

Title: The Competition Act 1998 (Public Policy Exclusion) Order 2007 No. 1896 'Complex Weapons' Lead department or agency: Ministry of Defence Other departments or agencies:	Impact Assessment (IA)
	IA No: BIS 0270
	Date: 21/01/11
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The MoD's 2005 Defence Industrial Strategy (DIS) outlined that declining investment in the defence Complex Weapons (or guided missiles) sector was a risk to the UK's ability to use its weapons as and when it required to do so. This requirement is called "Operational Sovereignty", which is defined as the ability to use our Armed Forces' capabilities with appropriate UK control and without third party constraints. The DIS set out how the retention of certain onshore industrial capabilities was essential in ensuring such Operational Sovereignty, and that the UK MoD's declining investment in Complex Weapons put the ongoing sustainability of these industrial capabilities at risk.

In response, the UK's key Complex Weapons industry companies formed "Team CW", an industrial group that would work together with the aim of delivering the UK's future Complex Weapons requirements while ensuring sustainment of critical industrial capabilities and ensuring Value for Money through controlled rationalisation of over-capacity. Team CW included five UK defence companies (MBDA UK, Thales Air Defence Ltd, Thales Missile Electronics, Roxel UK and QinetiQ), but was open to other companies which had a UK based operating division and which had design and development capabilities located in the UK. Working together to achieve these value for money and rationalisation aims would require the Team CW companies to share commercially sensitive information. This sharing would have constituted an illegal exchange of information in breach of Section 2 of the UK Competition Act 1998. There was also a risk that, when acting together, the Team CW companies would hold a dominant position in the market, and that their conduct necessary to ensure that Operational Sovereignty was maintained in the supply chain may have constituted an abuse of their position and thus a breach of Section 18 of the Act. However, the MoD considered that there were exceptional and compelling reasons of public policy as to why these prohibitions should not apply. It therefore sought a Public Policy Exclusion Order under Schedule 3, Paragraph 7 of the Act. The Competition Act (Public Policy Exclusion) Order for Complex Weapons (SI 2007/1896) came into force on 3 August 2007 (hereinafter referred to as "the PPEO").

What are the policy objectives and the intended effects?

- The UK retains an industrial capability to provide the UK Armed Forces with its Complex Weapons requirements.
- The UK continues to have sovereign control over its Complex Weapons.
- The MoD military requirements for Complex Weapons are met, while achieving best value for money from a more efficient industrial base.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 – Do Nothing (leaving the PPEO in place)

Option 1 – Repeal the PPEO and in its place use bi-lateral approach

The preferred option is Option 1.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 6/2015

What is the basis for this review? PIR. **If applicable, set sunset clause date:** Month/Year

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: _____ Edward Davey _____ Date: _____ 29/11/2011 _____

Summary: Analysis and Evidence

Policy Option 1

Description: Repeal the PPEO and continue with a bilateral approach

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Unq

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

It has not been feasible to conduct a formal Investment Appraisal against the Complex Weapons PPEO or its retraction through this IA. During our work to secure the PPEO, and subsequently during the launch of the first bilateral Partnering Agreement with MBDA in March 2010, the MoD identified savings of £1.2Bn associated with the operation of a sector wide and portfolio management approach towards the acquisition of weapons in comparison to open competition. These benefits however have not been accrued for the reasons set out in this IA. There are no costs anticipated through the bi-lateral approach.

Other key non-monetised costs by 'main affected groups'

The scale of these benefits is applicable to the bilateral approach towards operation of the Complex Weapons sector. There is arguably potential for slightly greater financial benefits through the originally envisaged Alliance approach, if only through the greater clarity that can be secured through companies talking directly together on commercially sensitive issues rather than through the MoD, which is a necessary feature of the bilateral construct. However, this is not significant and needs to be set against the potential incomes and efficiencies that can be secured through the export of new products, which is not judged to be feasible through an Alliance. The exploitation of exports is a key element of the Government's Defence and Security Equipment, Support and Technology Green Paper of December 2010 and success here with the new products being produced under the currently operated Team CW initiative will comfortably exceed those lost through the discontinuation of an Alliance. However, the extent of the benefits can not be accurately quantified until those export orders have been won

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	Unquantified	Unquantified

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by ‘main affected groups’

A bilateral approach will allow firms to export with confidence that there will be no legal challenge based on unfair competition. A similar level of benefits from that under the PPEO could be expected.

