

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5382

4 October 2024

## COMPETITION COMMISSION

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

THALES SA

AND

COBHAM AEROSPACE SAS

CASE NUMBER: 2023NOV0026

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

**Background**

1. On 15 November 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Thales SA ("Thales") intends to acquire the entire issued share capital of Cobham Aerospace SAS ("Cobham"). Post-merger, Cobham Aerospace will be a wholly owned subsidiary of Thales.

**Description of the merging parties**

2. The primary acquiring firm, Thales, is duly incorporated under the laws of France and listed on the Euronext Stock Exchange in Paris. Thales's shares are widely held and thus no firm or individual has direct or indirect control over Thales. Thales controls Gemalto Southern Africa (Pty) Ltd ("Gemalto") and Thales South Africa Systems (Pty) Ltd ("TSAS"). Thales and its subsidiaries will henceforth be referred to as Thales or the "Acquiring Group".
3. The merging parties submit that **[CONFIDENTIAL]**% of the shares of TSAS are held by HDPs.

4. The primary target firm, Cobham Aerospace, is duly incorporated under the laws of France. Cobham Aerospace is currently controlled by Cobham Limited (the “Cobham Group”). The Cobham Group is solely controlled by Advent International GPE IX (“Advent International”), which is an Advent Fund solely controlled by Advent International Corporation (“Advent”). Advent is not directly or indirectly controlled by any firm or individual.
5. In South Africa, Cobham Aerospace controls Omnipless Manufacturing (Pty) Ltd (“Omnipless”) and Satori Air Communications Limited (“Satori”). Cobham Aerospace and all the firms directly and indirectly controlling it and all the firms directly and indirectly controlled by it will hereinafter, collectively be referred to as the “Cobham Group” or Target Firm.
6. The merging parties submit that **[CONFIDENTIAL]** of the Target Firm’s shares are held by HDPs.

#### **Description of the transaction**

7. In terms of the Share Purchase Agreement, Cobham Limited will sell 100% of the securities in Cobham Aerospace, and this will result in Thales holding 100% of the issued shares and voting rights of Cobham Aerospace and indirectly of Cobham Aerospace’s subsidiaries.

#### **Activities of the merging parties**

8. Thales Group is active globally in the sectors of defence and security, aerospace and space, digital identity and security as well as ground transportation. In South Africa, the Thales Group provides technology solutions in the aerospace, transportation, defence, digital identity and security sectors.
9. Globally, Cobham Aerospace provides (i) satellite communications systems (“SATCOM”), (ii) avionics products (such as air-to-ground antennas, audio and radio management systems and panel components), (iii) aircraft lighting products and (iv) spare parts and maintenance services. In South Africa, Cobham Aerospace operates through its subsidiaries, (i) Omnipless and (ii) Satori. The merging parties submit that the Target Firm’s sales in South Africa are limited to the sale of some spare parts mostly in the form of electronic equipment relating to the aviation industry and the provision of maintenance,

repairs and overhaul ("MRO"). These are the only activities which generated turnover for the Target Firm in the last financial year within South Africa.

### **Overlapping markets**

10. The Commission considered the South Africa activities of the merging parties and found that, they overlap horizontally in the provision services relating to MRO specifically only related to aircraft electronic equipment. Globally, the activities of the merging parties overlap horizontally with regard to the (i) the avionics products, for example, audio-radio management systems, (ii) commercial SATCOM Systems, (iii) aircraft lighting, and (iv) the MRO activities.
11. The Commission further found that the proposed transaction does not raise a vertical overlap.

### **Competitive assessment**

12. The Commission followed the approach of the European Commission ("EC") and assessed the effects of the proposed transaction in the global market for the provision of MRO services, particularly on the components relating to electronic equipment utilised on aircrafts including the supply of spare parts on such electronic equipment.
13. The Commission is of the view that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in the affected markets.

### **Public interest**

14. To address the public interest concerns identified by the Commission, the parties tendered commitments including job creation, capital expenditure, procurement from HDP suppliers and skills development initiatives at the Target Firm.
15. The Commission considers that the commitments tendered by the parties render the merger justifiable on substantial public interest grounds.

### **Conclusion**

16. Based on the foregoing, the Commission approves the merger with Conditions included as **Annexure A**
- 17.

**ANNEXURE A****THALES SA****AND****COBHAM AEROSPACE****CASE NUMBER: 2023NOV0025**

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**CONDITIONS**

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**1. DEFINITIONS**

The following expressions shall bear the meaning assigned to them hereunder, and cognate expressions shall have corresponding meanings, namely:

- 1.1. **“Act”** means the Competition Act 89 of 1998, as amended;
- 1.2. **“Approval Date”** means the dates contained on the Commission’s Clearance Certificate;
- 1.3. **“Acquiring Firm”** means Thales S.A., as defined hereunder;
- 1.4. **“Cobham Aerospace S.A.S”** means Cobham Aerospace S.A.S, a *société par actions simplifiée* incorporated under the laws of France, whose registered office is at 35 rue de Monthéry 91450 Rungis Cedex, France, registered with the trade and company register of Créteil under registration number 889 218 707;
- 1.5. **“Commission”** means the Competition Commission of South Africa;
- 1.6. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.7. **“Conditions”** means these conditions, which shall lapse three years following the Implementation Date
- 1.8. **“Day”** means any business day, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

