

This Statutory Instrument has been published in substitution of the SI of the same number which did not reflect the version signed by the Secretary of State. This is necessary to correct an error in the signature block on page 4 where “Enterprise” should read “Energy” where it twice occurs. It is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2021 No. 944

COMPETITION

The Public Interest Merger Reference (Cobham Ultra Acquisitions Ltd. and Ultra Electronics Holdings plc) (Pre-emptive Action) Order 2021

Made - - - - at 10.35 a.m. on 18th August 2021

Coming into force - - at 4.30 p.m. on 18th August 2021

Laid before Parliament at 4.45 p.m. on 18th August 2021

The Secretary of State has reasonable grounds for suspecting that it is or may be the case that as a result of the proposed acquisition by Cobham Ultra Acquisitions Limited of Ultra Electronics Holdings plc arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct.

An intervention notice in respect of the relevant merger situation concerned, given by the Secretary of State on 18th August 2021 under section 42 of the Enterprise Act 2002(a), is in force.

In the opinion of the Secretary of State the exercise of the powers as set out in this Order is required for the purpose of preventing action which might prejudice a reference of the matter to the Competition and Markets Authority under section 45 of the Enterprise Act 2002(b) or impede the taking of any action under Part 3 of that Act which may be justified by the Secretary of State’s decisions on the reference.

The Secretary of State, for the purpose of preventing pre-emptive action(c), in exercise of the powers conferred by sections 86(1), 87(1) and (3) and 124(2)(b) of, and paragraph 2(2) of Schedule 7 to, the Enterprise Act 2002(d), makes the following Order:

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- (a) 2002 c.40; section 42 was amended by paragraphs 59 and 82 of Schedule 5, and paragraphs 15 and 21 of Schedule 15, to the Enterprise and Regulatory Reform Act 2013 (c. 24), S.I. 2011/1043 and S.I. 2019/93.
 - (b) Section 45 was amended by paragraphs 59 and 85 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013; there is another amendment to section 45 but it is not relevant to this Order.
 - (c) “Pre-emptive action” is defined in paragraph 2(12) of Schedule 7 to the Enterprise Act 2002 (paragraph 2(12) was inserted into Schedule 7 by paragraphs 1 and 4 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013).
 - (d) Paragraph 2(2) of Schedule 7 was amended by paragraphs 59 and 160 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

Citation, commencement and extent

1.—(1) This Order may be cited as the Public Interest Merger Reference (Cobham Ultra Acquisitions Ltd. and Ultra Electronics Holdings plc) (Pre-emptive Action) Order 2021 and comes into force at 4.30 p.m. on 18th August 2021.

(2) This Order extends to England and Wales, Scotland and Northern Ireland.

Interpretation

2.—(1) In this Order—

“the Act” means the Enterprise Act 2002;

“armed forces” means any of the naval, military or air forces of the Crown;

“Cobham” means Cobham Ultra Acquisitions Limited, a company incorporated in England and Wales (registered number 13552764);

“Minister of the Crown” has the same meaning as in section 8(1) of the Ministers of the Crown Act 1975(a);

“UK Government” means a Minister of the Crown or a department of the Government of the United Kingdom;

“Ultra” means Ultra Electronics Holdings plc, a company incorporated in England and Wales (registered number 02830397);

“working day” means any day which is not—

(a) a Saturday, a Sunday, Good Friday or Christmas Day, or

(b) a day which is a bank holiday in England and Wales.

(2) For the purposes of this Order, one person (A) is an “affiliate” of another person (B), if—

(a) any enterprise that A carries on from time to time and any enterprise that B carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act (enterprises ceasing to be distinct enterprises), or

(b) A and B are interconnected bodies corporate(b).

Interim provision

3.—(1) No information referred to in paragraph (2) may be disclosed or transferred, directly or indirectly and whether from inside or outside the United Kingdom, by Ultra (or any of its employees, directors, agents or affiliates) to Cobham (or any of its employees, directors, agents or affiliates).