Key assumptions/sensitivities/risks

Discount rate (%)

The MoD's approach assumed the successful incentivisation of Team CW to provide more effective delivery of Complex Weapons programmes, while ensuring Operational Sovereignty and value for money, and providing the CW industry with a coherent and long term understanding of the MoD's requirements, thereby assisting its transformation. Risks identified at that time were

- Future erosion of government funding for Complex Weapons;
- The Alliance approach failing to materialise as an effective construct;
- Objection from companies outside of the Alliance towards the Team CW approach.

One of the objectives of the Team CW Assessment Phase was to develop the commercial arrangements and to test the detail behind the Alliance business model. During this phase, the risk of legal challenge in the wider export market against products developed with the potential benefits of sharing sensitive information became known. However, by this time, the MoD had developed its own understanding of the Complex Weapons business through discussions with the individual companies so that the risk associated with managing the sector through bilateral arrangements was deemed to be manageable. Thus, the bilateral approach became more feasible and acts to mitigate the second and third risks listed above.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date was the policy implemented?			03/08/2007		
Which organisation(s) enforce(s) the policy?			Ministry of Defence		
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: 0	Benefits: 0	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	See page 2
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	
1	Regulatory Impact Assessment dated 4 April 2007 put in the weblink from the OPSI website
2	The Competition Act 1998 (Public Policy Exclusion) Order 2007 No. 1896 Again a weblink from OPSI website
3	Defence Industrial Strategy http://webarchive.nationalarchives.gov.uk/+http://www.mod.uk/DefenceInternet/DefenceFor/Business/DefenceIndustrialStrategy/
4	Defence Technology Strategy http://webarchive.nationalarchives.gov.uk/+http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/ScienceandTechnologyPublications/SITDocuments/DefenceTechnologyStrategy2006.htm

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Summary

On securing the PPEO, work started to develop an operating model between the MoD and the Team CW companies based around the concept of an Alliance partnering arrangement. In order to test the principles that were planned to be enacted through such an Alliance, the MoD commenced a formal Assessment Phase in 2008. The contracting mechanism for this phase was two non-competitive contracts, one each with the two Team CW prime contractors: MBDA UK and Thales Air Defence Ltd. These contracts were augmented by a Teaming Agreement which was signed by all of the Team CW members, including the MoD. The Teaming Agreement permitted the companies to share commercially sensitive information as allowed by the PPEO. Such information was expected to relate to the individual companies assets, structures, facilities and strategic goals, in order to permit the companies to start to develop ways of transforming and rationalising the Complex Weapons sector in an informed and controlled manner.

However, it became clear during 2009 that the envisaged Alliance business model might not permit the achievement of all of the objectives and other emerging policy objectives for the Complex Weapons sector and that a different contracting vehicle was likely to be necessary. Specifically, both the Government and the Team CW companies had begun to place a high emphasis on the ability of the UK to harness benefit through securing opportunities through export. In this respect, legal advice indicated that there was a risk that exports of a product that had benefited from the exchanges under the PPEO would not be protected by it under other national jurisdictions. There was also the potential for a breach of US "anti-trust" law. The companies therefore set out that they were not willing to continue to operate through an Alliance if this was to impact upon export opportunities.

Revisiting the original analysis, the MoD concluded that achievement of its policy objectives continued to demand a non-competitive sector-level approach towards the acquisition of Complex Weapons. However, it now concluded that best advantage lay in pursuing a bilateral approach towards partnering and that this would not require the use of the provisions provided by the PPEO. Therefore, and as part of the formal review process, the MoD agreed with BIS to take deregulatory action to revoke the PPEO. The non-regulatory bilateral approach now being implemented, which is contractual, is based upon working with the two Team CW prime contractors and their portfolios of work individually, and for the MoD to operate and manage its Complex Weapons requirements at sector level. The first bilateral partnering arrangement (with MBDA UK) was implemented in March 2010.

