EUROPEAN COMMISSION
DG Competition

Case M.11578 - BOEING / SPIRIT

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
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EUROPEAN COMMISSION

Brussels, 14.10.2025
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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

The Boeing Company
929 Long Bridge Drive
Arlington, Virginia, 22202
USA

Subject: Case M.11578 - BOEING / SPIRIT
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 ([1]) and Article 57 of the Agreement on the European Economic Area ([2])

Dear Sir or Madam,

(1) On 26 August 2025, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which The Boeing Company ('Boeing', the USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Spirit AeroSystems Holdings, Inc. ('Spirit', the USA) (the 'Transaction'). ([3]) Boeing and Spirit are designated hereinafter as the 'Parties'.

([1]) OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

([2]) OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

([3]) OJ C, C/2025/4873, 3.9.2025.

1. THE PARTIES

(2) Boeing, headquartered in the USA, designs, manufactures, and sells commercial airplanes, defence, space and security systems, and provides related services on a global basis.

(3) Spirit, headquartered in the USA, manufactures aerostructures, serving commercial aircraft, military aircraft and business jets as well as provides aftermarket services for commercial and military platforms on a global basis.

2. THE CONCENTRATION

(4) According to the Merger Agreement of 30 June 2024, Boeing will acquire 100% of the issued share capital of Spirit.

(5) Upon completion of the Transaction, Boeing will hold 100% of the shares and voting rights in respect of Spirit, and hence acquire sole control of Spirit within the meaning of Article 3(1)(b) of the Merger Regulation.

(6) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Boeing: EUR […] in 2023; Spirit: EUR […] in 2023) ([4]). Each of them has a Union-wide turnover in excess of EUR 250 million (Boeing: EUR […] in 2023; Spirit: EUR […] in 2023), but each does not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Introduction

(8) Spirit is a manufacturer of aerostructures, serving commercial aircraft, military aircraft and business jets. Spirit's core products include fuselage structures, wing structures, pylon structures, nacelles, and empennage structures. Spirit also provides aftermarket services, primarily component maintenance and spare parts. ([5]) Spirit's aerostructures form - from an upstream perspective - input components of commercial aircraft, military aircraft and business jets which are produced at the downstream level, such as for instance the large commercial aircraft manufactured and supplied by Boeing.

(9) In relation to aerostructures, Boeing mostly produces aerostructures for its own aircraft but has some limited third party sales. In respect of commercial aircraft, Boeing is a manufacturer of single-aisle passenger aircraft, twin-aisle passenger aircraft, freighter aircraft, and business jets. As regards military aircraft, Boeing manufactures and supplies manned and unmanned military aircraft and weapon systems, strategic defence and intelligence systems, satellite systems and space

([4]) Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

([5]) Form CO, paragraphs 123 et seq.

exploration capabilities. Furthermore, Boeing provides satellite systems and space exploration solutions. Moreover, Boeing provides various services, such as maintenance, repair and overhaul services, supply of spare parts, as well as other operational, engineering, training and digital aviation services. ([6])

4.2. Relevant markets

4.2.1. Supply of aerostructures

4.2.1.1. Product market

4.2.1.1.1. The Commission's decisional practice

(10) In some decisions, the Commission has considered an overarching market for all aerostructures, i.e. not further considering the relevant product market at the level of individual aerostructures or (sub-)components. Ultimately, the Commission left the exact product market definition open. ([7])

(11) In other decisions, the Commission adopted a component-by-component approach, e.g. considering a separate relevant product market, for instance, for each of nacelle systems, slat systems, flap systems, fuselage systems, and pylons. Ultimately, the Commission left the exact product market definition open. ([8])

4.2.1.1.2. The Parties' view

(12) The Parties consider that there is an overarching market for all aerostructures. In the Parties' view, there is limited to no demand-side substitutability at the level of individual aerostructures, because (i) different aerostructures serve different technical solutions, and (ii) there is a high degree of customisation between components for different platforms due to varied and bespoke specifications. ([9])

(13) Nonetheless, in the Parties' view, there is evidence of strong supply-side substitution. It is not difficult for suppliers of aerostructures to start manufacturing different or new aerostructures. Various aerostructures are manufactured using the same process technology, design capabilities, and know-how. Moreover, the Parties compete with numerous other suppliers, which have the capability to manufacture a wide range of aerostructures. ([10])

4.2.1.1.3. The Commission's assessment

(14) The results of the market investigation confirmed that there is no demand-side substitution for individual aerostructures, such as fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, or empennage structures. This is not least because (i) aerostructure customers are not able to effectively and immediately substitute among different aerostructures or

([6]) Form CO, paragraphs 85 et seq.
([7]) M.1438 - BRITISH AEROSPACE / GEC MARCONI, paragraph 13.
([8]) M.6410 - UTC/ GOODRICH, paragraphs 109 et seq.; M.8948 - SPIRIT / ASCO, paragraph 19.
([9]) Form CO, paragraph 217 et seq.
([10]) Form CO, paragraph 217 et seq.

respective components, and (ii) different aerostructures have different technical functions. ([11])

(15) In respect of supply-side substitution, the results of the market investigation are not conclusive. On the one hand, some market participants suggested that aerostructure suppliers have a general expertise and a basic production process that allow them to manufacture various aerostructures. ([12])

(16) On the other hand, the results of the market investigation showed that each specific aerostructure requires expertise and tailored production process specific to the aerostructure in question, and that it is considerably costly and time-consuming for suppliers of aerostructures to start manufacturing different or new aerostructures. The supply substitution on part of aerostructure suppliers is limited due to considerable time-consuming investments, and capabilities, capacity, know-how and strategy before responding to a tender or request for quote of an aerostructure customer. ([13]) Still, the results of the market investigation suggest that there is a sufficient number of aerostructure suppliers that are able to address customers' demand per each category, i.e. a sufficient number of aerostructure suppliers for each of fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, and empennage structures. ([14])

(17) In light of the results of the market investigation, the Commission considers that there are many types of aerostructures and that switching suppliers is costly and time-consuming. The market investigation indicates that the level of supply-side substitution differs depending on the type of aerostructure but is overall rather limited. ([15])

(18) In any event, as will be explained further below, the market power of aerostructure suppliers stems from long-term supply contracts rather than exact market shares. Thus, the Commission considers that for the purposes of this decision, specifically the competitive non-horizontal analysis, the exact definition of the relevant product market can be left open, as far as the different components and sub-components of fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, and empennage structures are concerned.

(19) Therefore, for the purposes of this decision, the Commission considers that it is appropriate to assess the effects of the Transaction in relation to the relevant

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([11]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question C.A.1; non-confidential minutes of a call with a competitor, 1 April 2025, paragraph 6.

([12]) Non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 6 et seq.

([13]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions C.A.2 and C.A.3; non-confidential minutes of a call with a competitor, 1 April 2025, paragraphs 11 et seq.; non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 9 et seq.; non-confidential minutes of a call with a competitor, 25 March 2025, paragraphs 5 et seq.

([14]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.A.2; non-confidential minutes of a call with a competitor, 4 April 2025, paragraph 17.

([15]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions C.A.2 and C.A.3; non-confidential minutes of a call with a competitor, 1 April 2025, paragraphs 11 et seq.; non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 9 et seq.; non-confidential minutes of a call with a competitor, 25 March 2025, paragraphs 5 et seq.

product markets for fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, and empennage structures. ([16])

4.2.1.2. Geographic market

4.2.1.2.1. The Commission's decisional practice

(20) In previous decisions, the Commission considered that the markets for various aerostructures are global in scope. This mainly because aerostructures are procured on a global basis, the aerostructure suppliers offer their products worldwide, and there are no significant price differences among various regions of the world. ([17])

4.2.1.2.2. The Parties' view

(21) The Parties consider that the Commission's decisional practice in relation to the global scope of the markets for supply of various aerostructures generally still reflects today's market realities and dynamics. Aerostructure suppliers organise their manufacturing, participate in tenders, supply aerostructures and compete among each other on a global basis. Similarly, the aerostructure customers procure aerostructures worldwide which leads to significant global trade flows. ([18])

4.2.1.2.3. The Commission's investigation

(22) The results of the market investigation confirmed that the markets for various aerostructures, such as fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, and empennage structures are global in scope. Aerostructure suppliers organise their production and sales on a global basis. Moreover, prices of various aerostructures are quoted on a worldwide basis and do not differ according to a geographic region. Furthermore, aerostructure customers organise procurement of aerostructures on a global basis. Lastly, there are no material barriers to supplying aerostructure customers on a global basis. ([19])

(23) Therefore, for the purposes of this decision, the Commission considers that it is appropriate to assess the effects of the Transaction in relation to global markets for various aerostructures.

([16]) The market investigation did not provide indications that further segmentation, for example, on the basis of the type of aircraft, would be warranted. Therefore, the distinction of aerostructures for large commercial aircraft, business and / or military aircraft is not discussed.

([17]) M.6410 - UTC/ GOODRICH, paragraph 119; M.1438 - BRITISH AEROSPACE / GEC MARCONI, paragraph 17; M.8948 - SPIRIT / ASCO, paragraph 38.

([18]) Form CO, paragraphs 223 et seq.

([19]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions D.A.1, D.A.2, D.A.3, and D.A.4; non-confidential minutes of a call with a competitor, 1 April 2025, paragraphs 15 et seq.; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 13 et seq.; non-confidential reply of a customer to a request for information of 18 April 2025, paragraphs 9 et seq.

4.2.2. *Aircraft manufacturing - Large commercial aircraft*

4.2.2.1. Product market

4.2.2.1.1. The Commission's decisional practice

(24) In its decisional practice, the Commission has generally identified the following main categories of aircraft: (i) commercial aircraft; (ii) military aircraft; (iii) helicopters; and (iv) general aviation aircraft. ([20])

(25) Within commercial aircraft, the Commission further differentiated among (i) large commercial aircraft, (ii) regional aircraft, and (iii) business / corporate jets. Within large commercial aircraft, the Commission considered a further distinction between single aisle aircraft and twin aisle aircraft. ([21]) The Commission has also considered a further split of the market for single aisle large commercial aircraft into (i) aircraft with 90-120 seats, and (ii) aircraft with 120-200 seats. ([22])

4.2.2.1.2. The Parties' view

(26) The Parties consider that the Commission's decisional practice in relation to large commercial aircraft generally still reflects today's market realities and dynamics. In particular, the distinction between single aisle aircraft and twin aisle aircraft is still generally justified given these aircrafts' respective differing operating requirements, technical capabilities, as well as economic and financial requirements that come into play when customers take their procurement decisions. ([23])

4.2.2.1.3. The Commission's assessment

(27) The results of the market investigation largely confirmed the relevant product markets and segmentations of aircraft according to the Commission's decisional practice. Most importantly, these product markets and segmentations reflect customers' procurement considerations and patterns. Customers evaluate numerous criteria when deciding to purchase large commercial aircraft, including: (i) operating requirements (e.g., flying routes, optional seating or loading, flight frequency, and availability of airport slots), (ii) technical capabilities (e.g., range, capacity, performance, reliability, fleet commonality and maintenance, and service networks), and (iii) economic and financial requirements (e.g., purchase price, forecast operating revenue and costs, and residual value). ([24])

(28) In any event, the Commission considers that for the purposes of this decision, specifically the competitive non-horizontal analysis, the exact definition of the relevant product market can be left open. For the purposes of the competitive analysis, the Commission will assess the effects of the Transaction on the narrowest plausible market for single aisle large commercial aircraft, with the

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([20]) M.10760 - AIRBUS / SAFRAN / TAC / AUBERT & DUVAL, paragraph 42; M.8985 - BOEING / KLX, paragraph 15; M.8858 - BOEING / SAFRAN / JV (AUXILIARY POWER UNITS), paragraph 12.

([21]) M.10760 - AIRBUS / SAFRAN / TAC / AUBERT & DUVAL, paragraph 43.

([22]) M.8858 - BOEING / SAFRAN / JV (AUXILIARY POWER UNITS), paragraph 14.

([23]) Form CO, paragraph 158.

([24]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question C.B.1; non-confidential reply of a customer to a request for information of 18 April 2025, paragraphs 20 et seq.

segment for aircraft with 120-200 seats, and the market for twin aisle large commercial aircraft.

4.2.2.2. Geographic market

4.2.2.2.1. The Commission's decisional practice

(29) In its decisional practice, the Commission has consistently found that all markets for aircraft manufacturing, with the exception of military aircraft, are worldwide in scope. ([25])

4.2.2.2.2. The Parties' view

(30) The Parties consider that the Commission's decisional practice in relation to the global scope of, in particular, the market for large commercial aircraft generally still reflects today's market realities and dynamics. In particular, the two main manufacturers, Boeing and Airbus, compete globally and serve a worldwide customer base, including airlines and leasing companies across the globe. ([26])

4.2.2.2.3. The Commission's investigation

(31) The results of the market investigation confirmed that the market for single aisle large commercial aircraft, with the segments for (i) aircraft with 90-120 seats, and (ii) aircraft with 120-200 seats, and the market for twin aisle large commercial aircraft are global in scope. Large commercial aircraft suppliers organise their production and sales on a global basis. Moreover, prices for different large commercial aircraft are quoted on a worldwide basis and do not differ according to a geographic region. In addition, large commercial aircraft customers organise procurement of large commercial aircraft on a global basis. Lastly, there are no material barriers to supplying large commercial aircraft customers on a global basis. ([27])

4.2.3. Aircraft manufacturing - business jets

4.2.3.1. Product market

(32) Boeing Business Jet ('BBJ') sells ultra-large-cabin business jets for private, charter, corporate, or head-of-state operations. Boeing's business jets are repurposed large commercial aircraft, combining Boeing's commercial aviation technology with the luxury and customization needed for private and business jet use. ([28])

([25]) M.10760 - AIRBUS / SAFRAN / TAC / AUBERT & DUVAL, paragraph 96; M.8985 - BOEING / KLX, paragraph 33; M.8858 - BOEING / SAFRAN / JV (AUXILIARY POWER UNITS), paragraph 15.

([26]) Form CO, paragraph 164 et seq.

([27]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions D.B.1, D.B.2, D.B.3, and D.B.4; non-confidential reply of a customer to a request for information of 18 April 2025, paragraph 24.

([28]) Boeing's business jets are based on large commercial aircraft, and therefore the BBJ business depends on the pipeline of new aircraft designs that are developed for the large commercial aircraft business.

(33) Boeing's business jets in production currently include: ([29])

(a) BBJ 737 MAX (BBJ 737-7, BBJ 737-8, and BBJ 737-9), based on Boeing's 737 MAX family of commercial aircraft; and

(b) BBJ 787 Dreamliner (BBJ 787-8, BBJ 787-9, and BBJ 787-10), based on Boeing's 787 Dreamliner family of commercial aircraft.

(34) The BBJ 777X (BBJ 777-8 and BBJ 777-9), which is based on Boeing's 777X family of commercial aircraft, is going through the certification process. ([30])

(35) As mentioned above, Spirit is a manufacturer of aerostructures, including for business jets. Spirit's core products include fuselage structures, wing structures, pylon structures, nacelles, and empennage structures. More specifically, with regards to business jets, Spirit currently supplies a number of aircraft manufacturers such as Boeing, Airbus and Bombardier as well as engine manufacturers who use Spirit parts to develop their aircraft engines (e.g. Rolls-Royce, Pratt & Whitney).

4.2.3.1.1. The Commission's decisional practice

(36) As mentioned in paragraph (25), within commercial aircraft, the Commission defined different markets namely (i) large commercial aircraft, (ii) regional aircraft, and (iii) business / corporate jets. ([31])

(37) Regarding business jets specifically, in one of its earliest decisions involving the market for business jets, *General Electric/Honeywell*, the Commission has considered three different classes of business jets: (i) heavy, (ii) medium, and (iii) light business jets. ([32]) The Commission decided ultimately to leave the market definition open.

(38) In more recent decisions ([33]), the Commission did not segment the overall market for business jets, which it defined as comprising commercial "*aircraft designed for corporate activities and with a cost generally in the region of USD 3 – 70 million* [EUR 2.8 – 64.7 million]". ([34]) This was later confirmed in the most recent Commission decision on this point, *Airbus/Safran/TAC/Aubert & Duval*. ([35])

4.2.3.1.2. The Parties' view

(39) According to the Parties, today, business jets are typically purchased by corporations, governments, and/or individuals. As such, they are not designed only "for corporate activities" as set out in *Boeing/Safran/JV*, but also to serve individuals and heads of state. These customers choose from a wide spectrum of

([29]) BBJ 747-8 business jets are no longer available for order. While there are still several BBJ 747-8 in operation serving governments around the world, Boeing stopped manufacturing its 747 aircraft family. The last 747 aircraft was delivered in January 2023.

([30]) Form CO, paragraphs 95 and 96.

([31]) M.10760, Airbus/Safran/TAC/Aubert & Duval, paragraph 47; M.8985 Boeing/KXL, paragraphs 15 and 25; M.8858, Boeing/Safran/JV, paragraphs 12-13.

([32]) See M.2220, General Electric/Honeywell, recital (32): "*heavy* [business] *jets are more expensive, can carry more passengers and have transcontinental capability* (…). *Conversely, light* [business] *jets are smaller, can carry fewer passengers and have a more restricted flying range*".

([33]) See M.8858, Boeing/Safran/JV, recital (13). The Commission followed the same approach in M.8960, Adient/Boeing/JV, recital (13); and M.8985, Boeing/KLX, recital (15).

([34]) See M.10760, *Airbus/Safran/TAC/Aubert & Duval*, recital (42).

([35]) See M.10760, *Airbus/Safran/TAC/Aubert & Duval*, recital (43)(c).

very different business jets, with different price ranges ([36]) and serving different customer needs. In particular:

(a) On the one hand, there are Original Equipment Manufacturers ('OEMs') focused primarily on large commercial aircraft, Airbus and Boeing, whose business jets are based on their large commercial aircraft models. These business jets are generally larger, with cabin sizes between 884 sq ft (82 m2) (e.g., BBJ 737-7) and 3,315 sq ft (308 m2) (e.g., Airbus'ACJ350-1000). They are also more expensive, with the prices ranging between EUR […] (e.g., BBJ 737-7) and EUR […] (e.g., Airbus' ACJ350-1000). These are ultra-large cabin business jets, designed originally with handling frequent flights and large passenger loads.

(b) On the other hand, there are other OEMs, such as Bombardier, Textron Aviation, Embraer, Dassault, Gulfstream, or Cessna, whose business jets are built specifically to be business jets, enabling smaller numbers of passengers to board. These are generally smaller business jets, ranging from c. 56 sq ft (5m2) (e.g., Embraer's Phenom 100), 278 to c. 435 sq ft (26 m2 to c. 40 m2) (e.g., Bombardier's Global 7500.). These business jets are also typically less expensive (ranging from less EUR 1.9 million) (e.g., Embraer's Phenom 100) to EUR 74 million (e.g., Gulfstream's G700).

(40) From a demand-side perspective, the differences in business jets offerings described above may indicate that there is limited demand-side substitutability between business jets based on large commercial aircraft and business jets built specifically to be business jets ([37]). From a supply-side perspective, the aircraft design process is a long-term endeavour, taking years to complete. Large commercial OEMs focus on manufacturing larger, more expensive business jets, while smaller OEMs design smaller, less expensive ones, highlighting the complexity and distinct strategies in the industry. ([38])

(41) The Parties claims that the Commission's decisional practice over the past 20 years has consistently found that there is an overall market for business jets and that Boeing accounts for [0-5]% of the worldwide market for business jets in 2023 and it had […] in the EEA in the last three years. ([39])

(42) In any event, the Parties suggest that the relevant product market for business jets can be left open as the Transaction does not raise competition concerns regardless of how the market is defined. ([40])

4.2.3.1.3. The Commission's assessment

(43) The market investigation revealed that business jet manufacturers, tend to not consider Boeing nor Airbus as a competitor in this market ([41]). For instance, one of them said "*for business jets [...] does not compete with Boeing*.", while another one mentioned "*they do not compete in the business jet market, as the Company's jets serve up to 19 passengers, while Airbus and Boeing aircraft typically serve more than 20 passengers. They therefore do not target the same customers*." ([42])

([36]) from <USD 2 million (EUR 1.9 million) (e.g., Embraer's Phenom 100)271 to USD 366.5 million (EUR 338.9 million) (e.g., Airbus' ACJ350-1000).
([37]) Form CO, paragraph 167.
([38]) Form CO, paragraph 169.
([39]) Form CO, paragraph 170.
([40]) Form CO, paragraph 170.
([41]) Non-confidential minutes of a call with a business jet manufacturer, 23 October 2024.
([42]) Non-confidential minutes of a call with a business jet manufacturer, 21 May 2025.

(44) Considering the above, the Commission considers that the relevant product market is the overall market for business jets, potentially further segmented between (i) light/medium business jets and (ii) business jets based on larger commercial aircrafts.

(45) The Commission considers that the question whether the relevant product market is (i) the overall market for business jets or (ii) should be further segmented between types of aircrafts (light, medium or large), can be left open. Indeed, the Transaction does not raise competition concerns on the overall market for business jets (including all sizes) ([43]), nor on the potential market for light/medium business jets where Boeing is not active. Hence, for the purpose of this decision, the Commission will assess the competitive impact of the Transaction on the narrowest plausible product market definition – business jets based on large commercial aircrafts - where the Transaction raises competition concerns.

4.2.3.2. Geographic market

4.2.3.2.1. The Commission's decisional practice

(46) As mentioned in paragraph (29), in its decisional practice, the Commission has consistently found that all markets for aircraft manufacturing, with the exception of military aircraft, are worldwide in scope. ([44])

4.2.3.2.2. The Parties' view

(47) According to the Parties, today's market realities and dynamics largely remain consistent with the Commission's decisional practice. Boeing serves a worldwide customer base with its business jets, including governments, companies, and individuals across all regions. Hence, the Parties consider that the exact geographic market definition for business jets can be left open. ([45])

4.2.3.2.3. The Commission's assessment

(48) The market investigation confirmed that the scope of the geographic market for all aircraft manufacturing is worldwide in scope. It follows that the conclusions drawn by the Commission in paragraph (31) on the geographic scope of the market for large commercial aircrafts also apply to business jets based on large commercial aircrafts, the only segment of the market for business jets where Boeing is active. Hence the Commission considers that the market for business jets based on large commercial aircraft is global.

4.2.4. Aircraft manufacturing - Airborne Early Warning

4.2.4.1. Product market

4.2.4.1.1. The Commission's decisional practice

(49) Within manned military aircrafts, the Commission segmented the market between multirole combat aircrafts and special mission aircrafts, and for the latter

([43]) Form CO, Annex A.78 – from 2021 to 2023 included, Boeing's market share in the overall market for business jets ranged between [0-5]% (deliveries) and [0-5]% (orders).

([44]) M.10760 - AIRBUS / SAFRAN / TAC / AUBERT & DUVAL, paragraph 96; M.8985 - BOEING / KLX, paragraph 33; M.8858 - BOEING / SAFRAN / JV (AUXILIARY POWER UNITS), paragraph 15.

([45]) Form CO, paragraph 175 – 176 (Chapter A).

considered further segmenting it between (i) bombers; (ii) tankers (iii) command and control, i.e. airborne early warning and control ('AEW&C') (iv) electronic warfare and (iv) maritime patrol ('MPA'). ([46])

4.2.4.1.2. The Parties' view

(50) The Parties consider that it is not necessary to further segment manned military aircraft between multirole combat aircraft and special mission aircraft (or sub-segments thereof), as from a supply-side perspective, major military aircraft OEMs can produce both types of aircraft. ([47])

4.2.4.1.3. The Commission's assessment

(51) The result of the market investigation suggested that there is no demand-side substitution for airborne early warning aircrafts by other type of aircrafts, as they have a very specific use case. ([48]) According to a market participant, "*AEW&C airplanes are to be distinguished from other airplanes because of their specific use case, which is to detect other aircraft and incoming projectiles, as well as to carry out surveillance on the ground." ([49])* The Parties' internal documents also [information relating to Boeing's business strategy]. ([50]) In contrast to the Parties' argument, there also does not seem to be a supply-side substitution, as they are only very few companies (and by far not all OEMs) that are producing airborne early warning airplanes that compete with Boeing's E7. The Commission considers that for the purposes of this decision the exact definition of the relevant product market can be left open, because the Transaction does not raise serious doubts on the basis of any plausible definition of the relevant product market. For the purposes of this decision, the Commission will carry out its competitive assessment on the basis of the narrowest plausible product market on which there is a vertical link, i.e., the market for airborne early warning aircrafts.

4.2.4.2. Geographic market

4.2.4.2.1. The Commission's decisional practice

(52) In other cases, including the most recent one on military aircrafts, the Commission considered the markets to be national in scope, where a national supplier or defence program exists, and worldwide subject to barriers to trade due to export restrictions and national security considerations, where it does not. ([51])

4.2.4.2.2. The Parties' view

(53) The Parties consider the market only EEA-wide, also given the difference in conditions between the EEA and the US, in particular export control approvals and the EU's aim of more strategic autonomy. ([52])

([46]) M.1745 – EADS paragraphs 175- 179; M.11800 – BAES / LEONARDO / JAIEC / JV paragraphs 10-11.
([47]) Form CO, paragraphs 189-193.
([48]) Non-confidential minutes of a call with a manufacturer, 26 May 2025; Non-confidential minutes of a call with a customer, 16 April 2025.
([49]) Non-confidential minutes of a call with a AEW&C manufacturer, 26 May 2025.
([50]) For example, FormCO, Annex D3 p. 10-11.
([51]) M.1745 – EADS paragraphs 161-162, 180; M.1198, BAE/SAAB paragraph 22; M.11800 – BAES / LEONARDO / JAIEC / JV paragraphs 12-13.
([52]) Form CO, paragraphs 189-190.