(2) The information referred to in this paragraph is information relating to—

(a) any goods or services provided by Ultra (or any of its affiliates) to the UK Government or the armed forces,

(b) the provision of any of the goods or services referred to in sub-paragraph (a),

(c) any goods or services provided by Ultra (or any of its affiliates) to persons other than the UK Government or the armed forces, if the goods or services have been or are used in goods or services provided by any person to the UK Government or the armed forces, or

(d) the provision of any of the goods or services referred to in sub-paragraph (c), whether or not provided by Ultra or its affiliates.

(a) 1975 c. 26.

(b) “Interconnected bodies corporate” are defined in section 129(2) of the Enterprise Act 2002.

Compliance

4.—(1) Within the period of 10 working days beginning with the date on which this Order comes into force and, subsequently, at intervals of not more than 10 working days, Ultra must give the Secretary of State a compliance statement.

(2) A compliance statement is a statement in writing confirming that Ultra—

- (a) is in compliance with the requirements of this Order, and
- (b) has at all times since the coming into force of this Order been in compliance with those requirements.

(3) A compliance statement must be signed by the chief executive, a director, or senior manager of Ultra.

(4) In paragraph (3), “senior manager” means a person who plays a significant role in—

- (a) the making of decisions about how the whole or a substantial part of Ultra’s activities are to be managed or organised, or
- (b) the actual managing or organising of the whole or a substantial part of those activities.

Contravention

5. If Cobham or Ultra has any reason to suspect that this Order might have been contravened it must immediately notify the Secretary of State in writing.

Directions

6.—(1) The Secretary of State may give directions in writing falling within paragraph (2) to—

- (a) a person specified in the directions; or
- (b) the holder for the time being of an office so specified in any body of persons corporate or unincorporate.

(2) Directions fall within this paragraph if they are directions—

- (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
- (b) to do or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

(3) The Secretary of State may vary or revoke any directions given under this article.

Derogations

7. For the purposes of paragraph 2(2C) of Schedule 7 to the Act(a), the Secretary of State is not to be treated as having consented to the taking of action or a action of a particular description which would otherwise constitute a contravention of this Order unless the consent is in writing.

Kwasi Kwarteng

Secretary of State for Business, Energy and Industrial Strategy

At 10.35 a.m. on 18th August 2021

Department for Business, Energy and Industrial Strategy

(a) Paragraph 2(2C) was inserted by paragraphs 1 and 4 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

EXPLANATORY NOTE

(This note is not part of the Order)

The Secretary of State has given the Competition and Markets Authority an intervention notice on public interest grounds in respect of the anticipated merger of Ultra Electronic Holdings plc (“Ultra”) and Cobham Ultra Acquisitions Limited (“Cobham”). This Order is made for the purpose of preventing action which might prejudice a reference of the matter to the Competition and Markets Authority under section 45 of the Enterprise Act 2002 (c. 41) or impede the taking of any action under Part 3 of that Act which may be justified by the Secretary of State’s decisions on the reference.

Article 3 of the Order prohibits Ultra from sharing with Cobham any information relating to goods and services it supplies to the United Kingdom (“UK”) Government or the armed forces, or which it supplies to other persons and which are used in goods or services that are supplied to the UK Government or the armed forces. Articles 4 and 5 impose reporting obligations on Cobham and Ultra. Article 6 allows the Secretary of State to give directions for the purpose of ensuring compliance with the Order.

This Order, unless previously revoked, will cease to have effect if the Secretary of State accepts an undertaking under paragraph 3 of Schedule 7 to the Enterprise Act 2002 instead of referring the merger to the Competition and Markets Authority under section 45 of that Act or when the intervention notice otherwise ceases to be in force in accordance with section 43 of that Act.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum is available alongside the instrument on the UK legislation website, www.legislation.gov.uk.

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