UK Complex Weapons Sector: Evaluation and Final Stage IA

Background

1. Complex Weapons are tactical weapons that rely upon guidance systems to achieve their mission. They are commonly referred to as guided missiles. Complex Weapons provide the UK with battle winning precision effects which are able to achieve military advantage with a smaller number of weapons, whilst minimising collateral damage. The UK MoD has a long term requirement to procure and manage Complex Weapons through their life, as well as a continuing obligation to ensure that they are safe to use.

Overview – the Policy Objective

2. The MoD's Defence Industrial Strategy (DIS) published in 2005² identified that there was a need to maintain UK based industrial capabilities and technologies within a number of defence sectors to ensure that the UK retains appropriate Operational Sovereignty in order to protect its national security. Operational Sovereignty is defined as the ability to use our Armed Forces' capabilities with appropriate UK control and without third party constraints. This

² <http://www.science.mod.uk/strategy/dis.aspx>

strategy was amplified in the Defence Technology Strategy in 2006³ which identified the specific technologies and capabilities that should be sustained within the UK, subject to the achievement of Value for Money.

3. The DIS identified that there had been a significant and sustained reduction⁴ in the UK's investment in Complex Weapons from the start of the millennium, and recognised that this reduction was a major risk⁵ to the future sustainability of the UK Complex Weapons sector and hence the UK's ability to retain Operational Sovereignty of its weapons. The Armed Forces need to have absolute confidence in the performance and safety of the weapons they use on military operations. Without an UK based Complex Weapons industrial capability, there was, and there remains, a risk that the UK may find itself in a position of having to rely on technologies sourced from companies not based in the UK to meet its Complex Weapons requirements without understanding the provenance and operation of key systems and sub-systems. Having this ability is key to the retention of Operational Sovereignty. Based on this analysis, the MoD judged that it would need to intervene in order to manage the sustainable and affordable industrial transformation and rationalisation of the UK Complex Weapons sector consistent with the need to retain Operational Sovereignty. In parallel, and in response to the challenges of the DIS and as a discrete initiative separate from Government, the UK's key Complex Weapons companies formed a grouping known as "Team CW". Team CW included five UK defence companies⁶, but the grouping was open to other UK based Complex Weapons companies which had significant design and development capabilities. Team CW's aim was to work together to deliver the UK's Complex Weapons military requirements at affordable cost, while retaining Operational Sovereignty through a rationalised UK based industrial footprint developed through an optimised approach to the sector through joint planning, and the implementation of a co-ordinated approach to rationalisation.

The Approach

4. The Team CW approach, which broadly continues to be in place today, is a non-competitive method to address the challenges set out in the DIS through an innovative approach that delivers the Complex Weapon military capability and Operational Sovereignty required, while generating significant savings to the MoD over time. The Team CW approach incorporates a number of strategies⁷, principal of which is the development of a family of weapons using the same technologies and components, funded through a stable "pipeline" of funding⁸. The latter intends to provide stability to the UK Complex Weapons industry in return for greater flexibility to the MoD and the retention of industrial skills and capabilities required to maintain Operational Sovereignty.

Options considered to take forward the Team CW initiative

5. During 2007, the MoD examined the potential for a number of different commercial constructs to deliver the Team CW approach, as well as potentially opting for alternative strategies (such as continuing to pursue open competition). In developing and comparing these options, the MoD needed to create a commercial environment that would allow the MoD to meet

³ <http://www.science.mod.uk/strategy/dts.aspx>

⁴ At the time of publication in 2005 the DIS projected a 40% reduction in MoD investment in the CW sector over the then forthcoming five year period to 2010. This reduction has since occurred and a sum of less than £600M per annum now represents the new baseline for MoD's investment in the CW sector.

⁵ The MoD assessed that companies that are in an industry which faces serious over-capacity (such as the CW sector in 2006-7) are likely to rationalise. This rationalisation might take the form of unilateral decisions to close down certain of their own facilities; or it might lead companies to merge or take over one another. The MoD's concern at that time was that such free-market rationalisation might lead to the loss of just the types of capability that the DIS and DTS identified as being crucial.