4.2.4.2.3. The Commission's investigation

(54) The market investigation confirmed the Commission's findings in previous cases, i.e., national markets for countries with domestic suppliers and international export markets (excluding all countries with domestic suppliers and / or supply restrictions) for countries without domestic suppliers. While a customers indicated that they would rather purchase AEW&C airplanes from NATO allies or other close partners ([53]), they are also exported to other countries, as long as there are no export restrictions in place. ([54])

4.2.5. Aircraft manufacturing - military helicopters

4.2.5.1. Product market

4.2.5.1.1. The Commission's decisional practice

(55) In the past, the Commission has distinguished helicopters from other types of aircrafts. ([55]) Within helicopters, the Commission identified distinct product markets for military helicopters and civil helicopters based on product characteristics, the structure of demand, and the conditions of competition. The Commission considered to segment the market of helicopters based on application or on its weight but ultimately left the market definition open. ([56])

4.2.5.1.2. The Parties' view

(56) The Parties consider that the market definition for helicopters can be left open, as the Transaction does not give rise to competition concerns, regardless of how the market is defined. ([57])

4.2.5.1.3. The Commission's assessment

(57) Findings from the market investigation suggest that there is a separate market for heavy lifting military helicopters. This is because when key user requirements are set by a customer, those requirements cannot be met by several smaller helicopters. ([58]) Only heavy lifting helicopters are able to carry a certain size, e.g., a military vehicle. In addition, the footprint differs, and there would be a need for multiple crews to operate the two helicopters. ([59]) However, the market definition for helicopters can be left open, as the Transaction does not give rise to competition concerns, regardless of how the product market is defined.

([53]) Non-confidential minutes of a call with a AWAC customer, 16 April 2025.

([54]) For example, the first Saab Global Eye's were sold to the United Arab Emirates; Saab's Erieye radar system is used by Brazil, Greece and Mexico. Boeing's first E7 wedgetails were sold to Australia.

([55]) M.8985 – Boeing/KLX, paragraph 15, M.8858 – Boeing/Safran/JV (Auxiliary Power Units); M.10760 - Airbus/Safran/TAC/Aubert & Duval paragraph 42.

([56]) M.6410 - UTC/ GOODRICH paragraph 147.

([57]) Form CO, paragraphs 206-207.

([58]) Non-confidential minutes of a call with a military helicopter customer, 31 July 2025; Non-confidential minutes of a call with a military helicopter customer, 27 May 2025.

([59]) Non-confidential minutes of a call with a military helicopter customer, 31 July 2025.

4.2.5.2. Geographic market

4.2.5.3. The Commission's decisional practice

(58) In its past decisions, the Commission considered the market for military helicopters to be national in scope for countries with a national helicopter industry. Outside the markets with national helicopter production, the market was considered worldwide. ([60])

4.2.5.4. The Parties' view

(59) The Parties consider that there are different preferences in the US and the EEA, but that the geographic market definition can be left open, as the transaction does not raise competition concerns however the market is defined. ([61])

4.2.5.5. The Commission's investigation

(60) The findings of the market investigation confirmed the Commission's findings in previous cases, namely that the market for military helicopters is national in scope for countries with a national helicopter industry, but worldwide for markets without a national helicopter production, excluding Russia and China where export restrictions are in place. ([62])

5. COMPETITIVE ASSESSMENT

5.1. Introduction

(61) As set out in the previous section, the Commission considers that the relevant vertically affected markets to be assessed for the purposes of this decision are the following:

(a) upstream markets:

(1) global market for the supply of fuselage structures;

(2) global market for the supply of wing structures with the segments for (i) slat systems, and (ii) flap systems;

(3) global market for the supply of pylon structures;

(4) global market for the supply of nacelles with the segments for (i) thrust reversers, and (ii) other nacelle components;

(5) global market for empennage structures.

(b) downstream markets:

(1) global market for single-aisle large commercial aircraft with the segment for aircraft with 120-200 seats;

(2) global market for twin-aisle large commercial aircraft;

(3) global market for business jets based on large commercial aircraft;

([60]) M.1745, EADS, paragraph 58.

([61]) Form CO, paragraph 208.

([62]) Non-confidential minutes of a call with a military helicopter customer, 27 May 2025; Non-confidential minutes of a call with a military helicopter producer, 7 May 2025.

(4) international export markets (excluding all countries with domestic suppliers and / or supply restrictions) for Airborne Early Warning and Control aircrafts;

(5) international export markets (excluding all countries with domestic suppliers and / or supply restrictions) for heavy lifting helicopters.

(62) The Transaction also results in horizontal overlaps and vertical relationships for several other markets. However, as these horizontal overlaps and vertical relationships do not give rise to affected markets within the meaning of paragraph 25(g) of Annex I of Commission Implementing Regulation (EU) 2023/914, ([63]) as they meet the conditions for review under points 5 and 8 of the Notice on a simplified treatment ([64]), they will not be assessed further in this decision. ([65])

5.2. Non-horizontal non-coordinated effects

5.2.1. Legal framework

(63) According to the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-horizontal Merger Guidelines'), foreclosure effects may principally occur where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and / or incentive to compete. ([66])

(64) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream. ([67])

(65) For input foreclosure to be a concern, the merged entity should have a significant degree of market power in the upstream market. Only when the merged entity has such a significant degree of market power, can it be expected that it will significantly influence the conditions of competition in the upstream market and thus, possibly, the prices and supply conditions in the downstream market. ([68])

(66) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its

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([63]) Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023, p. 22.

([64]) Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C160, 5.5.2023, p. 1 (the 'Notice on a simplified treatment').

([65]) These non-affected markets include in broad terms most prominently horizontal overlaps in relation to the global markets for the supply of fuselage structures, pylon structures, nacelles and empennage structures that fall within the ambit of paragraph 8 of the Notice on a simplified treatment as well as vertical relationships in respect of global markets for single-aisle large commercial aircraft with 90-120 seats as well as spare parts and repair and maintenance services that fall within the ambit of paragraph 5 of the Notice on a simplified treatment.

([66]) Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 6–25, paragraph 18.

([67]) Non-horizontal Merger Guidelines, paragraph 32.

([68]) Non-horizontal Merger Guidelines, paragraph 35.

upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on end customers in the downstream market. ([69])

(67) For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground. ([70])

(68) The Commission also examines whether the merged entity may, by vertically integrating, gain access to commercially sensitive information regarding the upstream or downstream activities of rivals. For instance, by becoming the supplier of a downstream competitor, a company may obtain critical information, which allows it to price less aggressively in the downstream market to the detriment of end customers. It may also put competitors at a competitive disadvantage, thereby dissuading them to enter or expand in the market. ([71])

5.2.2. Large commercial aircraft

5.2.2.1. Introduction

(69) Spirit manufacturers and sells aerostructures, inter alia, to manufacturers of large commercial aircraft, including Boeing and Airbus.

(70) The Transaction gives rise to the following vertically affected markets based on Boeing's substantial shares on the downstream markets:

(a) upstream markets:

(1) global market for the supply of fuselage structures;

(2) global market for the supply of wing structures with the segments for (i) slat systems, and (ii) flap systems;

(3) global market for the supply of pylon structures;

(4) global market for the supply of nacelles with the segments for (i) thrust reversers, and (ii) other nacelle components;

(5) global market for empennage structures.

(b) downstream markets:

(1) global market for single-aisle large commercial aircraft with the segment for aircraft with 120-200 seats;

(2) global market for twin-aisle large commercial aircraft.

(71) In this section, the Commission assesses the possible non-coordinated vertical effects resulting from these non-horizontal links with regard to large commercial aircraft.

([69]) Non-horizontal Merger Guidelines, paragraph 59.
([70]) Non-horizontal Merger Guidelines, paragraph 61.
([71]) Non-horizontal Merger Guidelines, paragraph 78.

5.2.2.2. Input foreclosure

5.2.2.2.1. The Parties' view

(72) The Parties submit that the Transaction will not lead to full or partial input foreclosure for several reasons.

(73) First, Spirit does not have market power in relation to the supply of aerostructures in order for the merged entity to engage in input foreclosure. Spirit's shares in relation to the global markets for the supply of each of fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, and empennage structures are respectively below 30%. [Information relating to Spirit's confidential and commercially sensitive internal data]. Spirit's sales to Boeing will remain unaffected by the Transaction. ([72])

(74) Second, Airbus, i.e. the only other Spirit's customer for aerostructures for large commercial aircraft apart from Boeing, is protected by current supply contracts with Spirit that exclude any form of full or partial input foreclosure. The supply contracts between Airbus and Spirit […]. ([73])

(75) Third, Airbus can switch to many alternative suppliers. Airbus already owns most of the IP rights necessary to manufacture the aerostructures that Spirit supplies to Airbus and […]. ([74])

(76) Fourth, Airbus has significant in-house capabilities to self-supply aerostructures. Airbus has access to most of the IP rights necessary to develop the relevant aerostructures and could obtain a license for the remaining IP rights in the event of termination for default. Moreover, Airbus already supplies 45% of its aerostructure requirements in-house. In addition, Airbus could and has in the past sponsored a new entrant to supply relevant aerostructures. ([75])

(77) Fifth, Spirit's aerostructures do not constitute important inputs. Spirit's aerostructures are not a significant cost factor relative to the price of Airbus' large commercial aircraft. Airbus can switch to numerous alternative suppliers. Spirit's aerostructures do not constitute important inputs with a view to the time and cost of switching suppliers. Above that, aerostructures are not a significant source of product differentiation of large commercial aircraft offerings. ([76])

(78) Sixth, the merged entity would not have the incentive to engage in full or partial input foreclosure. Such a strategy would not be profitable for the merged entity. If the merged entity were to engage in a foreclosure strategy, demand for large commercial aircraft would not be diverted from Airbus to the merged entity. Even if the merged entity were able to capture some sales diverted from Airbus, it is unlikely that it would be able to address the diverted demand in the near future due to its production capacity constraints. Given the merged entity's ability to address any diverted demand only with a delay, Airbus would be able to counteract any hypothetical foreclosure strategy by finding an alternative solution for its aerostructure supply in a timely manner. ([77])

([72]) Form CO, paragraphs 264 et seq.
([73]) Form CO, paragraphs 250 et seq.
([74]) Form CO, paragraphs 267 et seq.
([75]) Form CO, paragraphs 267, 291 et seq.
([76]) Form CO, paragraphs 296 et seq.
([77]) Form CO, paragraphs 303 et seq.

(79) Lastly, any hypothetical input foreclosure strategy would not lead to increased prices or entry barriers. Spirit lacks market power whilst Airbus has plenty of alternative aerostructure suppliers and even the ability to self-supply or sponsor market entry. Moreover, even unlikely potential market entrants would have sufficient alternative aerostructure suppliers to Spirit post-Transaction in order to establish themselves on the large commercial aircraft markets. ([78])

5.2.2.2.2. The Commission's assessment

5.2.2.2.2.1. Market power

(80) For input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market. It is only in these circumstances that the merged firm can be expected to have a significant influence on the conditions of competition in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.

(81) The Transaction gives rise to the following vertically affected markets and segments with a view to supply of aerostructures and large commercial aircraft. The following tables set out the Parties' and their competitors' shares on these markets. ([79])

Table 1 - Global market for the supply of fuselage structures (2022 - 2024)

	2022 (value)	2023 (value)	2024 (value)
Spirit	**[10-20]%**	**[20-30]%**	**[10-20]%**
Boeing	**[0-5]%**	**[0-5]%**	**[0-5]%**
Combined	**[10-20]%**	**[20-30]%**	**[20-30]%**
Airbus Atlantic	[5-10]%	[0-5]%	[0-5]%
Leonardo	[0-5]%	[0-5]%	[0-5]%
MHI	[0-5]%	[0-5]%	[0-5]%
Latecoere	[0-5]%	[0-5]%	[0-5]%
BAE Systems	[0-5]%	[0-5]%	[0-5]%
Others	[60-70]%	[60-70]%	[60-70]%

Form CO, Table 28.

([78]) Form CO, paragraphs 331 et seq.

([79]) The Parties were not able to provide estimated market shares in terms of volume in respect of the supply of aerostructures or estimated market shares in terms of value in respect of the large commercial aircraft.

Table 2 - Global market for the supply of wing structures (2022 - 2024)

	2022 (value)	2023 (value)	2024 (value)
Spirit	**[5-10]%**	**[10-20]%**	**[5-10]%**
GKN	[10-20]%	[10-20]%	[10-20]%
MHI	[5-10]%	[5-10]%	[5-10]%
Montana Aerospace	[5-10]%	[0-5]%	[0-5]%
Sonaca	[0-5]%	[0-5]%	[0-5]%
Aernnova	[0-5]%	[0-5]%	[0-5]%
Others	[60-70]%	[50-60]%	[60-70]%

Form CO, Table 27.

Table 3 - Global market for the supply of slat systems (2022 - 2024)

	2022 (value)	2023 (value)	2024 (value)
Spirit	**[10-20]%**	**[20-30]%**	**[10-20]%**
GKN	[10-20]%	[10-20]%	[10-20]%
MHI	[5-10]%	[5-10]%	[5-10]%
Montana Aerospace	[5-10]%	[0-5]%	[0-5]%
Sonaca	[0-5]%	[0-5]%	[0-5]%
Aernnova	[0-5]%	[0-5]%	[0-5]%
Others	[50-60]%	[40-50]%	[50-60]%

Form CO, Annex A.101.

Table 4 - Global market for the supply of flap systems (2022 - 2024)

	2022 (value)	2023 (value)	2024 (value)
Spirit	**[5-10]%**	**[10-20]%**	**[5-10]%**
GKN	[10-20]%	[10-20]%	[10-20]%
MHI	[5-10]%	[5-10]%	[5-10]%
Montana Aerospace	[5-10]%	[0-5]%	[0-5]%
Sonaca	[0-5]%	[0-5]%	[0-5]%
Aernnova	[0-5]%	[0-5]%	[0-5]%
Others	[60-70]%	[50-60]%	[60-70]%

Form CO, Annex A.101.

Table 5 - Global market for the supply of pylon structures (2022 - 2024)

	2022 (value)	2023 (value)	2024 (value)
Spirit	**[10-20]%**	**[20-30]%**	**[20-30]%**
Boeing	**[0-5]%**	**[0-5]%**	**[0-5]%**
Combined	**[10-20]%**	**[20-30]%**	**[20-30]%**
Collins Aerospace	[30-40]%	[30-40]%	[30-40]%
GKN	[0-5]%	[0-5]%	[0-5]%
Senior	[0-5]%	[0-5]%	[0-5]%
Albany Engineered Composites	[0-5]%	[0-5]%	[0-5]%
Magellan	[0-5]%	[0-5]%	[0-5]%
Others	[40-50]%	[30-40]%	[30-40]%

Form CO, Table 29.

Table 6 - Global market for the supply of nacelles (2022 - 2024)

	2022 (value)	2023 (value)	2024 (value)
Spirit	**[10-20]%**	**[20-30]%**	**[20-30]%**
Boeing	**[0-5]%**	**[0-5]%**	**[0-5]%**
Combined	**[10-20]%**	**[20-30]%**	**[20-30]%**
Collins Aerospace	[30-40]%	[30-40]%	[30-40]%
Safran	[20-30]%	[10-20]%	[10-20]%
GKN	[0-5]%	[0-5]%	[0-5]%
MRAS	[0-5]%	[0-5]%	[0-5]%
Nordam	[0-5]%	[0-5]%	[0-5]%
Others	[20-30]%	[10-20]%	[20-30]%

Form CO, Annex A.101.

Table 7 - Global market for the supply of thrust reversers (2022 - 2024)

	2022 (value)	**2023 (value)**	**2024 (value)**
Spirit	**[10-20]%**	**[20-30]%**	**[10-20]%**
Collins Aerospace	[30-40]%	[30-40]%	[30-40]%
Safran	[20-30]%	[10-20]%	[10-20]%
GKN	[0-5]%	[0-5]%	[0-5]%
MRAS	[0-5]%	[0-5]%	[0-5]%
Nordam	[0-5]%	[0-5]%	[0-5]%
Others	[20-30]%	[20-30]%	[20-30]%

Form CO, Annex A.101.

Table 8 - Global market for the supply of other nacelle components (2022 - 2024)

	2022 (value)	**2023 (value)**	**2024 (value)**
Spirit	**[10-20]%**	**[20-30]%**	**[20-30]%**
Boeing	**[0-5]%**	**[0-5]%**	**[0-5]%**
Combined	**[10-20]%**	**[20-30]%**	**[20-30]%**
Collins Aerospace	[30-40]%	[30-40]%	[30-40]%
Safran	[20-30]%	[10-20]%	[10-20]%
GKN	[0-5]%	[0-5]%	[0-5]%
MRAS	[0-5]%	[0-5]%	[0-5]%
Nordam	[0-5]%	[0-5]%	[0-5]%
Others	[20-30]%	[10-20]%	[20-30]%

Form CO, Annex A.101.

Table 9 - Global market for empennage structures (2022 - 2024)

	2022 (value)	2023 (value)	2024 (value)
Spirit	**[0-5]%**	**[0-5]%**	**[0-5]%**
Boeing	**[0-5]%**	**[0-5]%**	**[0-5]%**
Combined	**[0-5]%**	**[0-5]%**	**[0-5]%**
GKN	[5-10]%	[5-10]%	[5-10]%
Aciturri	[5-10]%	[5-10]%	[5-10]%
Aernnova	[5-10]%	[5-10]%	[5-10]%
AVIC and COMAC	[5-10]%	[0-5]%	[0-5]%
Airbus Atlantic	[0-5]%	[0-5]%	[0-5]%
Others	[60-70]%	[60-70]%	[70-80]%

Form CO, Annex A.101.

Table 10 - Global market for single-aisle large commercial aircraft (2022 - 2024)

	2022 (volume)		2023 (volume)		2024 (volume)	
	Deliveries	Orders	Deliveries	Orders	Deliveries	Orders
Boeing	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**
Airbus	[50-60]%	[40-50]%	[50-60]%	[60-70]%	[60-70]%	[60-70]%
Embraer	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
UAC	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
COMAC	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%

Form CO, Annex A.108; Annex A.78.

Table 11 - Global market for single-aisle large commercial aircraft with 120-200 seats (2022 - 2024)

	2022 (volume)		2023 (volume)		2024 (volume)	
	Deliveries	Orders	Deliveries	Orders	Deliveries	Orders
Boeing	**[40-50]%**	**[30-40]%**	**[40-50]%**	**[30-40]%**	**[30-40]%**	**[20-30]%**
Airbus	[50-60]%	[30-40]%	[40-50]%	[50-60]%	[50-60]%	[40-50]%
Embraer	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%
COMAC	[0-5]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[20-30]%
UAC	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Form CO, Annex A.108; Annex A.78.

Table 12 - global market for twin-aisle large commercial aircraft (2022 - 2024)

	2022 (volume)		**2023 (volume)**		**2024 (volume)**	
	Deliveries	**Orders**	**Deliveries**	**Orders**	**Deliveries**	**Orders**
Boeing	**[40-50]%**	**[70-80]%**	**[50-60]%**	**[50-60]%**	**[40-50]%**	**[30-40]%**
Airbus	[50-60]%	[20-30]%	[40-50]%	[40-50]%	[50-60]%	[60-70]%

Form CO, Annex A.108; Annex A.78.

(82) Market shares provide useful first indications of the market power and the competitive importance of both the merging parties and their competitors. ([80]) However, the market investigation has revealed that regardless of Spirit's and Boeing's shares or the concentration levels in respect of a given market and / or segment for supply of aerostructures, Spirit holds a significant degree of market power based on the existing supply contracts with customers for aerostructures, i.e. in this instance, large commercial aircraft manufacturers.

(83) Once large commercial aircraft manufacturers decide to procure a specific aerostructure for a specific large commercial aircraft programme, they solicit offers from multiple suppliers, for instance, by means of a competitive tender or request for quote. In terms of types of solicited offers, large commercial aircraft manufacturers either provide the aerostructure supplier with specifications for the supplier to develop the design of the aerostructure in question (so-called 'build-to-spec') or provide the design of the aerostructure to the supplier (so-called 'build-to-print'). ([81])

(84) The market investigation has shown that, in general, there are sufficient alternative aerostructure suppliers to Spirit at this stage of the selection process that the large commercial aircraft manufacturers can chose from. Once they have received the offers, large commercial aircraft manufacturers typically select few aerostructure suppliers with whom they enter into negotiations. At the end of the negotiations, the large commercial aircraft manufacturers select their supplier and typically enter into a long-term contractual relationship (typically for the lifetime of the large commercial aircraft in question, i.e. decades) with this supplier on a build-to-spec or build-to-print basis. ([82])

(85) In a build-to-spec scenario, the aerostructure supplier in alignment with the large commercial aircraft manufacturer needs to go through various phases of pre-engineering, design development, stress testing, testing and reporting for certification and the certification itself, increasing production capacity, development of specific tools and assembly lines for the aerostructure in question all the way until actual production and supply. Depending, among others, on the exact type of aerostructure, its complexity, the suppliers' capacity and capabilities, the entire process from conclusion of the supply contract until

([80]) Non-horizontal Merger Guidelines, paragraph 24.

([81]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.A.4; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 6 et seq.

([82]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions E.A.2 and E.A.5; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 6 et seq.

production typically takes more than three years and involves costs of hundreds of millions or even billion of euros. ([83])

(86) In a build-to-print scenario, large commercial aircraft manufacturers provide the aerostructure supplier with the design of the aerostructure. Nonetheless, the aerostructure supplier still needs to at least increase its production capacity, as well as develop and adjust its specific tools and assembly lines for the aerostructure in question. The entire process is less time-consuming and less costly compared to the build-to-spec scenario but still - depending on several factors - typically takes more than two years and involves costs of dozens of millions of euros. ([84])

(87) In both scenarios, it is respectively equally time-consuming and costly to switch aerostructure suppliers. This can be explained by several reasons including but not limited to (i) the necessity for the new aerostructure supplier to increase its capacity, production lines and develop the industrial expertise, (ii) the need to obtain regulatory authorisations and supplier qualification; (iii) the time required to acquire the industrial know-how to manufacture fully equipped and assembled aerostructures; (iv) the necessity to adapt to the aircraft program ramp-up plan; (v) the necessity to recruit and train qualified workforce; and (vi) the complexity of organising the procurement of the raw materials and sub-components. ([85])

(88) The market investigation revealed that given the considerable time and investment required, it is either very difficult or even economically unfeasible for large commercial aircraft manufacturers with an existing supply contract to switch their supplier. ([86]) Thus, large commercial aircraft manufacturers essentially become dependent on their aerostructure suppliers once they have been selected. Existing supply contracts create a lock-in effect that grant the aerostructure supplier market power.

(89) On balance, the market power in relation to the supply of aerostructures stems from existing supply relationships with aerostructure customers rather than the level of market share at different component and sub-component level. The outcome of the non-horizontal analysis thus does not differ regardless of the specific segmentation at the component or sub-component level of different aerostructures. The same holds true in relation to the analysis of the other non-coordinated effects by means of the merged entity gaining access to commercially sensitive information.

(90) In respect of large commercial aircraft, Spirit has only two customers, i.e. Boeing and Airbus. Spirit currently supplies Airbus directly with fuselage structures, wing structures, and pylon structures. Spirit is Airbus' single source of supply for

([83]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.A.6; non-confidential minutes of a call with a competitor, 1 April 2025, paragraphs 11 et seq.; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 6 et seq.; non-confidential minutes of a call with a competitor, 25 March 2025, paragraphs 5 et seq.

([84]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.A.8; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 6 et seq.; non-confidential minutes of a call with a competitor, 25 March 2025, paragraphs 5 et seq.

([85]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions E.A.7 and E.A.9; non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 9 et seq.

([86]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions E.A.10 and E.A.11.

most of the aerostructures supplied externally for the programmes supplied by Spirit. ([87]) Indirectly, Spirit supplies a nacelle component to a third-party manufacturer that is incorporated into a more complex component. The third-party manufacturer supplies this more complex component incorporating Spirit's nacelle to Airbus. ([88]) Apart from that, Spirit does not supply Airbus directly or indirectly with nacelle structures or empennage structures. Spirit supplies Boeing directly with fuselage structures, wing structures, nacelles, and pylon structures, but not with empennage structures. ([89])

(91) Based on the existing supply contracts for large commercial aircraft, Spirit currently has market power towards Airbus and Boeing in relation to fuselage structures, wing structures, nacelle structures and pylon structures. Post-Transaction, Spirit would become part of the merged entity together with Boeing but would retain its supply contracts, and hence market power towards Airbus, including based on the supply contract with a third-party manufacturer that results in an indirect supply relationship with Airbus. For completeness, Spirit does not have market power towards other large commercial aircraft manufacturers, such as Embraer S.A. ('Embraer') or The Commercial Aircraft Corporation of China, Ltd. ('COMAC') because Spirit currently […] supply contracts (either directly or indirectly) with them. ([90])

(92) For completeness, the market investigation revealed that Spirit competes with other aerostructure suppliers on merits and does not stand out as an important innovator. ([91])

(93) For the above-mentioned reasons, in the following sections, the input foreclosure analysis is limited to the aerostructures currently supplied by Spirit to Airbus based on existing supply contracts based on direct supply relationships i.e. fuselage structures, wing structures, and pylon structures and based on an indirect supply relationship, i.e. nacelle structures. Given the same outcome of the full and partial input foreclosure analysis in respect of each of fuselage structures, wing structures, nacelle structures, and pylon structures, the following sections deal with full and partial input foreclosure in respect of all relevant aerostructures.