- 1.9. **“HDPs”** means historically disadvantaged persons, as contemplated in section 3(2) of the Act;
- 1.10. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties, which date will, in accordance with paragraph 6.1 below, be communicated to the Commission within 5 (five) Days of its occurrence;
- 1.11. **“Merger”** means Thales S.A.’s acquisition of Cobham Aerospace S.A.S, which acquisition was notified with the Commission on 6 November 2023;
- 1.12. **“Merging Parties”** means Thales S.A. and Cobham Aerospace S.A.S;
- 1.13. **“Omnipless”** means Omnipless Manufacturing (Pty) Ltd (**“Omnipless”**), a private company incorporated under the laws of South Africa with registered business address at 2 Westlake Drive, Westlake, Cape Town, South Africa under registration number 2002/009019/07.
- 1.14. **“South Africa”** means the Republic of South Africa;
- 1.15. **“SME”** means either a small or medium sized business as defined in the Act;
- 1.16. **“Target Firm”** means Cobham Aerospace S.A.S, as defined above;
- 1.17. **“Thales S.A.”** means Thales S.A., a *société anonyme* incorporated under the laws of France, registered under number 552 059 024, with registered office at 4, rue de la Verrerie, 92190 Meudon, France;
- 1.18. **“Tribunal”** means the Competition Tribunal of South Africa; and
- 1.19. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

## 2. EMPLOYMENT CONDITIONS

- 2.1. There shall, following the Approval Date, be no merger specific retrenchments arising from the Merger for a period of 3 years as from the Implementation Date
- 2.2. For the sake of clarity, merger-specific retrenchments do not include: (i) voluntary separation arrangements and/or voluntary retrenchments; (ii) voluntary early retirement; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including (but not limited to) terminations as a result of misconduct or poor performance; and (vii) any decision not

to renew or extend a contract or a fixed-term third party contract employee or contract with a third party.

2.3. Any retrenchments in respect of the markets and activities which are unrelated to the Merger will be presumed to be non-merger specific retrenchments.

2.4. The Merging Parties commit to create an additional **[CONFIDENTIAL]** jobs at Omnipless (which represents **[CONFIDENTIAL]**% of the current Omnipless employee head count) within **[CONFIDENTIAL]** after the Implementation Date. The Merging Parties will use reasonable efforts to ensure that the majority of appointments made in this regard, shall be HDPs.

### **3. CAPEX INVESTMENT**

3.1. The Target Firm commits to investing at least **R[CONFIDENTIAL]** in capital expenditure (“CAPEX”) in relation to Omnipless within **[CONFIDENTIAL]** from Implementation Date (representing a **R[CONFIDENTIAL]** compared to the previous three-year CAPEX at Omnipless).

### **4. SUPPLIER DEVELOPMENT AND HDP/SMME CONDITIONS**

4.1. Omnipless will also use its reasonable endeavours to proactively identify and procure from local suppliers who are SME and/or HDP controlled and who are able to supply required input products on commercially competitive terms, prices and quality such that products meet the requisite industry norms and standards and/or comply with any regulatory requirements imposed on the products.

### **5. SKILLS DEVELOPMENT CONDITIONS**

5.1. The Merging Parties commit to continue and support the current skills development initiatives of the Target Firm. Specifically, the Merging Parties commit to the following:

5.1.1. continuation and support of the student program provided by the Target Firm providing in-service training to technicians with an intake of **[CONFIDENTIAL]**, with **[CONFIDENTIAL]**% of such students being HDPs;

5.1.2. continuation of partnerships with local universities such as Cape Peninsula University of Technology, the University of Stellenbosch and expansion in the future with University of Cape Town; and

5.1.3. providing bursaries to **[CONFIDENTIAL]** HDPs in order to improve their qualifications and skills for occupational level growth. In this regard, the Merging

Parties shall seek to identify **[CONFIDENTIAL]** suitably qualified candidates **[CONFIDENTIAL]** of the Implementation Date and offer a bursary valued at **R[CONFIDENTIAL]** each for purposes of pursuing or completing studies in the field of engineering or sciences. The total value of this commitment is **R[CONFIDENTIAL]** and will be used towards university fees and related ancillary costs.

## 6. MONITORING

- 6.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 6.2. The Merging Parties shall circulate a copy of the relevant aspects of these Conditions relating to employment (i.e., paragraphs 2.1, 2.2 and 2.3 to the trade unions representatives and employee representatives within 5 (five) Days of the Approval Date.
- 6.3. Thales shall submit an affidavit (deposed to by a senior official of Thales) on each anniversary of the Implementation Date for the next 3 (three) years confirming compliance with the Conditions, which shall lapse on the third anniversary of the Implementation Date.
- 6.4. All correspondence in relation to monitoring the above Conditions may be sent to [celine.darrigade@thalesgroup.com](mailto:celine.darrigade@thalesgroup.com).

## 7. APPARENT BREACH

- 7.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determine that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

## 8. VARIATION

- 8.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

## 9. GENERAL

All correspondences in relation to the Conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za)

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions

Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298