by a company or companies incorporated within the UK.
- 2.3 They will provide to the Ministry of Defence a copy of the Memorandum and Articles of Association of each of the UK Companies within one month of the completion of the Transaction.
- 2.4 They will inform the Ministry of Defence in writing and thereafter consult with the Ministry of Defence at least 6 months prior to (i) removal of any significant part of the UK Military Capability to any location outside of the United Kingdom; or (ii) disposal of any significant part of the UK Military Capability to any entity not directly or indirectly controlled by Atlas Elektronik UK or Atlas Elektronik UK Holdings; or (iii) the voluntary winding-up or dissolution of Atlas Elektronik UK; or (iv) reducing in any significant way the UK Military Capability with respect to funded Military Programmes.

Protection and Exploitation of Technology and Information

- 2.5 Except in so far as the Ministry of Defence has separately agreed otherwise in writing, all matters relating to Military Programmes, and security within the UK Companies that relates to the Military Programmes, shall be maintained in line with UK National Security Regulations, including the security of work areas subject to special physical ring-fencing and in particular:
- (i) the operational management of the Military Programmes by the UK Companies shall be by personnel with the appropriate UK security clearances, with security procedures meeting UK National Security Regulations and any other such requirements as deemed necessary from time to time by the Ministry of Defence;
 - (ii) only personnel with appropriate security clearance shall have access to UK Protected Material;
 - (iii) no transfer or disclosure by whatever means of UK Protected Material, or of other Classified information relating to Military Programmes which is owned by a third party or country, shall be made outside of the UK Companies or to locations outside the United Kingdom without the prior written approval of the Ministry of Defence;
 - (iv) the originals of all information and material generated by the UK Companies pertaining to Military Programmes shall remain in the United Kingdom;
 - (v) prior to incorporating any information, material or technology which is subject to foreign export control regulations into any Military Programme for which any of the UK Companies is under contract with the Ministry of Defence on the Effective Date, Atlas Elektronik UK shall obtain written approval from the Ministry of Defence; and
 - (vi) all Communication and Information Systems (CIS) Installed and operated by the UK Companies shall be compliant with MOD security policy as defined in the CIS chapter of JSP440 ("Defence Manual of Security") and also be installed in accordance with MOD CIS installation policy defined in JSP480 ("Defence Co-ordinating Installation Design Authority Manual of Regulations for Installation of Communication and Information Systems").
- 2.6 They will ensure that the UK Companies are aware of, and bound by, obligations between the Ministry of Defence and any of the UK Companies regarding confidentiality of information, and rights in and limitations on use of intellectual property. They will also ensure that the UK Companies shall continue to respect any commercial exploitation levy obligations between the Ministry of Defence and any of the UK Companies in effect at the Effective Date. They shall have due regard to UK export control regulations.
- 2.7 They shall adhere to the following principles to prevent conflicts of interest, in relation to consultancy and research-linked consultancy advice carried out by Atlas Elektronik UK in support of the Ministry of Defence, namely that:-
- (i) Atlas Elektronik UK's independent advice and specialist services to the Ministry of Defence shall be impartial and objective;
 - (ii) Atlas Elektronik UK will comply with legal and, as included in contracts, MOD Defcon and DEFFORM requirements, for the protection of 3rd party proprietary information to which it is granted access;
 - (iii) Atlas Elektronik UK and Atlas Elektronik GmbH shall avoid or manage conflicts of interest, for example those that may arise as a result of Atlas Elektronik UK's control by a major supplier of defence goods or services, on a case-by-case basis by

agreement with the Ministry of Defence, in particular, where approved, by the creation of appropriate firewalls between business compartments, in a manner compliant with proposals that are to be developed pursuant to Clause 2.8 and that are entirely satisfactory to the Ministry of Defence.

- 2.8 For the purposes of demonstrating their adherence to the principles described in Clause 2.7 above, Atlas Elektronik UK and Atlas Elektronik GmbH will agree with the Ministry of Defence appropriate arrangements conforming with the published Ministry of Defence commercial policy for handling conflicts of interest prior to the Effective Date of these Undertakings.

Compliance

- 2.9 They will provide the Ministry of Defence with such information as it may from time to time reasonably require to ascertain that Atlas Elektronik UK is fulfilling the Security Undertakings. If Atlas Elektronik UK is unable to comply with any of the Security Undertakings, or becomes aware of any non-compliance, it will provide full reasons for the inability to comply or the non-compliance within one month of becoming aware thereof.
- 2.10 As well as appointing a security officer responsible for facilitating and overseeing the compliance with UK National Security Regulations and the Security Undertakings at the premises of the UK Companies (as required by UK National Security Regulations), Atlas Elektronik UK will, as soon as reasonably practicable after the Effective Date and following consultation with the Ministry of Defence, appoint a compliance officer who shall be responsible for providing to the Ministry of Defence:
- (i) an annual report within three months of the end of the financial year of Atlas Elektronik UK Ltd, as well as any other such information as the Ministry of Defence may from time to time require, to verify compliance with the Security Undertakings, including any measures taken or proposed by the UK Companies so as to ensure compliance with the Security Undertakings and to prevent any breach of them; and
 - (ii) full particulars of any failure to comply with the Security Undertakings within one month of such failure becoming apparent.
- 2.11 For the purpose of checking compliance with the Security Undertakings, representatives of the Ministry of Defence shall be entitled to enter and inspect any premises used by the UK Companies which are in any way connected with Military Programmes and inspect any document or thing in any such premises which is concerned with such Military Programmes. Such representatives shall be entitled to all such information as they may reasonably require.

Provision of Information

- 2.12 They will co-operate with the OFT and provide it with such information as it may reasonably require for the purpose of any of its functions under section 92 of the Act in relation to these Security Undertakings.

Directions from the OFT

- 2.13 Atlas Elektronik GmbH and the UK Companies will comply with such written directions as the OFT may from time to time give to take such steps within their competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Security Undertakings. Atlas Elektronik GmbH and the UK Companies will do or refrain from doing anything so specified or described in such written directions which they might be required by these Security Undertakings to refrain from doing or to do. Atlas Elektronik GmbH will procure that the UK Companies comply with these Security Undertakings as if the UK Companies themselves had given them.

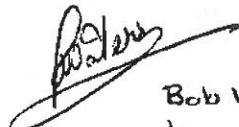
3 UNDERTAKING BY ATLAS ELEKTRONIK GMBH

3.1 Atlas Elektronik GmbH undertakes that it will take or refrain from taking such action as is reasonably necessary, in order to enable Atlas Elektronik UK and Atlas Elektronik UK Holdings to comply with these Security Undertakings.

4 GOVERNING LAW


4.1 These Undertakings shall be governed by and construed in accordance with the laws of England and the courts of England shall have exclusive jurisdiction to resolve, and the laws of England shall govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to these Undertakings or breach thereof, except that other jurisdictions may apply solely for the purpose of giving effect to this Clause and for the enforcement of any judgement, order or award given under English jurisdiction.

Signed


Bob Waters
Managing Director

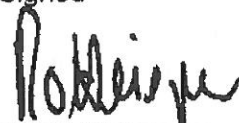
For and on behalf of Atlas Elektronik UK Limited


Signed


Bob Waters
Managing Director

For and on behalf of Atlas Elektronik UK (Holdings) Limited

Signed


Dieter Rottsieper
Managing Director


Kai Horten
Managing Director

For and on behalf of Atlas Elektronik GmbH