5.2.2.2.2.2. Ability to foreclose access to inputs

(94) Spirit's aerostructures supplied to Airbus directly and indirectly, i.e. fuselage structures, wing structures, nacelle structures, and pylon structures are respectively important inputs for large commercial aircraft: ([92])

(1) First, the time and cost of switching to alternative inputs is high. Depending, among others, on the exact type of aerostructure, its complexity, the suppliers' capacity and capabilities, switching typically takes more than three (definitely more than two) years and involves costs of hundreds of

([87]) Non-confidential reply of a customer to a request for information of 18 April 2025, paragraph 34.
([88]) Non-confidential minutes of a call with a customer, 16 April 2025, paragraphs 3 et seq.
([89]) Form CO, Table 14.
([90]) Form CO, Table 14.
([91]) Non-confidential minutes of a call with a competitor, 1 April 2025, paragraphs 20 et seq.; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 19 et seq.
([92]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 2 et seq.; non-confidential minutes of a call with a customer, 16 April 2025, paragraphs 7 et seq.

millions (definitely dozens of millions of euros). ([93]) Also, specifically in relation to Airbus, it would take Airbus considerable time and involve material costs to find alternative suppliers to Spirit or self-supply. ([94]) Similarly, the third-party manufacturer is effectively locked-in with Spirit given the required considerable time and high investment to switch the supplier of the nacelle component in question. ([95])

(2) Second, Spirit's aerostructures supplied to Airbus directly and indirectly are respectively critical components of large commercial aircraft without which large commercial aircraft could not be manufactured or effectively sold on the market. For instance, wings and wing components allow the large commercial aircraft to fly, fuselage structures present the core of the large commercial aircraft, and pylons connect engines and wings of large commercial aircraft. ([96])

(3) Lastly, Spirit's aerostructures supplied to Airbus directly and indirectly are a significant source of product differentiation for large commercial aircraft. Aerostructures largely determine key competitive factors of a large commercial aircraft, such as its performance, energy-consumption, operational efficiency, and cost of production. ([97])

(95) Furthermore, Airbus does not have viable alternative suppliers to Spirit in respect of Spirit's aerostructures supplied to Airbus directly and indirectly based on existing supply contracts. It would take Airbus considerable time and involve material costs to find alternative suppliers to Spirit. The time and cost to sponsor a new supplier not yet active in the same type of aerostructure or self-supply would be even higher. ([98]) Similarly, the third-party manufacturer is effectively locked-in with Spirit given the required considerable time and high investment to switch the supplier of the nacelle component. ([99])

(96) The fact that certain aerostructure suppliers are approved by Airbus for the supply of certain specific aerostructures does not provide Airbus with a viable, timely and cost-efficient option to switch to these alternative suppliers, as even these approved suppliers still need to consider for the new specific aerostructure to be supplied, among other factors, (i) the necessity to increase capacity, adapt the production lines and develop the industrial expertise, (ii) the need to obtain regulatory authorisations; (iii) the time required to acquire the industrial know-how to manufacture fully equipped and assembled aerostructures; (iv) the

([93]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions E.A.6, E.A.7, E.A.8, E.A.9 and E.A.13; non-confidential minutes of a call with a competitor, 1 April 2025, paragraphs 11 et seq.; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 6 et seq.

([94]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 9 et seq.; non-confidential reply of a customer to a request for information of 18 April 2025, paragraphs 39 et seq.; 49 et seq.

([95]) Non-confidential minutes of a call with a customer, 16 April 2025, paragraphs 9 et seq.

([96]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 4 et seq.

([97]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 6 et seq.

([98]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions E.A.6, E.A.7, E.A.8, E.A.9; non-confidential minutes of a call with a competitor, 1 April 2025, paragraphs 11 et seq.; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 6 et seq.; non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 9 et seq.

([99]) Non-confidential minutes of a call with a customer, 16 April 2025, paragraphs 9 et seq.

necessity to adapt to the aircraft program ramp-up plan; (v) the necessity to recruit and train qualified workforce; and (vi) the complexity of organising the procurement of the raw materials and sub-components. ([100])

(97) Above that, in respect of aerostructures that Spirit supplies to Airbus directly and indirectly, Airbus does not own or have at its disposal all the relevant IP rights. Should the merged entity engage in input foreclosure, Airbus - in order to be able to switch suppliers, self-supply or sponsor market entry - would need to negotiate with the merged entity conditions for the transfer or licence of these IP rights. In addition, Spirit uses proprietary specific industrial processes to supply Airbus with aerostructures where a technology or industrial know-how transfer to Airbus or an alternative supplier would be necessary. ([101]) Similarly, the third-party manufacturer would not have all relevant IP rights in order to effectively switch to an alternative aerostructure supplier for nacelles. ([102])

(98) Moreover, the existing supply contracts between Airbus and Spirit do not provide Airbus with sufficient protections that would render the merged entity unable to engage in input foreclosure. The legal remedies provided for in the supply contracts appear to have a relatively small compensatory value as opposed to the high value of Airbus' large commercial aircraft and as opposed to the considerable time and cost of Airbus having to switch suppliers, self-supply or sponsor market entry as well as the associated losses. ([103])

(99) Therefore, for the reasons set out above, the Commission concludes that the merged entity would have the ability to engage in full or partial input foreclosure in respect of Spirit's aerostructures supplied to Airbus directly and indirectly, i.e. fuselage structures, wing structures, nacelle structures, and pylon structures.

5.2.2.2.2.3. Incentive to foreclose access to inputs

(100) The incentive to foreclose depends on the degree to which foreclosure would be profitable. The vertically integrated firm will take into account how its supplies of inputs to competitors downstream will affect not only the profits of its upstream division, but also of its downstream division. Essentially, the merged entity faces a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers.

(101) In the present case, the incentives of the merged entity to engage in input foreclosure differ between aerostructures supplied directly by Spirit to Airbus, i.e. fuselage, wing and pylon structures and aerostructures supplied indirectly by Spirit to Airbus via the third-party manufacturer, i.e. nacelle structures.

(102) In respect of aerostructures supplied directly by Spirit to Airbus, if the merged entity were to stop supplying Airbus with aerostructures based on the existing supply contracts, this would lead to reduced sales of the merged entity's aerostructures, and hence losses at the upstream supply of aerostructure level.

([100]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 9 et seq.

([101]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 41 et seq.

([102]) Non-confidential minutes of a call with a customer, 16 April 2025, paragraphs 13 et seq.

([103]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 9 et seq.; non-confidential reply of a customer to a request for information of 18 April 2025, paragraphs 51 et seq.

Nonetheless, such a strategy would be profitable for the merged entity. Already the Parties' margins in relation to their respective commercial segments, i.e. Spirit's margins in respect of supplying Airbus with aerostructures for large commercial aircraft and Boeing's margins in respect of sales of its large commercial aircraft show that Spirit's margins generated with supply of aerostructures to Airbus upstream are [margin data]. ([104])

(103) It follows that it would be profitable for the merged entity to forego Spirit's non-profitable business of supplying aerostructures directly to Airbus to the benefit of Boeing's profitable business of selling large commercial aircraft. This is aggravated by the fact that Boeing has [margin data].

(104) Moreover, implementing any form of an input foreclosure strategy in respect of aerostructures supplied directly by Spirit to Airbus by the merged entity would very likely result in demand for large commercial aircraft being diverted away from Airbus to the merged entity. Boeing is Airbus' only viable similarly sized competitor for large commercial aircraft globally. Should Airbus - as a consequence of the merged entity's input foreclosure strategies - be unable to supply its own customers with large commercial aircraft, these customers would effectively need to source large commercial aircraft from Boeing. Other large commercial aircraft manufacturers, such as Embraer and / or COMAC are unlikely to be able to address Airbus' customers' diverted demand. ([105])

(105) Not least for this reason, it is immaterial to what extent Boeing currently faces production capacity constraints. Large commercial aircraft customers would need to source from Boeing as the only other viable similarly sized alternative supplier of large commercial aircraft. Furthermore, any delays in Airbus' ability to supply its customers with large commercial aircraft would likely grant the merged entity time to invest in increasing its own production capacity to address the diverted demand. In any event, [internal forecast of demand]. ([106])

(106) Therefore, for the reasons set out above, the Commission concludes that the merged entity would have the incentive to engage in full or partial input foreclosure in respect of aerostructures supplied directly by Spirit to Airbus, i.e. fuselage, wing and pylon structures. ([107])

(107) In respect of aerostructures supplied indirectly by Spirit to Airbus via the third-party manufacturer, i.e. nacelle structures, the merged entity does not appear to have sufficient incentives to engage in full or partial input foreclosure. Spirit generates profitable aftersales with airline customers that need aftersales services for their large commercial aircraft incorporating the nacelle structures in question. Ceasing to supply nacelle structures to the third-party manufacturer or applying worse supply conditions would result in the merged entity foregoing or at least limiting the income of these profitable aftersales. Furthermore, the third-party manufacturer will cease to supply the more complex component incorporating Spirit's nacelle component to Airbus because Airbus is phasing out / terminating the relevant large commercial aircraft programme. Thus, the merged entity would be foregoing profitable aftersales completely or at least partially without the ability to offset these losses by gaining customers for the supply of the nacelle

([104]) Form CO, Table 32.

([105]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 48 et seq.

([106]) Contrary to claims made at Form CO, paragraphs 316 et seq.

([107]) Also supported by Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.A.1.

components that will soon become obsolete. Above that, Airbus decided some time ago to source nacelles and nacelle components directly from nacelle suppliers rather than from other suppliers, such as the third-party manufacturer. Thus, the merged entity engaging in full or partial input foreclosure would not affect Airbus' current or future procurement of nacelle components. Moreover, the merged entity does not compete with the third-party manufacturer for the supply of the more complex component incorporating Spirit's nacelle component. Thus, there is no likely and material demand for large commercial aircraft and / or the more complex component incorporating Spirit's nacelle component that the merged entity could divert from Airbus and / or the third-party manufacturer and no opportunity for the merged entity to recoup the losses incurred by not selling the nacelle structure and not providing the profitable aftersales services. ([108])

(108) Therefore, for the reasons set out above, the Commission concludes that the merged entity would not have the incentive to engage in full or partial input foreclosure in respect of aerostructures supplied indirectly by Spirit to Airbus, i.e. nacelle structures.

5.2.2.2.2.4. Overall likely impact on effective competition

(109) In general, a merger will raise competition concerns because of input foreclosure when it would lead to increased prices in the downstream market thereby significantly impeding effective competition.

(110) Implementing an input foreclosure strategy by the merged entity in respect of aerostructures supplied directly by Spirit to Airbus, i.e. fuselage, wing and pylon structures would likely significantly increase Airbus' cost structure, and hence sales prices since switching suppliers, self-supplying or sponsoring market entry would be associated with very high costs for Airbus. Since Airbus accounts for a considerable share of the global large commercial aircraft markets, increases in the prices of Airbus' large commercial aircraft would very likely result in the increase of the overall price level of large commercial aircraft globally.

(111) Implementing an input foreclosure strategy by the merged entity in respect of aerostructures supplied directly by Spirit to Airbus, i.e. fuselage, wing and pylon structures could also negatively impact innovation on Airbus' part. ([109])

(112) In light of the above, the Commission finds that a full or partial input foreclosure strategy of the merged entity in respect of aerostructures supplied directly by Spirit to Airbus, i.e. fuselage, wing and pylon structures would have a significant impact on effective competition.

5.2.2.2.3. Conclusion

(113) In view of the reasons set out above, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market in respect of aerostructures supplied directly by Spirit to Airbus, i.e. fuselage structures, wing structures with the segments for slat systems and flap systems as well as pylons.

([108]) Non-confidential minutes of a call with a customer, 16 April 2025, paragraphs 4 et seq.
([109]) Non-confidential reply of a customer to a request for information of 18 April 2025, paragraph 84.

5.2.2.3. Customer foreclosure

5.2.2.3.1. The Parties' view

(114) The Parties submit that the Transaction will not lead to full or partial customer foreclosure for several reasons.

(115) First, Boeing cannot be considered an important customer with a significant degree of market power because Boeing accounts only for about [30-40]% of large commercial aircraft sold in terms of orders and a limited share of demand for aerostructures for large commercial aircraft, regional aircraft, business jets and military aircraft. Moreover, Spirit is already Boeing's largest third-party supplier of aerostructures and much larger than other Boeing's suppliers. ([110])

(116) Second, Spirit is unlikely to be able to serve Boeing's demand for all aerostructures for its large commercial aircraft without substantial time and investment. […]. ([111])

(117) Third, Boeing has a strategy to diversify and secure its supply chain as well as multi-source which would be inconsistent with any strategy to source all of its aerostructures from Spirit post-Transaction. ([112]) Furthermore, the production of large commercial aircraft is projected to increase in the coming years which would offset any loses as a result of aerostructure suppliers losing the merged entity as a customer. ([113])

(118) Fourth, Boeing has long-term supply contracts with aerostructure suppliers [information relating to Boeing's contractual supply arrangements]. ([114])

(119) Fifth, there is a sufficiently large alternative customer base that aerostructure suppliers could supply instead of Boeing. ([115])

(120) Lastly, the merged entity implementing any form of a customer foreclosure strategy would not have a significant impact on the supply of aerostructures because Boeing's aerostructure suppliers could serve Airbus instead of Boeing. ([116])

5.2.2.3.2. The Commission's assessment

5.2.2.3.2.1. Market power

(121) An important prerequisite for customer foreclosure concerns to arise is that the merged entity must have a significant degree of market power in the downstream market.

(122) Boeing's shares on the downstream markets for large commercial aircraft are considerable. Above that, Boeing is the only other viable similarly sized alternative supplier of large commercial aircraft to Airbus globally. Therefore, Boeing enjoys a significant degree of market power on the downstream markets and segments for large commercial aircraft.

([110]) Form CO, paragraphs 339 et seq.
([111]) Form CO, paragraphs 343 et seq.
([112]) Form CO, paragraphs 369 et seq.
([113]) Form CO, paragraphs 348 et seq.
([114]) Form CO, paragraph 350.
([115]) Form CO, paragraphs 351 et seq.
([116]) Form CO, paragraphs 386 et seq.

(123) Existing supply contracts for the supply of aerostructures grant market power to aerostructure suppliers regardless of the aerostructure suppliers' exact shares, not however to the aerostructure customers, such as large commercial aircraft manufacturers. Large commercial aircraft manufacturers essentially become dependent on their aerostructure suppliers in this respect. The market power of large commercial aircraft manufacturers stems primarily from their market share.

(124) Therefore, in the following sections, the customer foreclosure analysis is not limited to the aerostructures currently supplied either directly or indirectly by Spirit to any particular customer based on existing supply contracts, but rather concerns all relevant Spirit's aerostructures, i.e. fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, and empennage structures. Given the same outcome of the full and partial customer foreclosure analysis in respect of each relevant aerostructure, the following sections deal with full and partial customer foreclosure in respect of all aerostructures.

5.2.2.3.2.2. Ability to foreclose access to downstream markets

(125) The results of the market investigation confirmed that Boeing is an important customer in relation to fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, and empennage structures. Aerostructure suppliers typically generate a considerable share of their sale revenues with supplying aerostructures to Boeing and would suffer material harm to their business operations if they were no longer able to supply Boeing. ([117])

(126) The results of the market investigation further revealed that there is not a sufficiently large customer base, at present or in the future, that aerostructure suppliers could turn to. Boeing has considerable shares on the downstream markets for large commercial aircraft, accounts for a considerable procurement volume, and enjoys a position as the only other viable similarly sized alternative supplier of large commercial aircraft to Airbus globally. Other large commercial aircraft manufacturers, such as Airbus, Embraer or COMAC would not be able to absorb Boeing's demand. In particular, the demand of smaller large commercial aircraft manufacturers, such as Embraer or COMAC, is very limited compared to Boeing. ([118]) This holds true at the present and even for the foreseeable future when taking account of the projected growth of the downstream markets for large commercial aircraft in the coming years as was confirmed by a majority of market players that expressed an opinion. ([119]) Similarly, not even manufacturers of other types of aircraft, such as business jets or military aircraft would be able to absorb

([117]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.B.2; non-confidential minutes of a call with a competitor, 4 April 2025, paragraph 21.

([118]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.B.3; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 21 et seq.

([119]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.B.5; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 21 et seq.

Boeing's demand, not least given their much lower demand compared to Boeing. ([120])

(127) Moreover, the market investigation indicated that losing Boeing as a customer would materially harm aerostructure suppliers' business because they need to rely on economies of scale. ([121]) Above that, losing Boeing as a (potential) customer, and hence losing a (potential) crucial revenue stream would significantly reduce the aerostructure suppliers' ability and incentive to invest in cost reductions, research & development, and product quality of aerostructures. ([122])

(128) The majority of market players that expressed an opinion confirmed that aerostructure suppliers would not be able to price more aggressively or deploy other effective and timely strategies to maintain their sales levels. Given the current market circumstances, aerostructure suppliers already offer very competitive prices and sales conditions that they could not economically viably further improve. This is highlighted by the fact that aerostructure suppliers currently supply aerostructures at neutral or even negative margins. ([123])

(129) The results of the market investigation further revealed that there are no legal restrictions, such as safety or other regulations preventing Boeing from switching from its current aerostructure suppliers to Spirit, that would prevent the merged entity from engaging in customer foreclosure. ([124])

(130) Therefore, for the reasons set out above, the Commission concludes that the merged entity would have the ability to engage in full or partial customer foreclosure in relation to fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, and empennage structures.

5.2.2.3.2.3. Incentive to foreclose access to downstream markets

(131) The results of the market investigation indicated that it would not be profitable for the merged entity to engage in customer foreclosure in relation to fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, and empennage structures. ([125]) On balance, the merged entity would not be able to offset the costs and risks associated with switching, i.e. procuring aerostructures from Spirit rather than competing aerostructure suppliers by any possible gains. Switching suppliers typically takes more than three (definitely more than two) years and involves costs of hundreds of millions (definitely dozens

([120]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.B.4; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 21 et seq.

([121]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.B.6; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 19 et seq.; non-confidential minutes of a call with a competitor, 3 April 2025, paragraphs 22 et seq.

([122]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.B.7; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 19 et seq.; non-confidential minutes of a call with a competitor, 3 April 2025, paragraphs 23 et seq.

([123]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.B.8; non-confidential minutes of a call with a competitor, 4 April 2025, paragraph 22.

([124]) Non-confidential minutes of a call with a competitor, 3 April 2025, paragraph 30.

([125]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions E.B.9, and E.B.1.

of millions of euros). ([126]) The merged entity would thus need to spend considerable time and cost to switch from competing aerostructure suppliers to Spirit for each aerostructure in question only in order to internalise a business that is unlikely rendering profits. ([127]) The merged entity would unlikely be able to recoup any of the said costs by increasing prices of aerostructures to the extent in order to achieve positive margins or increasing prices of its large commercial aircraft given the constraint exercised by Airbus and large commercial aircraft customers. ([128])

(132) Furthermore, Spirit does currently not appear to have […] to address Boeing's demand for aerostructures. Spirit, including, in particular, Spirit's machinery lines, integrated production benches, chemical milling lines, production facilities, and warehouses, […]. ([129]) Moreover, in general, given the time and cost involved in developing and producing an aerostructure, aerostructure suppliers do not keep spare capacity but typically expand capacity to serve a specific customer's platform with a specific aerostructure. The merged entity would need to considerably invest in its production capacity for each aerostructure in question. ([130]) The merged entity would need to incur considerable cost in order to expand its production capacity for each aerostructure in question as well which would render any customer foreclosure strategy even less profitable.

(133) Lastly, Boeing has been historically pursuing a strategy of dual-sourcing aerostructures in order to maintain a competitive supply base and mitigate risks in the supply chain. ([131]) This further diminishes the incentive for the merged entity to engage in full or partial customer foreclosure.

(134) Therefore, for the reasons set out above, the Commission concludes that the merged entity would not have the incentive to engage in full or partial customer foreclosure in relation to fuselage structures, wing structures with segments for slat systems and flap systems, pylon structures, nacelles with segments for thrust reversers and other nacelle components, and empennage structures. ([132])

([126]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, questions E.A.6, E.A.7, E.A.8, and E.A.9; non-confidential minutes of a call with a competitor, 1 April 2025, paragraphs 11 et seq.; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 6 et seq.

([127]) Non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 22 et seq.; non-confidential minutes of a call with a competitor, 3 April 2025, paragraphs 18 et seq.

([128]) Non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 23 et seq.

([129]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.B.10; Form CO, paragraphs 374 et seq. (and cited annexes).

([130]) Non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 23 et seq.; non-confidential minutes of a call with a competitor, 3 April 2025, paragraphs 18 et seq.

([131]) Form CO, paragraphs 289 et seq. (including cited annexes).

([132]) For the sake of completeness, it should be noted that the Transaction does not affect the incentive of Boeing and / or the merged entity post-Transaction to procure new aerostructures from third parties as opposed to manufacturing these in-house in one way or the other. In general, Boeing needs to consider for each new large commercial aircraft project whether to produce specific aerostructures in-house or whether to procure these from independent third party aerostructure suppliers. Boeing needs to consider in this respect elements, such as the need for heavy investments, carrying the risk of the aerostructure business, regulatory accountability, control over safety issues, ramp-up flexibility and reduced lead-time variance, control over IP rights, etc. Not least based on these elements, Boeing takes the said decisions. The Transaction will not change it. See non-confidential minutes of a call with a competitor, 3 April 2025, paragraphs 18 et seq.

5.2.2.3.2.4. Overall likely impact on effective competition

(135) Given the lack of incentive for the merged entity's potential customer foreclosure strategy post-Transaction, it does not appear necessary to assess in detail the possible effects that the merged entity's customer foreclosure strategy would have on the market.

5.2.2.3.3. Conclusion

(136) Therefore, in light of the results of the market investigation and the evidence available to it, the Commission considers that that it is not likely that the merged entity would have the incentive to engage in a customer foreclosure strategy post-Transaction. Thus, the Commission concludes that the Transaction does not give rise to serious doubts in relation to customer foreclosure.

5.2.2.4. Access to commercially sensitive information

5.2.2.4.1. The Parties' view

(137) The Parties submit that the Transaction will not lead to other non-coordinated effects by means of gaining access to commercially sensitive information for several reasons.

(138) First, the merged entity would not have access to meaningful commercially sensitive information concerning Airbus. Spirit has generally only access to the information on the current and future costs of aerostructures that Spirit supplies to Airbus, the number of aerostructures supplied to Airbus, and some of the IP and design information related to the aerostructures that Spirit supplies to Airbus. ([133])

(139) Second, the merged entity would not be able to make use of the information that Spirit holds in relation to Airbus. The merged entity would not have information on the entire cost structure of Airbus' large commercial aircraft. Furthermore, the number of orders and deliveries is generally publicly available. ([134])

(140) Third, Spirit currently has, and the merged entity will have protocols in place ensuring commercially sensitive information concerning Airbus is properly handled. Spirit's employees are subject to non-disclosure agreements. Spirit's employees that are not dedicated to Airbus' aerostructures at a specific site, do not have access to commercially sensitive information concerning Airbus in this respect. Moreover, the merged entity will introduce additional measures to ensure commercially sensitive information concerning Airbus is properly handled post-Transaction.

5.2.2.4.2. The Commission's assessment

(141) The market investigation has revealed that the analysis of non-coordinated effects by means of gaining access to commercially sensitive information differs depending on whether the information in question relates to Airbus, the third-party manufacturer, or aerostructure suppliers.

([133]) Form CO, paragraphs 405 et seq.
([134]) Form CO, paragraph 408 et seq.

5.2.2.4.2.1. Commercially sensitive information related to Airbus

(142) Post-Transaction, the merged entity would gain access to the following very sensitive commercial information related to Spirit's aerostructures supplied to Airbus, and Airbus, in particular: ([135])

(1) design and specifications of Spirit's aerostructures supplied to Airbus, including based on critical IP rights for Airbus, as well as innovations to the design and models of current and future aerostructures for Airbus;

(2) Airbus' purchases of aerostructures, including information on prices and volumes;

(3) processes and know-how related to the production of Airbus' aerostructures, costs of production of Airbus' aerostructures, which represent a significant part of the production costs of a large commercial aircraft, orders of commercial aircraft and production capacities, and production planning and scheduling.

(143) The merged entity, as the only other viable similarly sized alternative supplier of large commercial aircraft would be able to meaningfully use this sensitive commercial information to adapt its competitive strategy vis-à-vis Airbus, for instance, in relation to the merged entity's sales prices, production costs, production rates, production process, design, innovations, and future research & development plans. ([136])

(144) Boeing and Airbus are the two main global equally sized competitors in relation to the highly competitive, innovative and concentrated market for large commercial aircraft. As such, the merged entity could post-Transaction also use Airbus' optimisations to solve its own engineering bottlenecks, reduce its own costs by benchmarking Airbus' process efficiencies, and / or adapt its production and ramp-up plans to Airbus. ([137])

(145) The merged entity would have the incentive to make use of Airbus' sensitive commercial information for the same reasons as engaging in input foreclosure.

(146) Nonetheless, the Commission finds that it can be left open whether the concentration raises serious doubts as to its compatibility with the internal market in respect of aerostructures supplied directly by Spirit to Airbus, i.e. fuselage structures, wing structures with the segments for slat systems and flap systems as well as pylons based on access to commercially sensitive information related to Airbus because any concerns in this respect will be addressed by the commitments as explained below.

5.2.2.4.2.2. Commercially sensitive information related to the third-party manufacturer and aerostructure suppliers

(147) Post-Transaction, the merged entity would gain access to commercially sensitive information on other aerostructure suppliers of Boeing in respect of each relevant

([135]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraph 63.

([136]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraph 65.

([137]) Non-confidential reply of a customer to a request for information of 18 April 2025, paragraph 88 et seq.

aerostructure, such as the sales price, sales volumes, costs, and information on manufacturing methods. ([138])

(148) However, the merged entity would not be incentivised to meaningfully use this sensitive information to adopt its competitive strategy vis-à-vis the other aerostructure suppliers. The commercially sensitive information that the merged entity would obtain would be specific to customised aerostructures supplied to Boeing* that Spirit could not readily use in relation to aerostructures that Spirit currently offers and supplies to Boeing and other customers. In order to make use of the information for the merged entity to gain an edge compared to aerostructures supplied by other suppliers to other customers, the merged entity would need to adjust its production process, i.e. invest significantly into its capacity and production process, thereby incurring cost and spending time similar to switching production for an aerostructure supplier. ([139]) For the reasons the merged entity is unlikely to have an incentive to engage in customer foreclosure, the merged entity would not have the incentive to do that.

(149) Post-Transaction, the merged entity would also gain access to commercially sensitive information on the third-party manufacturer's sales price, volumes, and production processes, i.e. not however commercially sensitive information on Airbus. ([140]) For the reasons the merged entity is unlikely to have an incentive to engage in customer foreclosure, the merged entity would not have the incentive to do that. Most importantly, on balance, the merged entity would not be able to offset the costs and risks associated with using the information, i.e. investing significantly into its capacity and production process to adapt its production process in line with the information, by any possible gains.

(150) Moreover, the Commission notes that during the market investigation no concerns were raised in this respect. ([141])

(151) In conclusion, in view of the reasons set out above, the Commission finds that the concentration does not raise serious doubts as to its compatibility with the internal market based on access to commercially sensitive information related to the third-party manufacturer or aerostructure suppliers.

5.2.3. *Business jets*

5.2.3.1. Introduction

(152) As mentioned in paragraph (32), Boeing Business Jet ('BBJ') sells ultra-large-cabin business jets for private, charter, corporate, or head-of-state operations. Boeing's business jets are repurposed large commercial aircraft, combining Boeing's commercial aviation technology with the luxury and customization

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([138]) Replies to Questionnaire to Competitors and Customers - Aerostructures for Large Commercial Aircraft, question E.C.1; non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 25 et seq.

* Should read: 'Airbus'

([139]) Non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 25 et seq.; non-confidential minutes of a call with a competitor, 3 April 2025, paragraphs 31 et seq.

([140]) Non-confidential minutes of a call with a customer, 16 April 2025, paragraphs 21 et seq.

([141]) Non-confidential minutes of a call with a competitor, 4 April 2025, paragraphs 28 et seq.; non-confidential minutes of a call with a competitor, 3 April 2025, paragraphs 34 et seq.; non-confidential minutes of a call with a customer, 16 April 2025, paragraphs 21 et seq.

needed for private and business jet use. ([142]) Boeing's activities with regard to business jets are limited, amounting to […] between 2021 and 2023 globally and, […] and […] between 2021 and 2023 in the EEA.

(153) As mentioned in paragraph (35), Spirit is a manufacturer of aerostructures, including for business jets. Spirit's core products include fuselage structures, wing structures, pylon structures, nacelles, and empennage structures.

(154) More specifically, Spirit currently supplies a number of (i) aircraft manufacturers such as Boeing, Airbus and Bombardier as well as (ii) engine manufacturers who use Spirit parts to develop their aircraft engines (e.g. Rolls-Royce, Pratt & Whitney). Table 13 provides an overview of Spirit's current supplies of aerostructures for business jets:

Table 13: Spirit's supplies of aerostructures for business jets

Customer	**Aerostructures**	**Spirit Location**
Boeing	Fuselages, Wings, Pylons, Nacelles	Wichita, Belfast, Casablanca, Subang*
Airbus	Fuselages, Wings, Pylons	Wichita, Belfast, Casablanca, Subang
Bombardier	Fuselages, Nacelles	Belfast, Casablanca
HondaJet	Fuselages	Belfast
Rolls Royce ('RR')	Nacelles, Nacelle components (sold by RR to Airbus, Bombardier, Gulfstream and in future Dassault) ([143])	Wichita, Belfast
Pratt & Whitney ('P&W')	Nacelle components (sold by P&W to Dassault)	Belfast

Source: Form CO, paragraphs 130, ff.

(155) As listed in the table Spirit supplies:

(a) Fuselage to Bombardier, Airbus and Boeing. ([144]) Also, Spirit has contracted to supply fuselage structure to the Honda Aircraft Company ('Honda') for a new light business jet with a capacity of 11 seats ([information relating to Spirit's contractual supply arrangements])

(b) Nacelles and pylons for Boeing and Bombardier, as well as two engine manufacturers - Pratt & Whitney and Rolls-Royce. Airbus, Bombardier, Gulfstream and Dassault use Rolls Royce engines with Spirit's nacelles for some of their business jet models. [Information relating to Spirit's contractual supply

([142]) Boeing's business jets are based on large commercial aircraft, and therefore the BBJ business depends on the pipeline of new aircraft designs that are developed for the large commercial aircraft business.

* Should read: 'Wichita, Subang'

([143]) Form CO para. 130; Reply to Q.39, PN RFI 2; and minutes from a call with an engine manufacturer on 2 October 2024.

([144]) Form CO, paragraph 131.

arrangements]. With regards to Pratt & Whitney, Spirit supplies nacelles components for one of its engines. ([145])([146])

(156) For completeness, the commercial relationship for the supply of nacelles is between the engine manufacturer and Spirit. Spirit has no commercial relationship with Embraer, Gulfstream, or Dassault for the supply of aerostructures, including nacelles.

(157) The Transaction gives rise to the following affected markets:

(a) Upstream markets for aerostructures:

(1) global market for the supply of fuselage structures;

(2) global market for the supply of wing structures with the segments for (i) slat systems, and (ii) flap systems;

(3) global market for the supply of pylon structures;

(4) global market for the supply of nacelles with the segments for (i) thrust reversers, and (ii) other nacelle components;

(5) global market for empennage structures.

(b) Downstream market:

(1) Global market for business jets (potentially based solely on large commercial aircraft).

5.2.3.2. Input foreclosure

5.2.3.2.1. The Parties' view

(158) First, the Parties argue that Spirit currently directly supplies aerostructures to (i) two OEMs focused primarily on large commercial aircraft, Airbus and Boeing, whose business jets are based on their large commercial aircraft models and (ii) one OEM whose business jets are built specifically to be business jets, enabling smaller numbers of passengers to board - Bombardier. ([147])

(159) Second, as mentioned in paragraphs (74) to (79), the Parties argue that the Transaction is unlikely to have anticompetitive effects on Airbus, the only other major customer of Spirit's aerostructures for (business jets based on) large commercial aircraft apart from Boeing. Indeed, Airbus is protected by long-term supply contracts with Spirit that prevent input foreclosure and ensure a steady supply of aerostructures without price increases or quality degradation. Additionally, Airbus has numerous alternative suppliers and significant in-house capabilities to manufacture its own aerostructures, including owning most of the necessary intellectual property rights. Spirit's aerostructures are also not considered an essential input for Airbus's production, and the merged entity would not have an economic incentive to engage in input foreclosure due to production capacity constraints and Airbus's ability to find alternative solutions. Overall, the existence of alternative suppliers, Airbus's in-house capabilities, and the lack of market power by Spirit mean that the merger would not lead to increased prices

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([145]) Form CO, paragraphs 132-133.

([146]) For Pratt & Whitney's V2500 engine, namely inlets, fan cowl, and engine build units ("EBUs").

([147]) For completeness, Spirit currently also supplies fuselage structures to Honda's HondaJet Echelon, which is currently in development.

or barriers to entry for new competitors, and Airbus is well-protected against potential anticompetitive behaviours by the merged entity.

(160) Third, Spirit's revenues from Bombardier are small and comprised only c. […]% of Spirit's total revenues in 2024. Spirit is not a critical supplier to Bombardier either. Spirit's aerostructures accounted for only […]% of Bombardier's total cost of sales. Hence, the Parties consider that the Transaction will not result in input foreclosure vis-a-vis Bombardier as Boeing has:

(a) No ability to foreclose Bombardier in business jets because:

(1) **Bombardier is protected by its contracts with Spirit**. [Information relating to Spirit's contractual supply arrangements]. The contracts set out price and quality requirements for these aerostructures. If the Merged Entity were to materially breach the contracts, Bombardier would have sufficient remedies to protect itself against any input foreclosure attempt [information relating to Spirit's contractual supply arrangements].

(2) **No market power.** As explained above, Spirit's worldwide share in aerostructures (overall), and fuselage structures is below 30% in 2024. This is also the case in empennage structures, where Spirit is a marginal player with a [0-5]% share worldwide in 2024.

(a) Bombardier can switch to other suppliers. Bombardier already owns most of the IP necessary to manufacture the relevant aerostructures. If the Merged Entity were to materially breach the contracts, […]. This would enable Bombardier to easily switch to alternative suppliers, including Bombardier-qualified suppliers, *e.g.*, GKN, Airbus Atlantic, AIDC, and others. They all compete with Spirit and represent a viable alternative for Bombardier.

(b) Bombardier can self-supply. It already self-supplies some of the relevant aerostructures and reportedly has excess manufacturing capability.

(3) None of the aerostructures Spirit supplies for the Global 7500 are a sufficiently "important input".[10] The value of the aerostructures supplied by Spirit accounts for only c. […]% of the Global 7500 list price, which is below the level at which input foreclosure concerns can plausibly arise. Based on Bombardier's go-to market strategy, the relevant aerostructures are not a source of differentiation for customers either.

(b) No incentive to foreclose Bombardier in business jets because:

(1) Boeing has a [0-5]% share worldwide in business jets. In 2024, Boeing delivered only […] jets and received […], all outside of the EEA. In the prior two years, Boeing also […] in the EEA.

(2) Any hypothetical foreclosure strategy would be more likely to benefit players whose businesses are concentrated on business jets, such as Gulfstream, whose offerings are similar to Bombardier's:

(a) Boeing's and Bombardier's business jets are very different. Most of Bombardier's jets are [information on price structure] than Boeing's smallest jet, the Boeing Business Jet ("BBJ") 737-7, and their cabins are […]% smaller than the size of the BBJ 737-7. Even Bombardier's largest jet currently in operation, the Global 7500, is [information on price structure] and has a cabin that is half the size of Boeing's smallest jet (BBJ 737-7).9*

(b) The Global 7500 is much more similar to Gulfstream's G700. These jets are almost identical when compared based on price (USD 78 vs. 80 million (EUR 72 vs 74 million)) cabin volume (2,637 vs. 2,603 cubic feet), and range (7,474 vs. 7,365 nautical miles).

(c) No impact on effective competition in business jets because:

(1) Regardless of any hypothetical foreclosure strategy by the Merged Entity, Bombardier's costs could not plausibly be raised enough so as to impede effective competition in business jets.

(2) End customers can choose from multiple business jet suppliers, including Embraer, Gulfstream, Dassault, and Honda.

(3) Boeing has a [0-5]% 2024 worldwide share and it is simply implausible that any foreclosure strategy would turn the market in its favour and leave leading business jets OEMs like Bombardier behind. This is especially so given that other major OEMs, such as Textron Aviation, Gulfstream, Embraer and others, do not source aerostructures from Spirit for their business jets.

5.2.3.2.2. The Commission's assessment

5.2.3.2.2.1. Market power

(161) Tables 1 to 9 in section 5.2.2.2.2.1, provide the combined market shares of the Parties as well as their competitors with regards to the global markets for the supply of: (i) fuselage structures, (ii) wing structures, (iii) slat systems, (iv) flap systems, (v) pylon structures, (vi) nacelles, (vii) thrust reversers, (viii) other nacelle components and (ix) empennage structures.

(162) As mentioned in paragraph (45), the global market for business jets is not affected by the Transaction as Boeing's market share in the overall market for business jets ranged between [0-5]% and [0-5]% (deliveries) and [0-5]% and [0-5]% (orders) ([148]). Also, the potential market for light/medium business jets is not affected either, because Boeing is not active in this segment of the market for business jets. With regards to the market for the manufacturing of business jets based on large commercial aircraft, the below table provides Boeing's market shares:

* Should read: '(BBJ 737-7).'

([148]) Form CO, Annex A.78.

Table 14: Boeing's market share on the market for the manufacturing of business jets based on large commercial aircraft

	2021		2022		2023	
	Volume	**Share (%)**	**Volume**	**Share (%)**	**Volumes**	**Share (%)**
Deliveries	**[0-10]**	**[30-40]%**	**[0-10]**	**[40-50]%**	**[0-10]**	**[10-20]%**
Orders	**[0-10]**	**[50-60]%**	**[0-10]**	**[30-40]%**	**[0-10]**	**[50-60]%**

Form CO,Annex A.110

(163) Market shares provide useful first indications of the market power and the competitive importance of both the merging parties and their competitors. ([149]) However, the market investigation has revealed that regardless of Spirit's and Boeing's shares or the concentration levels in respect of a given market and / or segment for supply of aerostructures, Spirit holds a significant degree of market power based on the existing supply contracts with customers for aerostructures which are, with respect to business jets based on large commercial aircrafts, large commercial aircraft manufacturers.

(164) As explained in paragraphs (82) to (93), when large commercial aircraft manufacturers procure a specific aerostructure, they solicit offers from multiple suppliers and select one to enter into a long-term contractual relationship. The supplier then undergoes a process of design development, testing, and production, which can take several years and involves significant costs. There are two types of contracts: "build-to-spec" and "build-to-print", both of which make it difficult and costly for manufacturers to switch suppliers once a contract is awarded, creating a lock-in effect that grants the supplier market power. With regards to (business jets based on) large commercial aircraft, Spirit has existing supply contracts with Boeing and Airbus, and would retain its market power towards Airbus post-transaction, particularly in relation to fuselage, wing, nacelle, and pylon structures, due to the significant time and investment required to design, test, and produce these aerostructures. The following sections set out the analysis of input foreclosure concerns in relation to business jets based on large commercial aircraft that largely follows the input foreclosure analysis for large commercial aircraft. This is not least for the reason that Spirit is often times not aware of when delivering an aerostructure to Boeing and / or Airbus whether the aerostructure in question is in fact destined for a business jet based on large commercial aircraft or just a large commercial aircraft.

5.2.3.2.2.2. Ability to foreclose access to inputs to Airbus

(165) With regards to business jets based on large commercial aircrafts, Spirit's customers are Boeing and Airbus (the same customers as for large commercial aircrafts). As described in paragraphs (94) to (99), the aerostructures supplied by Spirit to Airbus with regards to (business jets based on) large commercial aircrafts are critical components, and Airbus relies heavily on Spirit due to several factors, including high switching costs, the critical nature of the components, their importance in product differentiation, and the lack of alternative suppliers. Additionally, Airbus has limited IP rights and access to proprietary processes, further limiting its ability to switch suppliers. As a result, the merged entity would

([149]) Non-horizontal Merger Guidelines, paragraph 24.

have the ability to engage in input foreclosure, giving it significant market power and potentially harming competition.

5.2.3.2.2.3. Incentive to foreclose access to inputs to Airbus

(166) As described in paragraphs (100) to (108), the Commission's analysis reveals that the merged entity's incentive to engage in input foreclosure vis à vis Airbus varies between aerostructures supplied directly by Spirit to Airbus (fuselage, wing, and pylon structures) and those supplied indirectly via a third-party manufacturer (nacelle structures). For directly supplied aerostructures, the merged entity would have an incentive to foreclose Airbus because it would be profitable to do so, given Spirit's […] margins and Boeing's higher margins in the downstream market for large commercial aircraft. Foreclosure of Airbus would likely lead to demand being diverted from Airbus to Boeing, allowing the merged entity to recoup losses and increase its market share in the market for business jets based on large commercial aircrafts. In contrast, for indirectly supplied aerostructures (nacelle structures), the merged entity lacks sufficient incentives to engage in foreclosure vis à vis Airbus, as it would forfeit profitable aftersales services and there is no opportunity to divert demand from Airbus or a third-party manufacturer. Therefore, the Commission concludes that the merged entity would have an incentive to engage in input foreclosure for directly supplied aerostructures, but not for indirectly supplied aerostructures.

5.2.3.2.2.4. Overall likely impact on effective competition

(167) For the same reasons described in paragraphs (109) to (112), the Commission finds that a merger leading to input foreclosure of aerostructures supplied directly by Spirit to Airbus would raise significant competition concerns also on the market for business jets based on large commercial aircrafts. This is because it would likely lead to increased costs and prices for Airbus, resulting in higher prices for large commercial aircraft globally, given Airbus' considerable market share. Additionally, input foreclosure could stifle innovation at Airbus, further harming competition. Overall, the Commission concludes that a full or partial input foreclosure strategy by the merged entity would have a significant impact on effective competition in the market for business jets based on large commercial aircrafts.

5.2.3.2.3. Conclusion

(168) In light of the above, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market in respect of aerostructures supplied directly by Spirit to Airbus for the development of its business jets based on large commercial aircrafts, i.e. fuselage structures, wing structures with the segments for slat systems and flap systems as well as pylons.

5.2.4. Aircraft manufacturing - Airborne Early Warning

5.2.4.1. Introduction

(169) Boeing produces the E-7 Airborne Early Warning and Control ("AEW&C") aircraft. AEW&C aircrafts are equipped with a radar that is designed to detect, track, and identify potential threats, such as aircraft, missiles, and ships, at long ranges.

(170) Spirit supplies aerostructures for […], AEW&C aircraft. […] purchases the […], which it then modifies for its military purpose. […].

(171) The Transaction gives rise to the following vertical links:

(a) Upstream markets for aerostructures:

(1) global market for the supply of fuselage structures;

(2) global market for empennage structures.

(b) Downstream market:

(1) international export markets (excluding all countries with domestic suppliers and / or supply restrictions) for AEW&C aircrafts.

(172) In this section, the Commission assesses the possible non-coordinated vertical effects resulting from these non-horizontal links with regard to airborne early warning aircrafts.

5.2.4.2. Input foreclosure

5.2.4.2.1. The Parties' view

(173) The Parties submit that the Transaction will not lead to full or partial input foreclosure for several reasons.

(174) First, Spirit does not have market power in aerostructures to foreclose […] in military aircraft. This is because Spirit's share for the types of aerostructures supplied to […] i.e., fuselage structures and empennage structures are below 30%. ([150])

(175) Second, […] can switch to many alternative suppliers ([151]) or even self-supply ([152]). This is because there are many alternatives available, and switching can be done in a timely manner. […] likely has established relationships with established aerostructure suppliers and owns most of the IP necessary. ([153])

(176) Third, Spirit's supply of fuselage structures and empennage structures do not constitute an important input. This is because they are not "a critical component" or "a significant source of product differentiation" for the […], as can be seen from […]. ([154])

(177) Fourth, […] is protected from foreclosure by its contract with Spirit. The contract […]. ([155])

(178) Fifth, any foreclosure strategy would risk retaliation of […]. The military aircraft segment is characterized by significant cross supply between competitors and collaborations for the development of new military platforms. For example, […] and Boeing have been collaborating for over a decade on the T-7A Red Hawk advanced pilot training system ("T-7A"). […] manufactures and integrates the […] for the T-7A, with […]. This constitutes an important input, which allows

([150]) Form CO, paragraphs 536 et seq.
([151]) Form CO, paragraphs 544 et seq.
([152]) Form CO, paragraphs 548 et seq.
([153]) Form CO, paragraphs 545.
([154]) Form CO, paragraph 550 et seq.
([155]) Form CO, paragraph 552-559.

[…] to retaliate, should Boeing foreclose it. Boeing would not be able to switch in a timely manner to an alternative supplier, or to in-house production. ([156])

(179) Finally, Boeing's E7 is very different from […]. Boeing E-7 and the […] and there are key differences in terms of technical capabilities and the specific needs sought to be served. ([157])

5.2.4.2.2. The Commission's assessment

5.2.4.2.2.1. Market power

(180) The Transaction gives rise to the vertical link between the global market for aerostructures and segmentations, and the international export markets (excluding all countries with domestic suppliers and / or supply restrictions) for Airborne Early Warning and Control aircrafts.

(181) With regards to the market for the manufacturing of Airborne Early Warning and Control aircrafts, the below table provides the Parties' shares of outstanding orders:

Table 15 - AEW&C aircraft - Volume - Worldwide excluding Russia, China and other countries with national producers - 2022-2024 ([158])

Manufacturer	Outstanding Orders			Share (%)		
	2022	2023	2024	2022	2023	2024
Boeing	[0-10]	[0-10]	[0-10]	[20-30]%	[10-20]%	[10-20]%
Northrop Grumman	[10-20]	[10-20]	[10-20]	[60-70]%	[60-70]%	[70-80]%
Rostec	[0-10]	[0-10]	[0-10]	[10-20]%	[10-20]%	[10-20]%
Saab	[0-10]	[0-10]	[0-10]	[10-20]%	[10-20]%	[0-5]%
Total	**[20-30]**	**[10-20]**	**[10-20]**	**100.0%**	**100.0%**	**100.0%**

Source: [Market share information]

(182) In this table, volume market shares are computed in terms of outstanding firm orders based on [market share information] ([159]). For each year, the estimates report the total number of aircraft on order and awaiting delivery. The estimates exclude optional orders and do not reflect ongoing programs for the design of new military aircraft.

(183) Those volume market shares based on outstanding orders, provide first indications of the market power and the competitive importance of both the merging parties and their competitors. ([160]) However, the market investigation has revealed that regardless of Spirit's and Boeing's shares or the concentration levels in respect of a given market and / or segment for supply of aerostructures, Spirit holds a significant degree of market power based on the existing supply contracts with customers for aerostructures, i.e. in this instance, towards […] as a manufacturer of Airborne Early Warning and Control aircrafts.

(184) For the same reasons as those explained in paragraphs (82) to (93), when aircraft manufacturers procure a specific aerostructure, they solicit offers from multiple suppliers and select one to enter into a long-term contractual relationship. The

([156]) Form CO, paragraph 564 et seq.
([157]) Form CO, paragraph 572.
([158]) Response to RFI 9 Q1.
([159]) [Market share information].
([160]) Non-horizontal Merger Guidelines, paragraph 24.

supplier then undergoes a process of design development, testing, and production, which can take several years and involves significant costs. What makes switching even more difficult is the fact that Spirit's plant in Belfast that conducts the modification works for […] used to be owned by Bombardier ([161]), […] that serves as a basis for […]. Therefore, Spirit (i.e. the plant in Belfast) has manufactured these products for many years and Spirit is by now an expert in their area. As a result, given the considerable time and investment required, it is either very difficult or even economically unfeasible for aircraft manufacturers with an existing supply contract such as […] as regards its […] to switch their supplier. It follows from the existing supply contracts for […], Spirit currently has market power towards […] in relation to fuselage structures and empennage structures.

5.2.4.2.2.2. Ability to foreclose access to inputs

(185) The market investigation revealed that the merged entity would likely have the ability to foreclose […] after the transaction.

(1) First, in contrast to the to the Parties' claims, the modifications on the […] and the […] constitute important inputs. In particular, the modifications for the horizontal stabilizer are essential to […].

(2) Second, as explained before under paragraph (85), once an airplane manufacturer selected its supplier for aerostructure, switching becomes very time-consuming and costly. This can be explained by several reasons including but not limited to (i) the necessity for the new aerostructure supplier to adapt its capacity, production lines and develop the industrial expertise, (ii) the need to obtain regulatory authorisations and supplier qualification; (iii) the time required to acquire the industrial know-how to manufacture fully equipped and assembled aerostructures; (iv) the necessity to adapt to the aircraft program ramp-up plan; (v) the necessity to recruit and train qualified workforce; and (vi) the complexity of organising the procurement of the raw materials and sub-components. ([162])

(186) Therefore, for the reasons set out above, the Commission concludes that the merged entity would have the ability to engage in full or partial input foreclosure in relation to market for aerostructures and its segmentations.

5.2.4.2.2.3. Incentive to foreclose access to inputs

(187) The market investigation, however, also revealed that the merged entity would not have the incentive to foreclose […].

(188) In contrast to the Parties' claims, the market investigation revealed that […]. ([163]) In addition, Boeing's internal documents discuss […]. ([164]) […], customer indicated that they do not see it as a direct competitor to […] and Boeing's E7, as it serves a different use cases. ([165]) This is because it is smaller and designed to

([161]) Form CO, paragraphs 18 (Chapter D).

([162]) Non-confidential reply of a customer to a request for information of 28 March 2025, paragraphs 9 et seq.

([163]) Non-confidential minutes of a call with a customer, 16 April 2025, paragraphs 9; Non-confidential minutes of a call with a customer, 6 May 2025, paragraphs 6; Non-confidential minutes of a call with a customer, 28 May 2025, paragraphs 4, 7.

([164]) For example, [Boeing' internal document information], see PN RFI 3 Annex 7.1 p. 35.

([165]) Non-confidential minutes of a call with a customer, 6 May 2025, paragraphs 7; Non-confidential minutes of a call with a customer, 28 May 2025, paragraphs 7.

be used on an aircraft carrier, contrarily to the E7 and the […]. ([166]) Other alternatives have not been fully developed (so called "paper planes"), which makes them less attractive for potential customers. ([167])

(189) Nevertheless, the market investigation revealed that Boeing ultimately would not have an incentive to foreclose […]:

(1) **First**, this is because […] is a key partner for Boeing in the development of the T-7A Red Hawk advanced pilot training system, supplying Boeing with the […] for the T-7A, all of them being key components of the T-7A. The T-7A is a […], in which Boeing has invested [amount]. ([168]) As explained above in paragraphs (82) to (93), once a supplier is selected, given the considerable time and investment required, it is either very difficult or even economically unfeasible for aircraft manufacturers with an existing supply contract to switch their supplier. […] would therefore be in a strong position to retaliate, should Boeing try to foreclose […]. ([169])

(2) **Second**, […] is protected under the long-term contract […]. ([170])

(3) **Finally**, […] has expressed that it is not concerned about a potential foreclosure and does not expect any immediate negative impact of the Transaction. ([171])

(190) Therefore, for the reasons set out above, the Commission concludes that the merged entity would not have the incentive to engage in full or partial input foreclosure in relation to market for aerostructures and its segmentations.

5.2.4.3. Access to commercially sensitive information related to AEW&C aircraft

5.2.4.3.1. The Parties' view

(191) The Parties submit that the Transaction will not lead to other non-coordinated effects by means of gaining access to commercially sensitive information related to the […] for several reasons.

(192) First, the Parties argue that orders for the […] are publicly announced years before Spirit manufactures aerostructures for […], which means that the Merged Entity would not gain visibility into commercially sensitive information […]. ([172])

(193) Second, the Parties contend that Spirit's aerostructures are not a significant source of product differentiation for the […], as the key features of AEW&C aircraft are the advanced sensors and communications equipment, which are provided by […]. The aerostructures supplied by Spirit, such as […], do not represent a significant source of product differentiation for the […]. ([173])

5.2.4.3.2. The Commission's assessment

(194) Post-Transaction, the Merged Entity would gain access to limited commercially sensitive information related to the aerostructures it supplies to […] for the […].

([166]) Non-confidential minutes of a call with a customer, 28 May 2025, paragraphs 7.
([167]) Non-confidential minutes of a call with a customer, 16 April 2025, paragraphs 4.
([168]) Form CO, paragraph 565.
([169]) Form CO, paragraph 565.
([170]) Form CO, paragraphs 556-559.
([171]) Non-confidential minutes of a call with a customer, 26 May 2025, paragraphs 18 et seq.
([172]) Response to RFI 10 Q1.
([173]) Response to RFI 10 Q1.

However, this information is restricted to the specific parts of the […] that are produced by […], namely the […].

(195) The limited role of Spirit's aerostructures in the overall product differentiation of the […], and the timing of the manufacturing process all suggest that the Merged Entity would not have access to commercially sensitive information that could harm competition.

(196) Moreover, the Commission notes that during the market investigation, no concerns were raised regarding access to commercially sensitive information related to the […].

5.2.4.3.2.1. Overall likely impact on effective competition

(197) Given the lack of incentive for the merged entity's potential customer foreclosure strategy post-Transaction, it does not appear necessary to assess in detail the possible effects that the merged entity's customer foreclosure strategy would have on the market.

5.2.4.3.3. Conclusion

(198) In light of the above, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market in respect of all relevant aerostructures vis-à-vis Airborne Early Warning and Control aircrafts.

5.2.5. Military aircrafts – heavy lifting helicopters

5.2.5.1. Introduction

(199) Boeing produces and sells the Chinook CH-47, a heavy lifting helicopter. At the same time, as part of Spirit's Defense Business, Spirit supplies the cockpit and cabin section for the Sikorsky CH-53K King Stallion, another heavy lifting helicopter produced by Lockheed Martin.

(200) The Transaction gives rise to the following vertical links:

(a) Upstream markets for aerostructures:

(1) global market for the supply of fuselage structures;

(b) Downstream market:

(1) international export markets (excluding all countries with domestic suppliers and / or supply restrictions) for heavy lifting helicopters.

(201) In this section, the Commission assesses the possible non-coordinated vertical effects resulting from these non-horizontal links with regard to heavy lifting helicopters.

5.2.5.2. Input foreclosure

5.2.5.2.1. The Parties' view

(202) The Parties submit that the Transaction will not lead to full or partial input foreclosure for several reasons.

(203) First, this is because of the merged entity's share in aerostructures is less than 30% globally and in all segments, and Spirit lacks market power in fuselage structures specifically. This limits any ability to control supply conditions or prices. ([174])

(204) Second, Sikorsky procures fuselage structures from multiple suppliers and retains in-house manufacturing expertise and IP rights. This ensures it can switch suppliers or self-supply if needed. ([175])

(205) Third, Boeing's share in military helicopters is below 30% in the EEA and worldwide. The Merged Entity would therefore have no realistic prospect of recoupment downstream. ([176])

(206) Forth, Boeing, through its subsidiary [information relating to Boeing's business strategy]. The Transaction will reduce any (hypothetical) incentive to foreclose as after both Aurora and Spirit revenues will be at risk without any prospect of recoupment. ([177])

(207) Fifth, the CH-53K has not been sold to any EEA customer and the merged entity [information relating to Boeing's business strategy]. ([178])

(208) Finally, the Chinook and the CH-53K are distinct helicopters. Boeing and Lockheed Martin designed those helicopters for the specific applications of the U.S. Army and the USMC, respectively, and therefore, those helicopters have different capabilities suited for their distinct missions. ([179])

5.2.5.2.2. The Commission's assessment

5.2.5.2.2.1. Market power

(209) The Transaction gives rise to the following vertical link between the global markets for aerostructures and its segmentations and the international export markets (excluding all countries with domestic suppliers and / or supply restrictions) for heavy lifting military helicopters.

5.2.5.2.2.2. Ability to foreclose access to inputs

(210) The market investigation revealed that the merged entity would likely have the ability to foreclose Sikorsky after the transaction.

(211) With regards to the market for the manufacturing of heavy lifting military helicopters, the below table provides the Parties' shares of outstanding orders:

([174]) Form CO, paragraph 609, 615.
([175]) Form CO, paragraph 615.
([176]) Form CO, paragraph 616.
([177]) Form CO, paragraph 614.
([178]) Form CO, paragraph 616.
([179]) Form CO, paragraph 652-662.

Table 16 – Heavy lifting military helicopter - Volume - Worldwide excluding Russia, China and other countries with national producers - 2022-2024

Manufacturer	Outstanding Orders			Share (%)		
	2022	2023	2024	2022	2023	2024
Boeing	[30-40]	[20-30]	[40-50]	[50-60]%	[40-50]%	[70-80]%
Lockheed Martin	[20-30]	[30-40]	[10-20]	[40-50]%	[50-60]%	[20-30]%
Total	**[50-60]**	**[50-60]**	**[50-60]**	**100.0%**	**100.0%**	**100.0%**

Source: [Market share information]

(212) In this table, volume market shares are computed in terms of outstanding firm orders based [market share information] ([180]). For each year, the estimates report the total number of aircraft on order and awaiting delivery. [Market share information].

(213) Those volume market shares based on outstanding orders, provide first indications of the market power and the competitive importance of both the merging parties and their competitors. ([181]) However, the market investigation has revealed that regardless of Spirit's and Boeing's shares or the concentration levels in respect of a given market and / or segment for supply of aerostructures, Spirit holds a significant degree of market power based on the existing supply contracts with customers for aerostructures, i.e. in this instance, towards Sikrosky as a manufacturer of heavy lifting military helicopters.

(214) As outlined in paragraphs (82) to (93), when aircraft manufacturers procure a specific aerostructure, they solicit offers from multiple suppliers and select one to enter into a long-term contractual relationship. The supplier then undergoes a process of design development, testing, and production, which can take several years and involves significant costs. This is also the case for the supply relationship between Spirit and Sikorsky, as Sikorsky single-sources the cockpit and fuselage structures for its CH-53K helicopter from Spirit. ([182]) While the intellectual property (IP) around the requirements for the cockpit and fuselage structures is owned by Sikorsky, Spirit is the design authority for those structures and owns the IP related to Spirit's specific implementation and production to supply units that meet Sikorsky's specifications. Switching would also require a new certification process. ([183])

5.2.5.2.2.3. Incentive to foreclose access to inputs

(215) The market investigation, however, also revealed that the merged entity would not have the incentive to foreclose Sikorsky.

(1) **First**, despite the CH-53K and the CH-47 being the only existing viable option for heavy-lift military applications ([184]), both military helicopters have different features and were designed for different customers. The CH-53K is a heavy-lift combat helicopter engineered for the U.S. Marine Corps, optimized for harsh environments such as salt-water exposure and ship-to-shore operations. ([185]) [Boeing product and marketing

([180]) [Market share information].
([181]) Non-horizontal Merger Guidelines, paragraph 24.
([182]) Non-confidential minutes of a call with a competitor, 7 May 2025.
([183]) Non-confidential minutes of a call with a competitor, 7 May 2025.
([184]) Non-confidential minutes of a call with a customer, 27 May 2025, paragraphs 4.
([185]) Form CO, paragraph 616.

information]. ([186]) [Boeing product and marketing information]. ([187]) [Boeing product and marketing information]. ([188])

(2) **Second**, already before the transaction, Boeing is a long-term supplier of the [information relating to Boeing's contractual supply arrangements] for the CH-53K program, through its Aurora subsidiary, and has not engaged in total or partial foreclosure. There is no change in its ability to foreclose the CH-53K as a result of the Transaction. Instead, the Transaction will reduce the incentive which Boeing may theoretically have to foreclose the CH-53K, as both Aurora and Spirit revenues would be at risk. ([189])

(3) **Third,** in the twenty-years since the CH-53K began development, no EEA country has purchased the helicopter. The one country in the EEA that used a previous CH-53 variant – Germany – has made the decision to switch to the CH-47. While Germany initially ran a competitive process to replace its fleet of CH-53G helicopters, they ultimately opted to purchase the CH-47 in late 2021 because of its lower cost and greater interoperability with NATO partners that also operate the CH-47K. ([190]) Besides the US marines in the US, Israel is the only country that has purchased the CH-53K. ([191]) However, given that Israel has already made its choice, it is unlikely to switch to a different helicopter in the near future. Regarding the US market, as previously mentioned, the CH-47 and CH-53K have distinct use cases, with the CH-47 being exclusively used by the US Army and the CH-53K by the US Marine Corps. Consequently, it is doubtful that there will be competition between the two helicopters in the next few years, which would remove any incentive for Boeing to foreclose Sikorsky's CH-53K.

(4) **Finally,** no potential EEA customer has expressed concerns regarding the transaction. ([192])

(216) Therefore, for the reasons set out above, the Commission concludes that the merged entity would not have the incentive to engage in full or partial input foreclosure in relation to the market for heavy lifting helicopters.

5.2.5.2.2.4. Overall likely impact on effective competition

(217) Given the lack of incentive for the merged entity's potential customer foreclosure strategy post-Transaction, it does not appear necessary to assess in detail the possible effects that the merged entity's customer foreclosure strategy would have on the market.

([186]) Form CO, paragraph 616.
([187]) Form CO, paragraph 616.
([188]) Form CO, paragraph 616.
([189]) Form CO, paragraph 616.
([190]) Form CO paragraph 647.
([191]) Form CO paragraph 644.
([192]) Non-confidential minutes of a call with a customer, 27 May 2025, paragraphs 4.

5.2.5.3. Access to commercially sensitive information

5.2.5.3.1. The Parties' view

(218) The Parties submit that the Transaction will not lead to other non-coordinated effects by means of gaining access to commercially sensitive information for several reasons. ([193])

(219) First, as a supplier of fuselage structures to Sikorsky, Spirit only receives limited data on less sensitive information such as engineering data, production rates, and cost information related to its own production line, which does not allow it to infer the overall cost structure of the CH-53K or the price at which Lockheed Martin supplies the CH-53K to customers. ([194])

(220) Second, the Parties argue that even if Spirit were to have access to commercially sensitive information, there is no plausible risk that the transaction will result in a significant impediment of effective competition in the EEA.

5.2.5.3.2. The Commission's assessment

(221) Post-Transaction, the merged entity would gain access to commercially sensitive information on engineering data, production rates, and cost information. This information is, however, restricted to the specific part of the CH-53K that is produced by Spirit, [information relating to Boeing's contractual supply arrangements]. In addition, Boeing, through its subsidiary Aurora, already had access to certain information [information relating to Boeing's contractual supply arrangements] the transaction.

(222) In any event, as described in paragraph (203), the merged entity would not have the incentive to make use of Sikorsky's sensitive commercial information for the same reasons as engaging in input foreclosure.

(223) Moreover, the Commission notes that during the market investigation no concerns were raised in this respect.

(224) In conclusion, in view of the reasons set out above, the Commission finds that the concentration does not raise serious doubts as to its compatibility with the internal market based on access to commercially sensitive information related to Sikorsky's CH-53K.

5.2.5.3.3. Conclusion

(225) In light of the above, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market in respect of all relevant aerostructures vis-à-vis heavy lifting military helicopters.

6. PROPOSED REMEDIES

6.1. Framework for the assessment of the commitments

(226) The following principles from the Merger Regulation and the Commission's Notice on Remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the 'Remedies Notice') ([195])

([193]) Response to RFI 9 Q3.
([194]) Response to RFI 9 Q3.
([195]) OJ C 267, 22.10.2008, p.1.

apply where parties to a concentration offer commitments with a view of rendering a concentration compatible with the internal market and the functioning of the EEA agreement.

(227) Where, as in this case, a notified concentration raises serious doubts as to its compatibility with the internal market, the parties may undertake to modify the concentration to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the undertakings concerned, a notified concentration no longer raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation in conjunction with Article 6(2) of the Merger Regulation, and with the functioning of the EEA agreement.

(228) As set out in the Remedies Notice, the commitments proposed by the parties have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view. ([196]) Moreover, commitments in Phase I can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward, and the remedies so clear-cut, that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out 'serious doubts' within the meaning of Article 6(1)(c) of the Merger Regulation. ([197])

(229) In assessing whether the proposed commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments with reference to the structure and the particular characteristics of the market in which the competition concerns arise, including the position of the parties and other participants on the market. ([198]) In order for the proposed commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time. ([199])

(230) Concerning the type of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the required standards. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its decision, that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that effective competition will be maintained. ([200]) Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps and / or vertical relationships.

(231) The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the Merged Entity on a lasting basis and that is divested as a going concern. The divested business must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which is currently

([196]) Remedies Notice, paragraphs 9 and 61.
([197]) Remedies Notice, paragraph 81.
([198]) Remedies Notice, paragraph 12.
([199]) Remedies Notice, paragraph 9.
([200]) Remedies Notice, paragraph 10.

employed or which is necessary to ensure the business' viability and competitiveness. ([201])

(232) The intended effect of the divestiture will only be achieved if and once the divested business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The potential of a business to attract a suitable purchaser is an important element of the Commission's assessment of the appropriateness of the proposed commitments. ([202])

(233) However, there are situations where the Commission does not need to provide for the criteria for the parties to identify a suitable purchaser since the parties have already entered into a legally binding agreement with a buyer outlining the essentials of the purchase during the Commission's procedure (so called fix-it-first remedy). In this situation, the Commission will be able to decide whether the transfer of the divested business to the identified purchaser will remove the competition concerns. In this case, and if the Commission authorises the notified concentration, no additional Commission decision for the purchaser approval will be needed and the closing of the sale of the divested business may take place shortly afterwards. ([203])

(234) If the parties choose to enter into a binding agreement with a suitable purchaser by way of a fix-it-first remedy, the Commission will be able, in those circumstances, to conclude with the requisite degree of certainty that the commitments will be implemented with a sale to a suitable purchaser. ([204])

(235) Even though normally the divestiture of an existing viable stand-alone business is required, the Commission, by observing the principle of proportionality, may also advise the parties to consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the parties and therefore need to be 'carved out' in those respects. Conversely, carving-out a business from the scope of the commitments can only be accepted by the Commission if it can be certain that, at least at the time when the business is transferred to the purchaser, a viable business on a stand-alone basis will be divested and the risks for the viability and competitiveness caused by the carve-out will thereby be reduced to a minimum. ([205])

6.2. Commitments submitted by the Parties

6.2.1. Introduction

(236) In order to ensure that the Transaction is compatible with the internal market and the functioning of the EEA agreement, the Parties submitted two sets of commitments on 22 September 2025, by which they committed to divest, subject to the Commission's approval:

(a) To Airbus: all of Spirit's businesses related to Airbus (the 'Airbus Divestment Business', the 'Airbus Commitments') including all real property, equipment and tooling, IT systems, employees, business contracts, and any other tangible and intangible assets relevant for the performance of the Airbus Divestment Business.

([201]) Remedies Notice, paragraphs 23-25.
([202]) Remedies Notice, paragraph 47.
([203]) Remedies Notice, paragraph 56.
([204]) Remedies Notice, paragraph 57.
([205]) Remedies Notice, paragraphs 35-36.

(b) To Composites Technology Research Malaysia Sdn. Bhd., an affiliate of DRB-HICOM ('CTRM'): Spirit's site in Subang, Malaysia (the 'Subang Divestment Business', the 'Subang Commitments') including all real property, equipment and tooling, IT systems, employees, business contracts, and any other tangible and intangible assets relevant for the performance of the Subang Divestment Business.

(Together, the two sets of commitments are referred as the 'Final Commitments',).

6.2.2. The Airbus Commitments

(237) The businesses to be divested under the Airbus Commitments are collectively referred to as the 'Airbus Divestment Business'. Especially, the following assets, with certain exclusions, are included in the Airbus Divestment Business:

(1) Spirit's site in Casablanca (Morocco);

(2) Spirit's site in Kinston (North Carolina, USA);

(3) Spirit's site in Prestwick (Scotland, the UK);

(4) Spirit's site in Saint-Nazaire (France);

(5) Spirit's A220 Wing Production Unit in Belfast (Northern Ireland, the UK);

(6) Spirit's A220 mid-fuselage business in Belfast (Northern Ireland, the UK); and

(7) Spirit's A220 pylon business in Wichita (Kansas, USA).

(238) The Airbus Divestment Business includes all assets and staff that primarily contribute to the current operation or are necessary to ensure its viability and competitiveness, in particular:

(1) all tangible and intangible assets (including products under development and related rights, intellectual property rights, and know-how);

(2) all licenses, permits and authorisations issued by any governmental organization that are primarily related to or primarily used or held for use by the Airbus Divestment Business;

(3) all contracts, leases, commitments and customer orders primarily related to the Airbus Divestment Business;

(4) all customer, credit and other business records, to the extent primarily related to or to the extent primarily used or held for use in the Airbus Divestment Business; and

(5) all personnel primarily supporting the Airbus Divestment Business.

(239) In addition, pursuant to the Commitments the Parties commit to hold separate the Airbus Divestment Business from the retained business and to preserve its viability, marketability, and competitiveness, including the appointment of a monitoring trustee and a hold separate manager.

(240) On 27 April 2025, Spirit entered into a Stock and Asset Purchase Agreement ('SAPA') with Airbus for the acquisition of the Airbus Divestment Business. The Airbus Commitments represent a fix-it-first remedy which enables the Commission to assess with a requisite degree of certainty whether the transfer of the Airbus Divestment Business to Airbus removes the competition concerns raised by the Transaction.

(241) On 7 August 2025, and in order to assist the Commission with its assessment of Airbus as the suitable purchaser in view of the Airbus Commitments, the Parties appointed ALCIS ADVISERS GmbH ('Alcis') as the independent advisor. On 6 October 2025, Alcis submitted to the Commission their Reasoned Opinion on Airbus as suitable purchaser in respect of the Airbus Commitments ("Airbus Reasoned Opinion").

6.2.2.1. Commission's assessment of the Airbus Commitments

6.2.2.2. Suitability of the Airbus Commitments to remove serious doubts

(242) The Commission assessed whether the Airbus Commitments would be suitable to remove the serious doubts in all relevant markets. The Commission finds that the sale of the Airbus Divestment Business (together with the sale Subang Divestment Business) is suitable to alleviate the entirety the serious doubts raised by the Transaction with regard to large commercial aircrafts and business jets based on large commercial aircrafts.

(243) Based on the market test feedback, the Airbus Commitments (together with the Subang Commitments) are suitable to alleviate the entirety the serious doubts raised by the Transaction. ([206]) None of the respondents to the market test raised the issue that the Airbus Commitments would be insufficient to solve the competition concerns identified by the Commission.

(244) The sale of the Airbus Divestment Business will remove all direct supply relationships between Spirit and Airbus. The removal of these relationships will alleviate all input foreclosure and information exchange concerns identified across all relevant markets. The Commission considers that the Airbus Commitments are thus suitable to partly remove the competition concerns raised by the Transaction.

6.2.2.3. Viability of the Airbus Divestment Business

(245) Based on the evidence on the file and the market test feedback, the Commission considers that the Airbus Divestment Business will allow Airbus to compete effectively on a lasting basis.

(246) With regard, to the Airbus Divestment Business, Airbus has sufficient financial re-sources to fund the operations and future growth of the Airbus Divestment Business. The Airbus Divestment Business is a key supplier to some of Airbus' major aircraft programs, including the A220, A320 and A350. Hence, Airbus has strong incentives to support the Airbus Divestment Business as necessary to ensure the stability of its supply chain. ([207])

(247) The Airbus Commitments are sufficient to ensure that Airbus can successfully integrate the Airbus Divestment Business in order to compete in the downstream market for large commercial aircrafts. ([208]) No additional assets (tangible or intangible) or third-party (IP) rights would be required to ensure the immediate viability and competitiveness of the Airbus Divestment Business. Also, the personnel is sufficient for Airbus. ([209])

([206]) Market test, Replies to Question E.B.1.
([207]) Airbus Reasoned Opinion, Section 6.3.
([208]) Market test, Replies to Question E.C.1.and E.C.1.1.
([209]) Market test, Replies to Question E.C.3.

(248) Relevant services during the transitional period will enable Airbus a smooth and timely operation. ([210])

(249) There are no material risks associated with the transfer of the Airbus Divestment Business that would affect the Airbus Divestment Business' viability and competitiveness. Overall, the implementation of the Transaction and the sale of the Airbus Divestment Business would not raise any implementation risks. ([211])

6.2.2.4. Conclusion on the Airbus Commitments

(250) For the reasons outlined above, the Commission concludes that the Airbus Commitments are sufficient in scope and suitable to eliminate the serious doubts as to the compatibility of the Transaction with the internal market and with the functioning of the EEA Agreement.

6.2.2.5. Assessment of the suitability of Airbus as the purchaser

6.2.2.6. Framework for the assessment of the purchaser

(251) On 27 April 2025, Spirit entered into the SAPA with Airbus for the acquisition of the Airbus Divestment Business.

(252) Paragraph 56 of the Remedies Notice provides for situations when parties identify and enter into a legally binding agreement with a buyer outlining the essentials of the purchase during the Commission procedure (fix-it-first remedy). In this case, the Commission will be able to decide in the final decision whether the transfer of the divested business to the identified purchaser will remove the competition concerns. Under the fix it first assessment, if the Commission authorises the notified concentration, no additional Commission decision for the purchaser approval will be needed and the closing of the sale of the divested business may take place shortly afterwards.

(253) Against this background, the Commission needs to assess whether the proposed buyer of the fix-it-first remedy would fulfil the standard purchaser criteria as set out in the Remedies Notice, ([212]) and most notably if:

(1) the purchaser is independent of and unconnected to the parties;

(2) the purchaser possesses the financial resources, proven relevant expertise and has the incentive and ability to maintain and develop the divested business as a viable and active competitive force in competition with the parties and other competitors; and

(3) the acquisition of the business by a proposed purchaser is neither likely to create new competition problems nor to give rise to a risk that the implementation of the commitments will be delayed. Therefore, the proposed purchaser should be reasonably expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the business to be divested.

6.2.2.7. The purchaser is independent and unconnected to the Parties

(254) Airbus has no structural links with Boeing and / or Spirit. Further, Airbus does not hold, directly or indirectly, any shares in Boeing and / or Spirit, and vice versa,

([210]) Market test, Replies to Question E.C.4.
([211]) Market test, Replies to Question E.E.1.
([212]) Remedies Notice, paragraph 48.

and there are no common shareholders or directors. The limited commercial links of Boeing and / or Spirit with Airbus relate to ordinary course supply and purchase arrangements, are all at arm's length and on market terms. ([213])

(255) On the basis of the information made available to the Commission, the Commission is of the view that the links between Airbus and the Parties are not material and, as a result, Airbus is independent and unconnected to the Parties.

6.2.2.8. The purchaser has sufficient financial resources, proven relevant expertise and has the incentive and ability to maintain and develop the divested business

(256) As one of the two major manufacturers of large commercial aircraft, Airbus already manufactures all types of aerostructures, including wings and wing components, nacelles, pylon structures, fuselages and empennage structures. Further, Airbus regularly makes acquisitions to support its supply chain and the aerospace industry, with acquisitions of Daher Aerospace in 2025 and Tecalemit Aerospace Composites in 2022 being recent examples. Airbus also has significant experience in transfers of work which include relocations of aerostructure production lines. Airbus has already appointed dedicated teams to ensure the post-merger integration of the Airbus Divestment Business ([214])

(257) In 2024 and in the first half of 2025, Airbus reported solid financial results. ([215])

(258) Spirit currently supplies Airbus directly with fuselage structures, wing structures, and pylon structures. Spirit is Airbus' single source for most of the aerostructures supplied externally for the programmes supplied by Spirit. By acquiring the Airbus Divestment Business, Airbus will ensure the continuity and secure supply of its large commercial aircraft programmes. ([216])

(259) In light of the above, the Commission is of the view that Airbus (i) possesses sufficient experience and expertise to ensure efficient integration and develop the Airbus Divestment Business going forward, (ii) has sufficient financial resources to fund the Airbus Divestment Business' operations and future growth, and (iii) has proper incentives to maintain and develop the Airbus Divestment Business.

6.2.2.9. The acquisition will not create *prima facie* competition concerns

(260) Since Airbus is the only customer of the Airbus Divestment Business, there are no prima facie competition concerns related to the acquisition. No risk of input foreclosure arises, since the Airbus Divestment Business provides aerostructures exclusively to Airbus, and they are specifically configured to only supply products for Airbus' aircraft programs. As to any potential customers foreclose, the Airbus Divestment Business assets are specifically designed to meet the specifications of Airbus' large commercial aircraft programs and could not be used, as is, to supply third party aircraft manufacturers, since the Airbus Divestment Business would need additional specific tooling, processes and IP rights of third parties. Moreover, since Airbus is the only customer of the Airbus Divestment Business no non-horizontal concerns related to non-horizontal concerns arise. ([217])

([213]) Airbus Reasoned Opinion, Section 4.
([214]) Airbus Reasoned Opinion, Section 5.
([215]) Airbus Reasoned Opinion, Section 6.
([216]) Airbus Reasoned Opinion, Section 7.
([217]) Airbus Reasoned Opinion, Section 8.

(261) In light of the above, the Commission is of the view that Airbus' acquisition of the Airbus Divestment Business will not raise prima facie competition concerns.

6.2.2.10. Conclusion on the suitability of the purchaser

(262) In the light of the above, the Commission concludes that Airbus is a suitable purchaser for the Airbus Divestment Business and therefore no additional buyer approval decision is necessary.

6.2.2.11. Assessment of the proposed agreement

(263) On 27 April 2025, Spirit entered into the SAPA with Airbus for the acquisition of the Airbus Divestment Business, under the terms and subject to the conditions set out in the SAPA.

(264) The Commission takes the view that the SAPA is compliant with the Airbus Commitments for the reasons set out in the following recitals.

(265) The business object of the sale and purchase provided for by the SAPA corresponds to that of the Airbus Divestment Business as defined in the Commitments. In particular, it comprises:

(1) all tangible and intangible assets (including products under development and related rights, intellectual property rights, and know-how);

(2) all licenses, permits and authorisations issued by any governmental organization that are primarily related to or primarily used or held for use by the Airbus Divestment Business;

(3) all contracts, leases, commitments and customer orders primarily related to the Airbus Divestment Business;

(4) all customer, credit and other business records, to the extent primarily related to or to the extent primarily used or held for use in the Airbus Divestment Business; and

(5) all personnel primarily supporting the Airbus Divestment Business.

(266) As regards the preservation of viability, marketability and competitiveness of the Airbus Divestment Business, pursuant to the SAPA, Spirit shall ensure until closing, in particular, that the Airbus Divestment Business preserves business relationships with key suppliers and customers, and maintains all material structures, equipment and other tangible personal property of the Airbus Divestment Business.

6.2.2.12. Conclusion on the proposed purchaser and agreement related to Airbus Commitments

(267) On the basis of the above assessment, the Commission approves Airbus as a suitable purchaser for the above-mentioned reasons.

(268) On the basis of the SAPA, the Commission further concluded that the Airbus Divestment Business is being sold in a manner consistent with the Airbus Commitments.

6.2.3. The Subang Commitments

(269) The Subang Divestment Business consists of the entirety of Spirit's site in Subang (Malaysia) as currently operated and held by Spirit AeroSystems Malaysia Sdn Bhd. ('Spirit Malaysia').

(270) The Subang Divestment Business includes the transfer of all assets and staff that contribute to the current operation and / or are necessary to ensure the viability and competitiveness of the Subang Divestment Business, in particular:

(1) all tangible and intangible assets (including, if any, products under development and related rights, intellectual property rights, and know how) owned and held by Spirit Malaysia;

(2) all licenses, permits and authorizations issued by any governmental organization for the benefit of the Subang Divestment Business;

(3) all customer, credit and other records of Spirit Malaysia; and

(4) all relevant personnel.

(271) In addition, pursuant to the Subang Commitments the Parties commit to hold separate the Subang Divestment Business from the retained business and to preserve its viability, marketability, and competitiveness, including the appointment of a monitoring trustee and a hold separate manager.

(272) On 8 August 2025, Spirit entered into a Share Purchase Agreement ('SPA') with CTRM for the acquisition of the Subang Divestment Business. The Subang Commitments represent a fix-it-first remedy which enables the Commission to assess with a requisite degree of certainty whether the transfer of the Subang Divestment Business to CTRM removes the competition concerns raised by the Transaction.

(273) As set out at paragraph (241) above, on 7 August 2025 in order to assist the Commission with its assessment of CTRM as a suitable purchaser in view of the Subang Commitments, the Parties appointed Alcis as the independent advisor. On 6 October 2025Alcis submitted to the Commission the CTRM Reasoned Opinion on CTRM as suitable purchaser in respect of the Subang Commitments.

6.2.3.1. Commission's assessment of the Subang Commitments

6.2.3.2. Suitability of the Subang Commitments to remove serious doubts

(274) The Commission assessed whether the Subang Commitments would be suitable to remove its serious doubts in all relevant markets. The Commission finds that the sale of the Subang Divestment Business (together with the sale of the Airbus) Divestment Business is suitable to alleviate the entirety of the serious doubts raised by the Transaction.

(275) Based on the market test feedback, the Subang Commitments (together with the Airbus Commitments) are suitable to alleviate the entirety of the serious doubts raised by the Transaction. ([218]) None of the respondents to the market test raised the issue that the Subang Commitments would be insufficient to solve the competition concerns identified by the Commission.

(276) The sale of the Subang Divestment Business will alleviate all input foreclosure and information exchange concerns identified across all relevant markets. The Commission considers that the Subang Commitments (together with the Airbus Commitments) are thus suitable to remove the entirety of the competition concerns raised by the Transaction.

([218]) Market test, Replies to Question E.B.1.

6.2.3.3. Viability of the Subang Divestment Business

(277) Based on the evidence on file and the market test feedback, the Commission considers that the Subang Divestment Business will allow CTRM to compete effectively on a lasting basis.

(278) The Subang Divestment Business to be operated by CTRM would be profitable.

(279) The Subang Commitments are sufficient to ensure that CTRM can run the Subang Divestment Business immediately as a viable and competitive force. ([219]) No additional assets (tangible or intangible) or third-party (IP) rights would be required to ensure the immediate viability and competitiveness of the Subang Divestment Business. Also, the divested personnel is sufficient for CTRM. ([220])

(280) Relevant services during the transitional period will enable CTRM a smooth and timely operation. ([221])

(281) There are no material risks associated with the transfer of the Subang Divestment Business that would affect the Subang Divestment Business' viability and competitiveness. Overall, the implementation of the Transaction and the sale of the Subang Divestment Business would not raise any implementation risks. ([222])

6.2.3.4. Conclusion on the Subang Commitments

(282) For the reasons outlined above, the Commission concludes that the Subang Commitments are sufficient in scope and suitable to eliminate the serious doubts as to the compatibility of the Transaction with the internal market and with the functioning of the EEA Agreement.

6.2.3.5. Assessment of the suitability of CTRM as the purchaser

6.2.3.6. Framework for the assessment of the purchaser

(283) On 8 August 2025, Spirit entered into the SPA with CTRM for the acquisition of the Subang Divestment Business.

(284) As set out at paragraph (253) above, the Commission needs to assess whether the proposed buyer of the fix-it-first remedy would fulfil the standard purchaser criteria as set out in the Remedies Notice. ([223])

6.2.3.7. The purchaser is independent and unconnected to the parties

(285) CTRM has no structural links with Boeing and / or Spirit. The commercial links of Boeing and / or Spirit with CTRM relate are all at arm's length basis reflecting standard commercial terms. ([224])

(286) On the basis of the information made available to the Commission, the Commission is of the view that the links between CTRM and the Parties are not material and, as a result, CTRM is independent and unconnected to the Parties.

([219]) Market test, Replies to Question E.C.2.
([220]) Market test, Replies to Question E.C.3.
([221]) Market test, Replies to Question E.C.4.
([222]) Market test, Replies to Question E.E.2.
([223]) Remedies Notice, paragraph 48.
([224]) CTRM Reasoned Opinion, Section 4.

6.2.3.8. The purchaser has sufficient financial resources, proven relevant expertise and has the incentive and ability to maintain and develop the divested business

(287) CTRM has long been active as and is a highly recognised manufacturing partner to original equipment manufacturers and Tier I suppliers in the aerospace components manufacturing industry. CTRM has demonstrated its ability to win new business with key players in the sector, to add more aircraft programmes to its portfolio and to grow profitably. CTRM's shareholder DRB-HICOM has a track record of successfully acquiring, developing and growing businesses it has added to its portfolio. ([225])

(288) CTRM both on a stand-alone basis, but also through being part of DRB-HICOM has the financial resources to maintain and develop the Subang Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. CTRM overall is not excessively leveraged, has sufficient equity and is profitable and has sufficient means to finance the acquisition of the Subang Divestment Business including executing the related business plan and making the necessary investments. ([226])

(289) The acquisition of the Subang Divestment Business is an attractive investment opportunity for CTRM, mainly because of the Subang Divestment Business' extensive track record as a successful supplier of aerostructure components; its long-standing relationships with original equipment manufacturers and Tier I suppliers, as well as its sustainable profitability. The addition of the Subang Divestment Business into CTRM's portfolio, aligns with CTRM's overall strategy to scale up and expand beyond build-to-print manufacturing into aerostructure assembly. ([227])

(290) In light of the above, the Commission is of the view that CTRM (i) possesses sufficient experience and expertise to ensure efficient integration and develop the Subang Divestment Business going forward, (ii) has sufficient financial resources to fund the Subang Divestment Business' operations and future growth, and (iii) has proper incentives to maintain and develop the Subang Divestment Business.

6.2.3.9. The acquisition will not create *prima facie* competition concerns

(291) On the basis of the information made available to it, the Commission considers that the acquisition of Spirit Malaysia by CTRM and Spirit Malaysia does not raise any prime facie competition concerns. Indeed, prior to the Transaction, CTRM is Spirit Malaysia's largest supplier in terms of procurement value. Therefore, the acquisition of Spirit Malaysia by CTRM is a vertical consolidation within aerospace manufacturing (i.e. composites and aerostructures) industry. In the global aerostructures market, post-Transaction, CTRM's market share would remain below [0-5]% globally. Hence, the combined entity's (Spirit Malaysia/CTRM) presence will remain significantly small, ensuring a competitive landscape where customers like Boeing and Airbus can maintain supplier choice. Boeing and Airbus have committed to continue sourcing from the combined entity. Additionally, a [information relating to Boeing's contractual supply arrangements] non-engagement clause with Boeing, typical of such

([225]) CTRM Reasoned Opinion, Section 5.
([226]) CTRM Reasoned Opinion, Section 6.
([227]) CTRM Reasoned Opinion, Section 7.

agreements, mirrors the contract duration with Airbus, indicating balanced supplier relationship management. ([228])

(292) In light of the above, the Commission is of the view that CTRM's acquisition of the Subang Divestment Business will not raise prima facie competition concerns.

6.2.3.10. Conclusion on suitability of the purchaser

(293) In the light of the above, the Commission concludes that CTRM is a suitable purchaser for the Subang Divestment Business, and therefore no additional buyer approval decision is necessary.

6.2.3.11. Assessment of the proposed agreement

(294) On 8 August 2025, Spirit entered into the SPA with CTRM for the acquisition of the Subang Divestment Business, under the terms and subject to the conditions set out in the SPA.

(295) The Commission takes the view that the SPA is compliant with the Subang Commitments for the reasons set out in the following recitals.

(296) The business object of the sale and purchase provided for by the SPA corresponds to that of the Subang Divestment Business as defined in the Subang Commitments. In particular, it comprises:

(1) all tangible and intangible assets (including, if any, products under development and related rights, intellectual property rights, and know how) owned and held by Spirit Malaysia;

(2) all licenses, permits and authorizations issued by any governmental organization for the benefit of the Subang Divestment Business;

(3) all customer, credit and other records of Spirit Malaysia; and

(4) all relevant personnel.

(297) As regards the preservation of viability, marketability and competitiveness of the Subang Divestment Business, pursuant to the SPA, Spirit shall use commercially reasonable efforts until closing, in particular, to operate the Subang Divestment Business in the ordinary course of business in all material respects.

6.2.3.12. Conclusion on the proposed purchaser and agreement

(298) On the basis of the above assessment, the Commission approves CTRM as a suitable purchaser for the above-mentioned reasons.

(299) On the basis of the SPA, the Commission further concluded that the Subang Divestment Business is being sold in a manner consistent with the Subang Commitments.

7. CONDITIONS AND OBLIGATIONS

(300) Pursuant to the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market and the functioning of the EEA agreement.

([228]) CTRM Reasoned Opinion, Section 8.

(301) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market and the functioning of the EEA agreement is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(302) In accordance with the basic distinction described in paragraph (301) as regards conditions and obligations, this decision should be made conditional on (i) the full compliance by the Parties with Sections B of the Final Commitments (including the Schedules and Annexes) submitted by the Parties on 22 September 2025. All other Sections of the Final Commitments should be obligations within the meaning of Article 6(2) of the Merger Regulation. The full text of the Final Commitments is attached as Annexes 1 and 2 to this decision and forms an integral part thereof.

8. CONCLUSION

(303) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Final Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in sections B of the Final Commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Teresa RIBERA
Executive Vice-President

Airbus Commitments

COMMITMENTS TO THE EUROPEAN COMMISSION

Case M.11578
BOEING/SPIRIT

September 22, 2025

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Case M.11578 – BOEING/SPIRIT
COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), The Boeing Company hereby enters into the following commitments (the "***Airbus Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering its proposed acquisition of sole control over Spirit AeroSystems Holdings, Inc. (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A: Definitions

(1) For the purpose of the Airbus Commitments, the following terms shall have the following meaning:

A220 Pylon Divestment Business: The assets used primarily in connection with the performance by Spirit of its obligations under its contracts with Airbus related to the A220 pylons operated by Spirit in Wichita, Kansas, USA, as described in Schedule 1.

Affiliated Undertakings: Undertakings controlled by the Committing Parties and/or by the ultimate parents of the Committing Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

Airbus: Airbus SE or any of its designated affiliates.

Airbus Belfast Midfuse Business: The assets used primarily in connection with the performance by Spirit of its obligations under its contracts with Airbus related to the Airbus A220 Midfuse production operated by Spirit in Belfast, Northern Ireland, as described in Schedule 2.

Airbus Belfast Wing Production Unit: Spirit's A220 Wing Production Unit in Belfast, Northern Ireland.

Assets: The assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B of these Commitments, and described more in detail in the Schedules 1-6.

Belfast Divestment Business: The Airbus Belfast Midfuse Business and the Airbus Belfast Wing Production Unit, and related assets, as described in Schedule 2.

Boeing: The Boeing Company.

Closing: The transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: The period of [time period] from the Effective Date.

Committing Parties: Boeing and/or Spirit, as applicable. This includes also any legal successors of the Committing Parties.

Confidential Information: Any business secrets, knowhow, commercial information not in the public domain, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: Any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: The business or businesses as defined in Section B of these Commitments and in the Schedules 1-6 which the Committing Parties will divest.

Effective Date: The date of adoption of the Decision.

Hold Separate Manager: The person appointed by Spirit for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: All personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in Annex 29 to the Schedules, including the Hold Separate Manager.[1]

Kinston Divestment Business: The entirety of Spirit's site in Kinston (North Carolina, USA) and related assets, as described in Schedule 3.

Monitoring Trustee: One or more natural or legal person(s) approved by the Commission and appointed by the Committing Parties, and who has/have the duty to monitor the Committing Parties' compliance with the conditions and obligations attached to the Decision.

Morocco Divestment Business: The entirety of Spirit's site in Casablanca (Morocco), and related assets, as described in Schedule 4, excluding Spirit's work packages for [customer name] and the MRO service contracts performed in Casablanca.

MRO: Maintenance, Repair, and Overhaul.

Personnel: All employees of the Divestment Business listed in Annex 35 who are employed by the Divestment Business at Closing.

Prestwick Divestment Business: The entirety of Spirit's site in Prestwick (Scotland) and related assets, as described in Schedule 5, excluding the Remaining Prestwick Business.

Purchaser: Airbus.

Purchaser Criteria: the criteria laid down in paragraph 16 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

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1 *See* Appendix 1 to these Commitments.

Remaining Prestwick Business: R&D operations at the Aerospace Innovation Centre, Boeing's 767 fixed/forward leading edge work, and any other assets in Prestwick, Scotland, as set out in Schedule 5.

Saint-Nazaire Divestment Business: The entirety of Spirit's site in Saint-Nazaire (France) and related assets, as described in Schedule 6.

SAPA: The Stock and Asset Purchase Agreement entered into between Spirit and Airbus on April 27, 2025.

Schedules: The schedules to these Commitments describing the Divestment Business in more detail.

Spirit: Spirit AeroSystems Holdings, Inc.

Transaction: Boeing's acquisition of Spirit.

Transferred IP: All intellectual property rights (excluding trademarks or internet domain names) owned by Spirit as of the Closing that were exclusively developed by Spirit for use, and as of the Closing are exclusively used by Spirit in the design, development, manufacture, configuration, assembly, analysis, testing, certification, maintenance, support or refurbishment of Airbus' products or components in connection with Spirit's performance of Airbus work statements.

Trustee: The Monitoring Trustee.

(2) Should issues arise relating to the interpretation of terms listed in paragraph 1 of these Commitments or terms not defined, the Commission will retain the interpretation that is the most favourable for an effective implementation of the Commitments.

Section B: The commitment to divest and the Divestment Business

Commitment to divest

(3) In order to maintain effective competition, the Committing Parties commit to divest, or procure the divestiture of the Divestment Business as a going concern to Airbus on terms and conditions approved by the Commission. The Committing Parties shall be deemed to have complied with this commitment if pursuant to the SAPA, Spirit sells the Divestment Business to the Purchaser within the Closing Period.

Structure and definition of the Divestment Business

(4) The Divestment Business consists of the:

(a) A220 Pylon Divestment Business (*i.e.*, the assets used primarily in connection with the performance by Spirit of its obligations under its contracts with Airbus related to the A220 pylons operated by Spirit in Wichita).

(b) The Airbus Belfast Wing Production Unit (*i.e.*, the assets used primarily in connection with the performance by Spirit of its obligations under its contracts with Airbus related to the Airbus A220 wing production operated by Spirit in Belfast) and the Airbus Belfast Midfuse Business (i.e., the assets used primarily in connection with the performance by Spirit of its obligations under its contracts with Airbus related to the Airbus A220 Mid-Fuse production operated by Spirit in Belfast) (together the Belfast Divestment Business).

(c) Kinston Divestment Business.

(d) Morocco Divestment Business (excluding the [customer name] work performed in Casablanca, which will transfer to Belfast).

(e) Prestwick Divestment Business (excluding the R&D operations at the Aerospace Innovation Centre and Boeing's 767 fixed/forward leading edge work in Prestwick as set out in the Schedule).

(f) Saint-Nazaire Divestment Business.

(5) The legal and functional structure of the Divestment Business as operated to date is described in Spirit AeroSystems Organizational Chart.[2] The Divestment Business, described in more detail in Schedules 1-6, includes the transfer of all assets and staff that primarily contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business. In particular:

(a) All tangible and intangible assets (including products under development and related rights, intellectual property rights, and know-how);

(b) All licenses, permits and authorizations issued by any governmental organization that are primarily related to or primarily used or held for use by the Divestment Business (to the extent such licenses, permits or authorizations are transferrable);

[2] As defined in **Annex 1**.

(c) All contracts, leases, commitments and customer orders primarily related to the Divestment Business;

(d) All customer, credit and other business records, to the extent primarily related to or to the extent primarily used or held for use in the Divestment Business; and

(e) all Personnel primarily supporting the Divestment Business.

(6) In addition, the Divestment Business includes the benefit, for a transitional [time period], after Closing and [cost structure], of certain arrangements under which the Committing Parties or their Affiliated Undertakings supply products or services to the Divestment Business or of any other current or new arrangements which are necessary for the viability of the Divestment Business, as detailed in the Schedules, unless otherwise agreed with the Purchaser and with the approval of the Commission.[3] Strict firewall procedures shall be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant operations.

<u>Section C: Related commitments</u>

<u>Preservation of viability, marketability and competitiveness</u>

(7) From the Effective Date until Closing, the Committing Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimize as far as possible any risk of loss of the competitive potential of the Divestment Business. In particular, the Committing Parties, undertake:

(a) not to carry out any action that might have a significant adverse impact on the value, management, viability, or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available, or procure to make available, sufficient financial and other resources needed for the development of the Divestment Business, including the development of pipeline products or services where relevant, on the basis of the continuation of the existing business plans;

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, to assist the Divestment Business in the process of IT migration and/or IT separation until the full process is completed ;

(d) to the extent the Divestment Business includes any licenses, permits and authorizations issued by any governmental organization or any other third party/parties for the benefit of the Divestment Business, to take all reasonable steps, or procure that all reasonable steps are being taken, to obtain consent from any governmental organization or any other third party/parties for all required licenses, permits and authorizations; and

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3 These arrangements include support functions (*e.g.*, HR, finance), production support functions (*e.g.*, quality, manufacturing engineering, engineering, program), supply chain (*e.g.*, procurement, logistics), operations (*e.g.*, facility management, tooling), and IT.

(e) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes, to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Spirit's remaining business. Incentives schemes should not be linked to the sale of the Divestment Business within a certain period or to the sale price of the Divestment Business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, Spirit shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Spirit must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

(8) The Committing Parties commit, subject to paragraph 10 of these Commitments, from the Effective Date until Closing, to keep, or procure to keep, the Divestment Business separate from the businesses the Committing Parties are retaining and to ensure that unless explicitly permitted under these Commitments or as obligated under transitional services after Closing, (i) management and staff of the businesses retained by the Committing Parties have no involvement in the Divestment Business; and (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Committing Parties and do not report to any individual outside the Divestment Business.

(9) Until Closing, the Committing Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as distinct and saleable entities separate from the business which the Committing Parties are retaining. Immediately after the adoption of the Decision, the Committing Parties shall appoint a Hold Separate Manager. The Hold Separate Manager shall be the current head of the Divestment Business and shall be part of the Key Personnel. If the Hold Separate Manager is not the head of the Divestment Business at the time of the submission of the Commitments, the appointment should occur in agreement with the Commission. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Committing Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee. Spirit shall ensure that the Hold Separate Manager is available for an initial call with the Monitoring Trustee and the Commission, as well as to discuss any significant matter at the request of the Monitoring Trustee or the Commission during his/her mandate. The Monitoring Trustee or the Commission can discuss any matter relevant for the implementation of the Commitments with the Hold Separate Manager without the presence or explicit agreement of representatives of the Committing Parties. The Hold Separate Manager should provide all information requested by the Commission, including confidential information.

(10) Within a reasonable period after the Effective Date, the Committing Parties shall provide a detailed work plan on the implementation and scope of the hold-separate obligations to the Monitoring Trustee for its review and approval.

(11) Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 7(e) of these Commitments. The Commission may, after having heard the Committing Parties, require the Committing Parties to replace the Hold Separate

Manager. The Hold Separate Manager shall not be employed by the Committing Parties for a period of two years (2) after Closing.

Ring-fencing obligations

(12) The Committing Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by Spirit before the Effective Date will be eliminated and not be used by the Committing Parties. This includes measures vis-à-vis Spirit's appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. All personnel in Spirit's remaining business who have had access to Confidential Information relating to the Divestment Business shall sign non-disclosure agreements preventing them from using or disclosing any such information. To that effect, within two weeks of the Effective Date, the Committing Parties shall provide a detailed work plan on the implementation and scope of the ring-fencing measures and confidentiality obligations to the Monitoring Trustee for its review. The Committing Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to Boeing is required by law.

Transitional obligations

(13) Until the end of the term of the relevant obligations, the Committing Parties shall fulfil and respect its obligations under any and all of the agreements between Spirit and the Purchaser, as detailed in the Schedules 1-6.

Non-solicitation obligation

(14) The Committing Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of two (2) years after Closing.

Non-reacquisition obligation

(15) In order to maintain the structural effect of the Airbus Commitments, the Committing Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Committing Parties showing good cause and, accompanied by a report from the Monitoring Trustee (as provided in paragraph 49 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the whole or part of Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Section D. The Purchaser

(16) In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

a. The Purchaser shall be independent of and unconnected to the Committing Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture). In addition, the Purchaser should not be the Seller in the Concentration nor any of its Affiliated Undertakings.

b. The Purchaser shall have the financial resources to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Committing Parties and other competitors. In particular, the Purchaser shall not be excessively leveraged, shall have sufficient equity and profitability, shall have a turnover significantly larger than the turnover of the Divestment Business, shall have sufficient means to finance the acquisition of the Divestment Business and the execution of its business plan, including investments.

c. The Purchaser shall also have the proven expertise, ability and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Committing Parties and other competitors.

d. The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(17) The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. Spirit has reached an agreement with Purchaser on April 27, 2025. For the approval, Spirit must be able to demonstrate – and the Commission shall verify – that the Purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments including their objective to bring about a lasting structural change in the market.

(18) Any change to the SAPA (as well as ancillary agreements) taking place after the Commission's approval referred to in the previous paragraph shall be approved by the Commission, following consultation of the Monitoring Trustee.

Section E. Monitoring Trustee

I. Appointment procedure

(19) The Committing Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Committing Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.

(20) The Trustee shall:

(a) at the time of appointment, be independent of the Committing Parties and their Affiliated Undertakings;

(b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor;

(c) neither have nor become exposed to a Conflict of Interest;

(d) demonstrate sufficient capacity and resources to take on the Trustee role with all the obligations that the role entails, including to report regularly to the Commission; and

(e) have a sufficient presence in the EU/EEA, and sufficient expertise in the relevant EU/EEA countries covered by the Commitments.

(21) The Trustee shall be remunerated by Boeing in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Committing Parties

(22) No later than one week after the Effective Date, the Committing Parties shall submit the names of at least three natural or legal persons whom the Committing Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the persons proposed as Trustee fulfil the requirements set out in paragraph 20 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments; and

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

(23) The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Committing Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Committing Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Committing Parties

(24) If all the proposed Trustees are rejected, the Committing Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 22 of these Commitments.

Trustee nominated by the Commission

(25) If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Committing Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

(26) The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Committing Parties give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

(27) The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(b) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Committing Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

i. monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Committing Parties, in accordance with paragraphs 7, 8, 9 of these Commitments;

ii. monitor that the Committing Parties make available sufficient resources for the Divestment Business to develop, including for the development of pipeline products or services where relevant (including to reach completion, approval or registration of pipeline products or services), based on the continuation of existing business plans and relevant milestones or of any other future or ongoing projects that are important for the viability of the Divestment Business to the extent that there are any support obligations from the Committing Parties;

iii. to the extent that the Commitments include transitional agreements or the obligation to supply certain inputs, products or services, the Trustee shall monitor the strict compliance with the terms approved and inform the Commission promptly of any changes or compliance problems during the term of such agreements;

iv. supervise the management of the Divestment Business as distinct and saleable entities, in accordance with paragraphs 9 and 11 of these Commitments;

v. with respect to Confidential Information:

   – determine all necessary measures to ensure that the Committing Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Business

   – in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business;

   – make sure that any Confidential Information relating to the Divestment Business obtained by the Committing Parties before the Effective Date is eliminated and will not be used by the Committing Parties; and

   – decide whether such information may be disclosed to or kept by the Committing Parties as the disclosure is reasonably necessary to allow the Committing Parties to carry out the divestiture or as the disclosure is required by law;

vi. monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Committing Parties or Affiliated Undertakings;

(c) propose to the Committing Parties such measures as the Monitoring Trustee considers necessary to ensure the Committing Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

i. potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and by ensuring their access to a confidential version (or a meaningful non-confidential) version of the Commitments, and

ii. potential purchasers are granted reasonable access to the Personnel and Key Personnel;

(e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(f) provide to the Commission, sending the Committing Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. The Committing Parties shall neither receive nor comment on draft reports that the Monitoring Trustee prepares for the purposes of reporting to the Commission;

(g) promptly report in writing to the Commission, sending the Committing Parties a non-confidential copy at the same time, if it concludes on reasonable grounds the Committing Parties are failing to comply with these Commitments. The Committing Parties shall neither receive nor comment on draft reports that the Monitoring Trustee prepares for the purposes of reporting to the Commission;

(h) promptly report in writing to the Commission as soon as it becomes aware of potential exposure to a Conflict of Interest appearing after its appointment, including if it becomes aware of any potential lack of independence or Conflict of Interest with any purchaser participating in the sale process;

(i) to the extent that the Commitments include transitional services agreements, support for projects under development, or the obligation to supply certain inputs, products or services, assess that these obligations are satisfactorily reflected in the sale and purchase agreement and other transaction documents, and inform the Commission promptly of any deviation from the terms included in the Commitments or approved by the Commission or any dispute as to the compliance with such terms during the full duration of the agreement;

(j) promptly report in writing to the Commission risks of degradation of the value of operation of the Divestment Business, or risks that the Purchaser does not or is not able to carry out or maintain investment that are essential for the viability of the Divestment Business.

(k) remain throughout the term of the Commitments a point of contact for the Committing Parties, the Purchaser, the Commission and any other interested third party, in case of issues arising from the implementation and monitoring of the Commitments, including by producing ad hoc reports upon request of the Commission;

(l) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

III. Duties and obligations of the Committing Parties

(28) The Committing Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Committing Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Committing Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Committing Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

(29) Spirit shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business

which are currently carried out at headquarters level. Spirit shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Committing Parties shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

(30) The Committing Parties shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Committing Parties for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

(31) At the expense of Boeing, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Boeing's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are in line with business practice. Should Boeing refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, at the expense of Boeing, after having heard Boeing. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 30 of these Commitments shall apply *mutatis mutandis*.

(32) The Committing Parties agree that the Commission may share Confidential Information proprietary to the Committing Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.

(33) The Committing Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.

(34) For a period of 10 years from the Effective Date the Commission may request all information from the Committing Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

(35) If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including for failure to comply with the requirements in paragraph 27.

(a) the Commission may, after hearing the Trustee and the Committing Parties, require the Committing Parties to replace the Trustee; or

(b) the Committing Parties may, with the prior approval of the Commission, replace the Trustee.

(36) If the Trustee is removed according to paragraph 35 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19-25 of these Commitments.

(37) Unless removed according to paragraph 35 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. Interpretation of the Commitments

(38) In case of a conflict between the wording of the text of the present Commitments and the SAPA (and the ancillary documents) executed by the Committing Parties, or the Purchaser, the wording of the Commitments shall prevail, without prejudice to the fact that the interpretation of the Commitments shall take into account the solution that is more favourable to the Divestment Business.

(39) In the event that the Commission requires any amendment, variation or modification to be made to the SAPA or ancillary documents as a condition to the delivery of the Decision, the Committing Parties shall use their reasonable best efforts to enter into such documents as are necessary to give effect to reflect such amendment, variation or modification, and, in all other circumstances, the Committing Parties will negotiate with the Purchaser in good faith and use their respective reasonable efforts to accommodate and agree any such amendment, variation or modification and enter into any documents required to reflect such amendment, variation or modification and in any event, no such amendment, variation or modification shall be implemented without the prior written consent of the Committing Parties.

Section G. Dispute Resolution Procedure

(40) The following dispute resolution procedure applies in case of conflict between the Committing Parties and the Purchaser in relation to the Commitments.

(41) The Committing Parties and the Purchaser shall appoint a panel of experts (the '***Experts***'). This panel shall comprise:

(a) one expert appointed jointly by the Committing Parties;

(b) one expert appointed by the Purchaser; and

(c) one expert appointed by the two experts appointed under (a) and (b) provided that if they fail to appoint the third expert within 15 working days from their appointment, either the Committing Parties or the Purchaser may request the Monitoring Trustee to appoint the third expert, provided that each person so appointed shall be independent of the Committing Parties and the Purchaser, and a suitably qualified and experienced expert.

(42) The process shall be conducted in private and shall be confidential but under supervision of the Monitoring Trustee. The language of the process shall be English.

(43) The Experts shall act on the following basis:

(a) the Experts shall act fairly and impartially;

(b) each party shall submit to the Experts its brief and its submission in relation to the matter in dispute within 5 working days of the Experts' appointment;

(c) the Experts shall decide the procedure to be followed within 5 working days of their appointment, which may be pursuant to the AAA Rules in New York, under the Commercial Arbitration Rules of the American Arbitration Association (the "**AAA Rules**").

(d) the Committing Parties and the Purchaser shall assist and provide documentation as the Experts reasonably requires to consider the matters referred to them;

(e) decisions of the Experts shall be based on majority votes of the panel;

(f) the Experts' determination in relation to any matter referred to them shall be given within a maximum period of one month of the Experts' appointment;

(g) the Experts' determination in relation to any matter referred to them shall (save for manifest error or fraud) be final and binding on the Committing Parties and the Purchaser;

(h) any challenge to the Experts' determination shall be made in the courts of New York;

(i) each party shall carry out the actions required to comply with the obligations set out in the Experts' determination in relation to any matter pursuant referred to them within any time-limits specified by the Experts; and

(j) the Experts shall determine how and by whom the costs of the determination in relation to any matter referred to it including the fees and expenses of the Experts are to be paid.

(44) The Commission shall be allowed and enabled to participate in all stages of the dispute resolution procedure by:

(k) receiving all written submissions (including documents and reports, *etc.*) made by the Committing Parties and the Purchaser to the procedure;

(l) receiving all documents exchanged by the Experts with the Committing Parties and the Purchaser to the procedure;

(m) filing any written submissions; and

(n) being present at the hearing(s) and being allowed to ask questions.

(45) The Experts shall forward, or shall order the Committing Parties and the Purchaser to forward, the documents mentioned to the Commission without delay.

(46) The Monitoring Trustee shall receive copies of:

(o) all submissions made by the Committing Parties and the Purchaser in relation to the matters they wish to have resolved by the Experts, on the day when these have been submitted to the Experts;

(p) all other documentation provided by the Committing Parties and the Purchaser, on the day when these have been submitted to the Experts; and

(q) the determination made by the Experts, on the day when the determination has been provided to the Committing Parties and the Purchaser.

(47) This dispute resolution procedure is without prejudice to any other rights and remedies that may be available to the Committing Parties and the Purchaser as the case may be in respect of any breach of the transaction documents. This procedure is also without prejudice to any Commission decision related to the compliance of the Committing Parties with the Commitments.

Section H: The review clause

(48) The Commission may extend the time periods foreseen in the Commitments in response to a request from the Committing Parties, in appropriate cases, on its own initiative. Where the Committing Parties request an extension of a time period, they shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Committing Parties. Only in exceptional circumstances shall the Committing Parties be entitled to request an extension within the last month of any period.

(49) The Commission may further, in response to a reasoned request from the Committing Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Committing Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section I: Entry into force

(50) The Commitments shall take effect upon the date of adoption of the Decision.

[signed]

duly authorized for and on
behalf of Boeing

[signed]

duly authorized for and on
behalf of Spirit

SCHEDULE 1 – A220 Pylon Divestment Business

(1) The A220 Pylon Divestment Business as operated to date has the legal and functional structure described in Spirit AeroSystems Organizational Chart.[4]

(2) In accordance with paragraph 4 of these Airbus Commitments, the A220 Pylon Divestment Business includes, but is not limited to:

(a) **The following main tangible assets:**

- Tooling and equipment used primarily in connection with the A220 Pylon Divestment Business.[5]

(b) **The following main intangible assets:**

- Transferred IP rights related to the A220 Pylon Divestment Business.[6]
- License to IP rights (other than Transferred IP) used in connection with the A220 Pylon Divestment Business, as set out in the IP License Agreement.[7]

(c) All licenses, authorizations, and permits for the A220 Pylon Divestment Business.[8]

(d) **The following main contracts**, **agreements, leases, commitments and understandings:**

- Main contracts including business contracts and commingled contracts used primarily in connection with the A220 Pylon Divestment Business.[9]
- Records, files, data and other materials, whether in hard copy or electronic form, to the extent primarily related to or to the extent primarily used or held for use in the A220 Pylon Divestment Business and in the possession of Spirit.
- All Personnel of the A220 Pylon Divestment Business.[10]
- The A220 Pylon Divestment Business includes the benefit, for a transitional period of [time period], after Closing and [cost structure] of certain arrangements under which the Committing Parties or their Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the TSA Agreement[11] and the List of Transitional Services.[12]

[4] As defined in **Annex 1**.
[5] As defined in **Annex 2**.
[6] As defined in **Annex 3**.
[7] As defined in **Annex 4**.
[8] As defined in **Annex 5**.
[9] As defined in **Annex 7**.
[10] As defined in **Annex 30**
[11] As defined in **Annex 31**.
[12] As defined in **Annex 32**.

(3) The A220 Pylon Divestment Business shall not include any assets that are not primarily related to the A220 Pylon Divestment Business.[13] These include, among other assets:

- Boeing Excluded Assets. All (A) contracts primarily related to or primarily used, and (B) equipment, tooling and other assets (other than intellectual property rights), including all books, records, files, data and other materials, whether in hard copy or electronic form primarily related to or primarily used in or held for use, in the case of the immediately foregoing clauses (A) and (B), in connection with Spirit businesses, or performing its or their obligations under its or their contracts or statements of work, with, for or on behalf of Boeing.

- Intellectual Property. All Intellectual Property Rights, other than the Transferred IP.

(4) If there is any asset or personnel which is not covered by paragraph 2 of this Schedule 1 but which contribute to the current operation (and are not excluded pursuant to paragraph 3 of this Schedule 1) or are necessary to ensure the viability and competitiveness of the A220 Pylon Divestment Business, that asset, personnel or adequate substitute will be offered to Airbus.

[13] As defined in **Annex 8**.

SCHEDULE 2 – Belfast Divestment Business

(1) The Belfast Divestment Business as operated to date has the legal and functional structure described in Spirit AeroSystems Organizational Chart.[14]

(2) In accordance with paragraph 4 of these Airbus Commitments, the Belfast Divestment Business includes, but is not limited to:

(a) **The following main tangible assets:**

- Tooling and equipment as primarily used in connection with the Belfast Divestment Business.[15]
- Real property located in Belfast, Northern Ireland:
  - [Real property].
  - [Real property].
- IT Systems as primarily used in connection with the Belfast Divestment Business.[16]

(b) **The following main intangible assets:**

- Transferred IP rights related to the Belfast Divestment Business.[17]
- License to IP rights (other than Transferred IP) used in connection with the Belfast Divestment Business, as set out in the IP License Agreement.[18]

(c) All licenses, authorizations, and permits for the Belfast Divestment Business.[19]

(d) **The following main contracts**, **agreements, leases, commitments and understandings:**

- Main contracts including business contracts and commingled contracts used primarily in connection with the Belfast Divestment Business.[20]
- [Lease].
- Records, files, data and other materials, whether in hard copy or electronic form, to the extent primarily related to or to the extent primarily used or held for use in the Belfast Divestment Business and in the possession of Spirit.
- All Personnel of the Belfast Divestment Business.[21]

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14 As defined in **Annex 1**.
15 As defined in **Annex 9**.
16 As defined in **Annex 10**.
17 As defined in **Annex 3**.
18 As defined in **Annex 4**.
19 As defined in **Annex 5**.
20 As defined in **Annex 12**.
21 As defined in **Annex 30**

- Key Personnel of the Belfast Divestment Business as set out in Appendix 1 below.[22]

- The Belfast Divestment Business includes the benefit, for a transitional period of [time period], after Closing and [cost structure] of certain arrangements under which the Committing Parties or their Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the TSA Agreement[23] and the List of Transitional Services.[24]

(3) The Belfast Divestment Business shall not include any assets that are not primarily related to the Belfast Divestment Business.[25] These include, among other assets:

- Boeing Excluded Assets. All (A) contracts primarily related to or primarily used, and (B) equipment, tooling and other assets (other than intellectual property rights), including all books, records, files, data and other materials, whether in hard copy or electronic form primarily related to or primarily used in or held for use, in the case of the immediately foregoing clauses (A) and (B), in connection with Spirit businesses, or performing its or their obligations under its or their contracts or statements of work, with, for or on behalf of Boeing.

- Remaining Belfast Business Excluded Assets. All Contracts and other assets (other than intellectual property rights) primarily related to or primarily used in connection with Spirit's businesses in Belfast, Northern Ireland, other than the Belfast Divestment Business, including any assets (other than intellectual property rights) primarily related to or primarily used in connection with the (A) provision of engineering services, including research and development, to third parties other than Purchaser; (B) business of performing its obligations under its statements of work with [customer name] or any of its Affiliates, [customer name] or any of its Affiliates, defense customers or other third-party customers in Belfast, Northern Ireland and (C) aftermarket business in Belfast, Northern Ireland.

- Intellectual Property. All Intellectual Property Rights, other than the Transferred IP.

(4) If there is any asset or personnel which is not covered by paragraph 2 of this Schedule 2 but which contribute to the current operation (and are not excluded pursuant to paragraph 3 of this Schedule 3) or are necessary to ensure the viability and competitiveness of the Belfast Divestment Business, that asset, personnel or adequate substitute will be offered to Airbus.

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22 As defined in **Annex 29**.
23 As defined in **Annex 31**.
24 As defined in **Annex 32**.
25 As defined in **Annex 8**.

SCHEDULE 3 – Kinston Divestment Business

(1) The Kinston Divestment Business as operated to date has the legal and functional structure described in Spirit AeroSystems Organizational Chart.[26]

(2) In accordance with paragraph 4 of these Airbus Commitments, the Kinston Divestment Business includes, but is not limited to:

(a) **The following main tangible assets:**

- Tooling and equipment used in connection with the Kinston Divestment Business.[27]
- Real property located in Kinston, North Carolina, USA:
  - [Real property].
  - [Real property].
- IT Systems.[28]

(b) **The following main intangible assets**:

- Transferred IP rights related to the Kinston Divestment Business.[29]
- License to IP rights (other than Transferred IP) used in connection with the Kinston Divestment Business, as set out in the IP License Agreement.[30]

(c) **The following equity securities:**

- The equity securities of Spirit AeroSystems North Carolina Inc.

(d) All licenses, authorizations, and permits for the Kinston Divestment Business.[31]

(e) **The following main contracts**, **agreements, leases, commitments and understandings:**

- Main contracts including business contracts and commingled contracts used in connection with the Kinston Divestment Business.[32]
- Leases to real property located in Kinston, North Carolina, USA:
  - [Lease].
  - [Lease].

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26 As defined in **Annex 1**.
27 As defined in **Annex 13**.
28 As defined in **Annex 14**.
29 As defined in **Annex 3**.
30 As defined in **Annex 4**.
31 As defined in **Annex 5**.
32 As defined in **Annex 16**.

- [Lease].
- [Lease].
- [Lease].
- [Lease].
- [Lease].

(f) Records, files, data and other materials, whether in hard copy or electronic form, to the extent primarily related to or to the extent primarily used or held for use in the Kinston Divestment Business and in the possession of Spirit.

(g) All Personnel of the Kinston Divestment Business.[33]

(h) Key Personnel of the Kinston Divestment Business as set out in Appendix 1 below.[34]

(i) The Kinston Divestment Business includes the benefit, for a transitional period of [time period], after Closing and [cost structure] of certain arrangements under which the Committing Parties or their Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the TSA Agreement[35] and the List of Transitional Services.[36]

(j) Any other tangible or intangible assets owned by Spirit and exclusively related to the Kinston Divestment Business.

(3) The Kinston Divestment Business shall not include any assets that are designated as "Excluded Assets" in Airbus/Spirit Excluded Assets.[37] These include, among other assets:

- <u>Boeing Excluded Assets</u>. All (A) contracts primarily related to or primarily used, and (B) equipment, tooling and other assets (other than intellectual property rights), including all books, records, files, data and other materials, whether in hard copy or electronic form primarily related to or primarily used in or held for use, in the case of the immediately foregoing clauses (A) and (B), in connection with Spirit businesses, or performing its or their obligations under its or their contracts or statements of work, with, for or on behalf of Boeing.

- <u>Intellectual Property</u>. All Intellectual Property Rights, other than the Transferred IP.

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33 As defined in **Annex 30**.
34 As defined in **Annex 29**.
35 As defined in **Annex 31**.
36 As defined in **Annex 32**.
37 As defined in **Annex 8**.

(4) If there is any asset or personnel which is not covered by paragraph 2 of this Schedule 3 but which contribute to the current operation (and are not excluded pursuant to paragraph 3 of this Schedule 3) or are necessary to ensure the viability and competitiveness of the Kinston Divestment Business, that asset, personnel or adequate substitute will be offered to Airbus.

SCHEDULE 4 – Morocco Divestment Business

(1) The Morocco Divestment Business as operated to date has the legal and functional structure described in Spirit AeroSystems Organizational Chart.[38]

(2) In accordance with paragraph 4 of these Airbus Commitments, the Morocco Divestment Business includes, but is not limited to:

(a) **The following main tangible assets:**

- Tooling and equipment used in connection with the Morocco Divestment Business.[39]
- Real property located in Casablanca, Morocco:
  - [Real property].
  - [Real property].
- IT Systems.[40]

(b) **The following main intangible assets**:

- Transferred IP rights related to the Morocco Divestment Business.[41]
- License to IP rights (other than Transferred IP) used in connection with the Morocco Divestment Business, as set out in the IP License Agreement.[42]

(c) **The following equity securities:**

- The equity securities of Spirit AeroSystems Morocco, SAS.

(d) All licenses, authorizations, and permits for the Morocco Divestment Business.[43]

(e) Main contracts including business contracts and commingled contracts used in connection with the Morocco Divestment Business.[44]

(f) Records, files, data and other materials, whether in hard copy or electronic form, to the extent primarily related to or to the extent primarily used or held for use in the Morocco Divestment Business and in the possession of Spirit.

(g) All Personnel of the Morocco Divestment Business.[45]

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38 As defined in **Annex 1**.
39 As defined in **Annex 17**.
40 As defined in **Annex 18**.
41 As defined in **Annex 3.**
42 As defined in **Annex 4**.
43 As defined in **Annex 5**.
44 As defined in **Annex 20**.
45 As defined in **Annex 30**.

(h) Key Personnel of the Morocco Divestment Business as set out in Appendix 1 below.[46]

(i) The Morocco Divestment Business includes the benefit, for a transitional period of [time period], after Closing and [cost structure] of certain arrangements under which the Committing Parties or their Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the TSA Agreement[47] and the List of Transitional Services.[48]

(3) The Morocco Divestment Business shall not include any assets that are designated as "Excluded Assets" in Airbus/Spirit Excluded Assets.[49] These include, among other assets:

- Boeing Excluded Assets. All (A) contracts primarily related to or primarily used, and (B) equipment, tooling and other assets (other than intellectual property rights), including all books, records, files, data and other materials, whether in hard copy or electronic form primarily related to or primarily used in or held for use, in the case of the immediately foregoing clauses (A) and (B), in connection with Spirit businesses, or performing its or their obligations under its or their contracts or statements of work, with, for or on behalf of Boeing.

- Remaining Morocco Business Excluded Assets. All Contracts and other assets (other than intellectual property rights) exclusively related to Spirit's regional and business jet operations and any aftermarket operations in Casablanca, Morocco, as of June 30, 2024.

- Intellectual Property. All Intellectual Property Rights, other than the Transferred IP.

(4) If there is any asset or personnel which is not covered by paragraph (1) of this Schedule 4 but which contribute to the current operation (and are not excluded pursuant to paragraph (3) of this Schedule 4) or are necessary to ensure the viability and competitiveness of the Divestment Business, that asset, personnel or adequate substitute will be offered to Airbus.

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46 As defined in **Annex 29**.

47 As defined in **Annex 31**.

48 As defined in **Annex 32**.

49 As defined in **Annex 8**.

SCHEDULE 5 – Prestwick Divestment Business

(1) The Prestwick Divestment Business as operated to date has the legal and functional structure described in Spirit AeroSystems Organizational Chart.[50]

(2) In accordance with paragraph 4 of these Airbus Commitments, the Prestwick Divestment Business includes, but is not limited to:

(a) **The following main tangible assets:**

- Tooling and equipment used in connection with the Prestwick Divestment Business.[51]
- Real property located in Prestwick, Scotland:
  - [Real property]
- IT Systems.[52]

(b) **The following main intangible assets**:

- Transferred IP rights related to the Prestwick Divestment Business.[53]
- License to IP rights (other than Transferred IP) used in connection with the Prestwick Divestment Business, as set out in the IP License Agreement.[54]
- Legal title to Spirit AeroSystems (Europe) Limited and Spirit AeroSystems (Europe) Pension Trustees Limited.

(c) All licenses, authorizations, and permits for the Prestwick Divestment Business.[55]

(d) **The following main contracts**, **agreements, leases, commitments and understandings:**

- Main contracts including business contracts and commingled contracts used in connection with the Prestwick Divestment Business.[56]
- Leases to real property located in Prestwick, Scotland:
  - [Lease].
  - [Lease].
  - [Lease].

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50 As defined in **Annex 1**.
51 As defined in **Annex 21**.
52 As defined in **Annex 22**.
53 As defined in **Annex 3**.
54 As defined in **Annex 4**.
55 As defined in **Annex 5**.
56 As defined in **Annex 24**.

(e) Records, files, data and other materials, whether in hard copy or electronic form, to the extent primarily related to or to the extent primarily used or held for use in the Prestwick Divestment Business and in the possession of Spirit.

(f) All Personnel of the Prestwick Divestment Business.[57]

(g) Key Personnel of the Prestwick Divestment Business as set out in Appendix 1 below.[58]

(3) The Prestwick Divestment Business shall not include any assets that are designated as "Excluded Assets" in Airbus/Spirit Excluded Assets.[59] These include, among other assets:

- Boeing Excluded Assets. All (A) contracts primarily related to or primarily used, and (B) equipment, tooling and other assets (other than intellectual property rights), including all books, records, files, data and other materials, whether in hard copy or electronic form primarily related to or primarily used in or held for use, in the case of the immediately foregoing clauses (A) and (B), in connection with Spirit businesses, or performing its or their obligations under its or their contracts or statements of work, with, for or on behalf of Boeing.

- Remaining Prestwick Business. (A) All Contracts and other assets (other than intellectual property rights) primarily related to or primarily used in connection with Spirit's respective businesses in Prestwick, Scotland other than the Prestwick Divestment Business and the assets compromising the Spirit AeroSystems Aerospace Innovation Centre located in Prestwick, Scotland, (B) all contracts and other assets (including real property) comprising or contained within the Spirit AeroSystems Aerospace Innovation Centre in Prestwick, Scotland (but excluding the Transferred IP (including physical manifestations thereof) and tools, equipment or other assets contributed by the Purchaser or exclusively used in the performance by Spirit of any Airbus-related contracts).

- Intellectual Property. All Intellectual Property Rights, other than the Transferred IP.

(4) If there is any asset or personnel which is not covered by paragraph 2 of this Schedule 5 but which contribute to the current operation (and are not excluded pursuant to paragraph 3 of this Schedule 5) or are necessary to ensure the viability and competitiveness of the Divestment Business, that asset, personnel or adequate substitute will be offered to Airbus.

57 As defined in **Annex 30**.
58 As defined in **Annex 29**.
59 As defined in **Annex 8**.

SCHEDULE 6 – Saint-Nazaire Divestment Business

(1) The Saint-Nazaire Divestment Business as operated to date has the legal and functional structure described in Spirit AeroSystems Organizational Chart.[60]

(2) In accordance with paragraph 4 of these Airbus Commitments, the Saint-Nazaire Divestment Business includes, but is not limited to:

(a) **The following main tangible assets:**

- Tooling and equipment used in connection with the Saint-Nazaire Divestment Business.[61]
- Real property located in Saint-Nazaire, France: [Real property].
- IT Systems.[62]

(b) **The following main intangible assets**:

- Transferred IP rights related to the Saint-Nazaire Divestment Business.[63]
- License to IP rights (other than Transferred IP) used in connection with the Saint-Nazaire Divestment Business, as set out in the IP License Agreement.[64]

(c) **The following equity securities:**

- The equity securities of Spirit AeroSystems France SARL.

(d) All licenses, authorizations, and permits for the Saint-Nazaire Divestment Business.[65]

(e) **The following main contracts**, **agreements, leases, commitments and understandings:**

- Main contracts including business contracts and commingled contracts used in connection with the Saint-Nazaire Divestment Business.[66]
- Leases to real property located in Saint-Nazaire, France:
  - [Lease].
  - [Lease].
  - [Lease].

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60 As defined in **Annex 1**.
61 As defined in **Annex 25**.
62 As defined in **Annex 26**.
63 As defined in **Annex 3**.
64 As defined in **Annex 4**.
65 As defined in **Annex 5**.
66 As defined in **Annex 28**.

(f) Records, files, data and other materials, whether in hard copy or electronic form, to the extent primarily related to or to the extent primarily used or held for use in the Saint-Nazaire Divestment Business and in the possession of the Committing Parties.

(g) All Personnel of the Saint-Nazaire Divestment Business.[67]

(h) Key Personnel of the Saint-Nazaire Divestment Business as set out in Appendix 1 below.[68]

(i) The Saint-Nazaire Divestment Business includes the benefit, for a transitional period of [time period] after Closing and [cost structure] of certain arrangements under which the Committing Parties or their Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the TSA Agreement[69] and the List of Transitional Services.[70]

(j) Any other tangible or intangible assets owned by Spirit and exclusively related to the Saint-Nazaire Divestment Business.

(3) The Saint-Nazaire Divestment Business shall not include any assets that are designated as "Excluded Assets" in Airbus/Spirit Excluded Assets.[71] These include, among other assets:

- <u>Boeing Excluded Assets</u>. All (A) contracts primarily related to or primarily used, and (B) equipment, tooling and other assets (other than intellectual property rights), including all books, records, files, data and other materials, whether in hard copy or electronic form primarily related to or primarily used in or held for use, in the case of the immediately foregoing clauses (A) and (B), in connection with Spirit businesses, or performing its or their obligations under its or their contracts or statements of work, with, for or on behalf of Boeing.

- <u>Intellectual Property</u>. All Intellectual Property Rights, other than the Transferred IP.

(4) If there is any asset or personnel which is not covered by paragraph (1) of this Schedule 6 but which contribute to the current operation (and are not excluded pursuant to paragraph (3) of this Schedule 6) or are necessary to ensure the viability and competitiveness of the Divestment Business, that asset, personnel or adequate substitute will be offered to Airbus.

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67 As defined in **Annex 30**.
68 As defined in **Annex 29**.
69 As defined in **Annex 31**.
70 As defined in **Annex 32**.
71 As defined in **Annex 8**.

APPENDIX 1

List of Key Personnel for the Divestment Businesses

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List of Annexes to the Commitments Schedules

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Subang Commitments

COMMITMENTS TO THE EUROPEAN COMMISSION

Case M.11578
BOEING/SPIRIT

September 22, 2025

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Case M.11578 – BOEING/SPIRIT
COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), The Boeing Company hereby enters into the following commitments (the "***Subang Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering its proposed acquisition of sole control over Spirit AeroSystems Holdings, Inc. (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A: Definitions

(1) For the purpose of the Subang Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: Undertakings controlled by the Committing Parties and/or by the ultimate parents of the Committing Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

Airbus: Airbus SE.

Airbus Subang Business: All assets used in connection with the performance by Spirit of its obligations under its contracts with Airbus operated or performed by Spirit in Subang, Malaysia.

Assets: The assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B of the Subang Commitments, and Schedule 1 to the Subang Commitments.

Boeing: The Boeing Company.

Closing: The transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: The period of [time period] from the Effective Date.

Committing Parties: Boeing and/or Spirit, as applicable. This includes also any legal successors of the Committing Parties.

Confidential Information: Any business secrets, knowhow, commercial information not in the public domain, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: Any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Subang Commitments.

CTRM: Composites Technology Research Malaysia Sdn. Bhd, which is 100% owned by DRB-HICOM Berhad, a publicly listed Malaysian conglomerate.

Divestment Business: The business or businesses as defined in Section B of the Subang Commitments and Schedule 1 which the Committing Parties will divest.

Effective Date: The date of adoption of the Decision.

Hold Separate Manager: The person appointed by Spirit for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: All personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in Schedule 1 to the Subang Commitments, including the Hold Separate Manager(s).

Monitoring Trustee: One or more natural or legal person(s) approved by the Commission and appointed by the Committing Parties, and who has/have the duty to monitor the Committing Parties' compliance with the conditions and obligations attached to the Decision.

Personnel: All staff employed by Spirit Malaysia at Closing.

Purchaser: CTRM.

Purchaser Criteria. The criteria laid down in paragraph 17 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: The schedule to the Subang Commitments describing the Divestment Business in more detail.

Subang SPA: The Share Purchase Agreement entered into between Spirit and CTRM on August 8, 2025.

Spirit: Spirit AeroSystems Holdings, Inc.

Spirit Malaysia: Spirit AeroSystems Malaysia Sdn Bhd.

Transaction: Boeing's acquisition of Spirit.

Trustee: The Monitoring Trustee.

(2) Should issues arise relating to the interpretation of terms listed in paragraph 1 of the Subang Commitments or terms not defined, the Commission will retain the interpretation that is most favorable for an effective implementation of the Subang Commitments.

Section B: The commitment to divest and the Divestment Business

Commitment to divest

(3) In order to maintain effective competition, the Committing Parties commit to divest, or procure the divestiture of the Divestment Business as a going concern to CTRM on terms and conditions approved by the Commission.

(4) The Committing Parties shall be deemed to have complied with this commitment if pursuant to the Subang SPA, Spirit sells the Divestment Business to the Purchaser within the Closing Period.

Structure and definition of the Divestment Business

(5) The Divestment Business consists of the entirety of Spirit's site in Subang (Malaysia) as operated and held by Spirit Malaysia. For the avoidance of doubt, this shall include the Airbus Subang Business.

(6) The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes the transfer of all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business. In particular:

(a) all tangible and intangible assets (including, if any, products under development and related rights, intellectual property rights, and know how) owned and held by Spirit Malaysia;

(b) all licenses, permits and authorizations issued by any governmental organization for the benefit of the Divestment Business;

(c) all contracts, leases and commitments of Spirit Malaysia;

(d) all customer, credit and other records of Spirit Malaysia; and

(e) all Personnel.

(7) In addition, the Divestment Business includes the benefit, for a transitional period of up to [time period], unless earlier terminated, after Closing and at [cost structure] of all arrangements under which the Committing Parties or their Affiliated Undertakings supply products or services to the Divestment Business or of any other current or new arrangements which are necessary for the viability of the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser and with the approval of the Commission.[1] Strict firewall procedures shall be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant operations.

[1] These include IT, aftermarket services, finance, product quality, procurement and program arrangements.

Section C: Related commitments

Preservation of viability, marketability and competitiveness

(8) From the Effective Date until Closing, the Committing Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimize as far as possible any risk of loss of the competitive potential of the Divestment Business. In particular, the Committing Parties, undertake:

(a) not to carry out any action that might have a significant adverse impact on the value, management, viability, or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available, or procure to make available, sufficient financial and other resources needed for the development of the Divestment Business, including the development of pipeline products or services where relevant, on the basis of the continuation of the existing business plans;

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, to assist the Divestment Business in the process of IT migration and/or IT separation until the full process is completed;

(d) to the extent the Divestment Business includes any licenses, permits and authorizations issued by any governmental organization or any other third party/parties for the benefit of the Divestment Business, to take all reasonable steps, or procure that all reasonable steps are being taken, to obtain consent from any governmental organization or any other third party/parties for all required licenses, permits and authorizations; and

(e) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes, to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Spirit's remaining business. Incentives schemes should not be linked to the sale of the Divestment Business within a certain period or to the sale price of the Divestment Business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Committing Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Committing Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

(9) The Committing Parties commit, subject to paragraph 11 of the Subang Commitments, from the Effective Date, until Closing, to keep, or procure to keep, the Divestment Business separate from the businesses the Committing Parties are retaining and to ensure that unless explicitly permitted under the Subang Commitments or as obligated under transitional services after Closing, (i) management and staff of the businesses retained by the Committing Parties have no involvement in the Divestment Business; and (ii) the Key

Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Committing Parties and do not report to any individual outside the Divestment Business.

(10) Until Closing, the Committing Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as distinct and saleable entities separate from the business which the Committing Parties are retaining. Immediately after the adoption of the Decision, the Committing Parties shall appoint a Hold Separate Manager. The Hold Separate Manager shall be the current head of the Divestment Business and shall be part of the Key Personnel. If the Hold Separate Manager is not the head of the Divestment Business at the time of the submission of the Subang Commitments, the appointment should occur in agreement with the Commission. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Committing Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee. Spirit shall ensure that the Hold Separate Manager is available for an initial call with the Monitoring Trustee and the Commission, as well as to discuss any significant matter at the request of the Monitoring Trustee or the Commission during his/her mandate. The Monitoring Trustee or the Commission can discuss any matter relevant for the implementation of the Subang Commitments with the Hold Separate Manager without the presence or explicit agreement of representatives of the Committing Parties. The Hold Separate Manager should provide all information requested by the Commission, including confidential information.

(11) Within a reasonable period after the Effective Date, the Committing Parties shall provide a detailed work plan on the implementation and scope of the hold-separate obligations to the Monitoring Trustee for its review and approval.

(12) Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(e) of the Subang Commitments. The Commission may, after having heard the Committing Parties, require the Committing Parties to replace the Hold Separate Manager. The Hold Separate Manager shall not be employed by the Committing Parties for a period of two years (2) after Closing.

<u>Ring-fencing obligations</u>

(13) The Committing Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by Spirit before the Effective Date will be eliminated and not be used by the Committing Parties. This includes measures vis-à-vis Spirit's appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. All personnel in Spirit's remaining business who have had access to Confidential Information relating to the Divestment Business shall sign non-disclosure agreements preventing them from using or disclosing any such information. To that effect, within two weeks of the Effective Date, the Committing Parties shall provide a detailed work plan on the implementation and scope of the ring-fencing measures and confidentiality obligations to the Monitoring Trustee for its review. The Committing Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary

for the divestiture of the Divestment Business or the disclosure of which to Boeing is required by law.

Transitional obligations

(14) Until the end of the term of the relevant obligations, the Committing Parties shall fulfil and respect its obligations under any and all of the agreements between Spirit and the Purchaser, as detailed in the Schedule.

Non-solicitation obligation

(15) The Committing Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of two (2) years after Closing.

Non-reacquisition obligation

(16) In order to maintain the structural effect of the Subang Commitments, the Committing Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Committing Parties showing good cause and, accompanied by a report from the Monitoring Trustee (as provided in paragraph 49 of the Subang Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the whole or part of Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Section D: The Purchaser

(17) In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

a. The Purchaser shall be independent of and unconnected to the Committing Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture). In addition, the Purchaser should not be the Seller in the Concentration nor any of its Affiliated Undertakings.

b. The Purchaser shall have the financial resources to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. In particular, the Purchaser shall not be excessively leveraged, shall have sufficient equity and profitability, shall have a turnover significantly larger than the turnover of the Divestment Business, shall have sufficient means to finance the acquisition of the Divestment Business and the execution of its business plan, including investments.

c. The Purchaser shall also have the proven expertise, ability and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

d. The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(18) The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. Spirit has reached an agreement with Purchaser on August 8, 2025. For the approval, Spirit must be able to demonstrate – and the Commission shall verify – that the Purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments including their objective to bring about a lasting structural change in the market.

(19) Any change to the Subang SPA (as well as ancillary agreements) taking place after the Commission's approval referred to in the previous paragraph shall be approved by the Commission, following consultation of the Monitoring Trustee.

Section E: Monitoring Trustee

I. Appointment procedure

(20) The Committing Parties shall appoint a Monitoring Trustee to carry out the functions specified in the Subang Commitments for a Monitoring Trustee. The Committing Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.

(21) The Trustee shall:

(a) at the time of appointment, be independent of the Committing Parties and their Affiliated Undertakings;

(b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor;

(c) neither have nor become exposed to a Conflict of Interest;

(d) demonstrate sufficient capacity and resources to take on the Trustee role with all the obligations that the role entails, including to report regularly to the Commission; and

(e) have a sufficient presence in the EU/EEA, and sufficient expertise in the relevant EU/EEA countries covered by the Subang Commitments.

(22) The Trustee shall be remunerated by Boeing in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Committing Parties

(23) No later than one week after the Effective Date, the Committing Parties shall submit the names of at least three natural or legal persons whom the Committing Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall

contain sufficient information for the Commission to verify that the persons proposed as Trustee fulfil the requirements set out in paragraph 21 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under the Subang Commitments; and

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

(24) The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Committing Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Committing Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Committing Parties

(25) If all the proposed Trustees are rejected, the Committing Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 20 and 25 of the Subang Commitments.

Trustee nominated by the Commission

(26) If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Committing Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. <u>Functions of the Trustee</u>

(27) The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Subang Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Committing Parties give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

(28) The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(b) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Committing Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

i. monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Committing Parties, in accordance with paragraphs 8, 9, and 10 of the Subang Commitments;

ii. monitor that the Committing Parties make available sufficient resources for the Divestment Business to develop, including for the development of pipeline products or services where relevant (including to reach completion, approval or registration of pipeline products or services), based on the continuation of existing business plans and relevant milestones or of any other future or ongoing projects that are important for the viability of the Divestment Business to the extent that there are any support obligations from the Committing Parties;

iii. to the extent that the Subang Commitments include transitional agreements or the obligation to supply certain inputs, products or services, the Trustee shall monitor the strict compliance with the terms approved and inform the Commission promptly of any changes or compliance problems during the term of such agreements;

iv. supervise the management of the Divestment Business as distinct and saleable entities, in accordance with paragraphs 10 and 12 of the Subang Commitments;

v. with respect to Confidential Information:

   - determine all necessary measures to ensure that the Committing Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Business;

   - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business;

   - make sure that any Confidential Information relating to the Divestment Business obtained by the Committing Parties before the Effective Date is eliminated and will not be used by the Committing Parties; and

   - decide whether such information may be disclosed to or kept by the Committing Parties as the disclosure is reasonably necessary to allow the Committing Parties to carry out the divestiture or as the disclosure is required by law;

vi. monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Committing Parties or Affiliated Undertakings;

(c) propose to the Committing Parties such measures as the Monitoring Trustee considers necessary to ensure the Committing Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

   i. potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and by ensuring their access to a confidential version (or a meaningful non-confidential) version of the Subang Commitments, and

   ii. potential purchasers are granted reasonable access to the Personnel and Key Personnel;

(e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Subang Commitments;

(f) provide to the Commission, sending the Committing Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Subang Commitments and the progress of the divestiture process as well as potential purchasers. The Committing Parties shall neither receive nor comment on draft reports that the Monitoring Trustee prepares for the purposes of reporting to the Commission;

(g) promptly report in writing to the Commission, sending the Committing Parties a non-confidential copy at the same time, if it concludes on reasonable grounds the Committing Parties are failing to comply with the Subang Commitments. The Committing Parties shall neither receive nor comment on draft reports that the Monitoring Trustee prepares for the purposes of reporting to the Commission;

(h) promptly report in writing to the Commission as soon as it becomes aware of potential exposure to a Conflict of Interest appearing after its appointment, including if it becomes aware of any potential lack of independence or Conflict of Interest with any purchaser participating in the sale process;

(i) to the extent that the Subang Commitments include transitional services agreements, support for projects under development, or the obligation to supply certain inputs, products or services, assess that these obligations are satisfactorily reflected in the sale and purchase agreement and other transaction documents, and inform the Commission promptly of any deviation from the terms included in the Subang Commitments or approved by the Commission or any dispute as to the compliance with such terms during the full duration of the agreement;

(j) promptly report in writing to the Commission risks of degradation of the value of operation of the Divestment Business, or risks that the Purchaser does not or is not able to carry out or maintain investment that are essential for the viability of the Divestment Business.

(k) remain throughout the term of the Subang Commitments a point of contact for the Committing Parties, the Purchaser, the Commission and any other interested third party, in case of issues arising from the implementation and monitoring of the Subang Commitments, including by producing ad hoc reports upon request of the Commission;

(l) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

III. Duties and obligations of the Committing Parties

(29) The Committing Parties shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Committing Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Subang Commitments and the Committing Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Committing Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

(30) Spirit shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Spirit shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Committing Parties shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

(31) The Committing Parties shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Committing Parties for, any liabilities arising out of the performance of the Trustee's duties under the Subang Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

(32) At the expense of Boeing, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Boeing's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are in line with business practice. Should Boeing refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, at the expense of Boeing, after having heard Boeing. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 32 of the Subang Commitments shall apply *mutatis mutandis*.

(33) The Committing Parties agree that the Commission may share Confidential Information proprietary to the Committing Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.

(34) The Committing Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.

(35) For a period of 10 years from the Effective Date the Commission may request all information from the Committing Parties that is reasonably necessary to monitor the effective implementation of the Subang Commitments.

IV. Replacement, discharge and reappointment of the Trustee

(36) If the Trustee ceases to perform its functions under the Subang Commitments or for any other good cause, including for failure to comply with the requirements in paragraph 28.

(a) the Commission may, after hearing the Trustee and the Committing Parties, require the Committing Parties to replace the Trustee; or

(b) the Committing Parties may, with the prior approval of the Commission, replace the Trustee.

(37) If the Trustee is removed according to paragraph 36 of the Subang Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 20-27 of the Subang Commitments.

(38) Unless removed according to paragraph 36 of the Subang Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Subang Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. Interpretation of the Commitments

(39) In case of a conflict between the wording of the text of the present Commitments and the Subang SPA (and the ancillary documents) executed by the Committing Parties, or the Purchaser, the wording of the Commitments shall prevail, without prejudice to the fact that the interpretation of the Commitments shall take into account the solution that is more favourable to the Divestment Business.

(40) In the event that the Commission requires any amendment, variation or modification to be made to the Subang SPA or ancillary documents as a condition to the delivery of the Decision, the Committing Parties shall use their reasonable best efforts to enter into such documents as are necessary to give effect to reflect such amendment, variation or modification, and, in all other circumstances, the Committing Parties will negotiate with the Purchaser in good faith and use their respective reasonable efforts to accommodate and agree any such amendment, variation or modification and enter into any documents required to reflect such amendment, variation or modification and in any event, no such

amendment, variation or modification shall be implemented without the prior written consent of the Committing Parties.

Section G. Dispute Resolution Procedure

(41) The following dispute resolution procedure applies in case of conflict between the Committing Parties and the Purchaser in relation to the Subang Commitments.

(42) The Committing Parties and the Purchaser shall appoint a panel of experts (the '***Experts***'). This panel shall comprise:

(a) one expert appointed jointly by the Committing Parties;

(b) one expert appointed by the Purchaser; and

(c) one expert appointed by the two experts appointed under (a) and (b) provided that if they fail to appoint the third expert within 15 working days from their appointment, either the Committing Parties or the Purchaser may request the Monitoring Trustee to appoint the third expert, provided that each person so appointed shall be independent of the Committing Parties and the Purchaser, and a suitably qualified and experienced expert.

(43) The process shall be conducted in private and shall be confidential but under supervision of the Monitoring Trustee. The language of the process shall be English.

(44) The Experts shall act on the following basis:

(a) the Experts shall act fairly and impartially;

(b) each party shall submit to the Experts its brief and its submission in relation to the matter in dispute within 5 working days of the Experts' appointment;

(c) the Experts shall decide the procedure to be followed within 5 working days of their appointment, which shall: (i) in the event such dispute arises out of or relates to Sections 3.4 or 3.5 of the Subang SPA, be pursuant to the laws of Malaysia; and (ii) in respect of any other dispute under the Subang SPA, be pursuant to the laws of the State of Delaware, and, in each case, be submitted to the exclusive jurisdiction of the International Chamber of Commerce (the "**ICC**"), pursuant to the dispute resolution framework in Section 12.12 of the Subang SPA;

(d) the Committing Parties and the Purchaser shall assist and provide documentation as the Experts reasonably requires to consider the matters referred to them;

(e) decisions of the Experts shall be based on majority votes of the panel;

(f) the Experts' determination in relation to any matter referred to them shall be given within a maximum period of one month of the Experts' appointment;

(g) the Experts' determination in relation to any matter referred to them shall (save for manifest error or fraud) be final and binding on the Committing Parties and the Purchaser;

(h) any challenge to the Experts' determination shall pursuant to the exclusive jurisdiction of the ICC, in accordance with Section 12.12 of the Subang SPA;

(i) each party shall carry out the actions required to comply with the obligations set out in the Experts' determination in relation to any matter pursuant referred to them within any time-limits specified by the Experts; and

(j) the Experts shall determine how and by whom the costs of the determination in relation to any matter referred to it including the fees and expenses of the Experts are to be paid.

(45) The Commission shall be allowed and enabled to participate in all stages of the dispute resolution procedure by:

(k) receiving all written submissions (including documents and reports, *etc.*) made by the Committing Parties and the Purchaser to the procedure;

(l) receiving all documents exchanged by the Experts with the Committing Parties and the Purchaser to the procedure;

(m) filing any written submissions; and

(n) being present at the hearing(s) and being allowed to ask questions.

(46) The Experts shall forward, or shall order the Committing Parties and the Purchaser to forward, the documents mentioned to the Commission without delay.

(47) The Monitoring Trustee shall receive copies of:

(o) all submissions made by the Committing Parties and the Purchaser in relation to the matters they wish to have resolved by the Experts, on the day when these have been submitted to the Experts;

(p) all other documentation provided by the Committing Parties and the Purchaser, on the day when these have been submitted to the Experts; and

(q) the determination made by the Experts, on the day when the determination has been provided to the Committing Parties and the Purchaser.

(48) This dispute resolution procedure is without prejudice to any other rights and remedies that may be available to the Committing Parties and the Purchaser as the case may be in respect of any breach of the transaction documents. This procedure is also without prejudice to any Commission decision related to the compliance of the Committing Parties with the Subang Commitments.

Section H: The review clause

(49) The Commission may extend the time periods foreseen in the Subang Commitments in response to a request from the Committing Parties, in appropriate cases, on its own initiative. Where the Committing Parties request an extension of a time period, they shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the

report to the Committing Parties. Only in exceptional circumstances shall the Committing Parties be entitled to request an extension within the last month of any period.

(50) The Commission may further, in response to a reasoned request from the Committing Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in the Subang Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Committing Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section I: Entry into force

(51) The Subang Commitments shall take effect upon the date of adoption of the Decision.

[signed]

duly authorized for and on
behalf of Boeing

[signed]

duly authorized for and on
behalf of Spirit

SCHEDULE

(1) The Divestment Business as operated to date has the legal and functional structure described in Spirit AeroSystems Organizational Chart.[2]

(2) In accordance with paragraph 6 of the Subang Commitments, the Divestment Business includes, but is not limited to:

(a) **The following main tangible assets:**

- Tooling and equipment owned by Spirit Malaysia.
- All IT Systems owned by Spirit Malaysia.

(b) **The following main intangible assets**:

- IP rights owned by Spirit Malaysia.
- License to IP rights used by Spirit Malaysia in its operations.
- Legal title to Spirit Malaysia.

(c) All licenses, authorizations, and permits held by Spirit Malaysia at the time of Closing.

(d) **The following main contracts**, **agreements, leases, commitments and understandings:**

- Main contracts, including procurement agreements, sourcing supply agreements, scheduling agreements, and logistics management agreements.[3]
- Leases to real property located in Subang, Malaysia that are leased by Spirit Malaysia.[4]

(e) Records, files, data and other materials, whether in hard copy or electronic form related to or used or held for use in the Divestment Business and in the possession of the Committing Parties.

(f) Personnel of the Subang Divestment Business, *i.e.*, all but [1-5] employees employed by Spirit Malaysia (*i.e.*, [750-1250] employees, including staff, managers, executives and trainees).[5]

(g) Key Personnel of the Subang Divestment Business as set out in Appendix 1 below.[6]

(h) The Divestment Business includes the benefit, for a transitional period of [time period], unless earlier terminated, after Closing and at [cost structure] of all

[2] As defined in **Annex 1**.
[3] As defined in **Annex 3**.
[4] As defined in **Annex 3**.
[5] As defined in **Annex 4**.
[6] As defined in **Annex 2**.

arrangements under which the Committing Parties or their Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the applicable purchase agreement and related transitional service agreement, as detailed in the TSA Agreement [7] and the List of Transitional Services [8].

(i) Any other tangible or intangible assets owned by Spirit Malaysia.

(3) The Divestment Business shall not include any other tangible or intangible assets, contracts, records, knowhow or personnel that is not set forth in paragraph 2 of this Schedule.

(4) If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to CTRM.

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7 As defined in **Annex 5**.

8 As defined in **Annex 6**.

APPENDIX 1

List of Key Personnel for the Divestment Business

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List of Annexes to the Subang Commitments Schedule

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