⁶ Team CW includes MBDA UK, Thales Air Defence Ltd; Thales Missile Electronics, Roxel UK, and QinetiQ. Of these, MBDA and TADL are Prime Contractors (PC) to the MoD, the others are principal sub-contractors

⁷ The Team CW approach incorporated the use of sector and portfolio management (rather than management of projects in stove-pipes), rapid development and incremental insertion of technologies, the use of weapons of broad utility rather than using bespoke systems, and through the use of common and modular components, being able to reduce overall stockpile levels.

⁸ The concept of a pipeline attempts to permit a stable amount of funding per year rather than funding that has significant peaks and troughs.

the challenges posed by the DIS and to achieve the UK's requirement for affordable and effective military capability, while achieving overall Value for Money. The MoD considered the following different constructs.

a. Maintaining existing competitive arrangements. This was the "Do Nothing" option. This option would have meant continuing to procure Complex Weapons through open international competition and the assumption that this would be through the use of Military-Off-The-Shelf (MOTS) systems. While potentially providing some of the required level of military capability, this option would not have secured enduring on-shore sovereign capability and thus retain an appropriate level of Operational Sovereignty. It was also unaffordable in overall terms⁹. This option was therefore rejected.

b. Partnering with Team CW. This option required the creation of Team CW (see paragraph 3 above) and was based on the development of a long term Strategic Partnering Agreement between the MoD and the Team CW companies. The SPA was planned on the basis of an Alliance construct. The aim of the SPA was to incentivise Team CW to work together to provide more effective delivery of CW programmes, while ensuring operational sovereignty and Value for Money, and providing the CW industry with a more coherent and long term understanding of the MoD's requirements, thereby assisting its rationalisation and efficiency. Overall, this option was deemed to offer the optimum solution for the UK Complex Weapons sector, as it would deliver increased commonality of systems, secure a greater degree of operational sovereignty, reduce through life costs, and provide better support to front line operations.

c. Select a single UK Prime Contractor. This option was based on the selection of a single Complex Weapons Prime Contractor to act as a single source for the UK's future acquisition and support of Complex Weapons. This option offered some advantages in terms of efficient sector management, but in practice it proved that no one company had all the requisite technologies and thus this option would not have guaranteed access to the full range of capabilities and technologies required for full Operational Sovereignty.

d. Implement Bilateral Partnering Arrangements with UK Prime Contractors. This option was similar in approach to Option (b), but was based on the MoD negotiating individual partnering arrangements with the UK's Complex Weapons Prime Contractors on a bilateral basis in order to undertake the transformational activities needed to deliver the sector strategy. While this option continued to offer the ability to manage the industry at portfolio and sector level, the MoD concluded that this option would not be as comprehensive as a solution based on partnering with Team CW industry under an Alliance approach. It was also judged at that time that negotiating the full range of partnering arrangements might take significant time to conclude with the potential that sovereign capability could be lost during the process.

6. In assessing these options, the MoD concluded that, while operating a bilateral partnering approach or selecting a single Prime Contractor offered some benefits, they presented risks of not fully covering all the capabilities and technologies essential for the retention of Operational Sovereignty of Complex Weapons. In contrast, partnering with Team CW (Option (b) above) provided a higher level of confidence that Operational Sovereignty would be safeguarded. This led to the decision to pursue partnering with Team CW through a Strategic Partnering Agreement as the preferred option.

Developing the Team CW Alliance Approach

7. In taking forward the Alliance approach, the MoD recognised that it would be essential for the Team CW companies to engage in a number of practices which would constitute a breach

⁹ There was recognition at this time that certain future military capability requirements were unfunded leading to future capability gaps.

of Section 2 (the Chapter I prohibition) and Section 18 (the Chapter II prohibition) of the UK Competition Act 1998.¹⁰

8. Working with (the then) Department for Business Enterprise and Regulatory Reform (BERR) and the Cabinet Office's Better Regulation Executive (BRE), the MoD prepared a comprehensive Regulatory Impact Assessment (RIA) that explained the rationale for seeking a Public Policy Exclusion Order (PPEO) for certain categories of agreements and particular circumstances in the UK Complex Weapons sector. The PPEO was enacted through Statutory Instrument No. 1896, which came into force on 3 August 2007.

Policy in Practice

9. With the PPEO in place, work commenced in 2008 to develop an operating model for the proposed Alliance arrangement between the Team CW members. The approach was constructed around the creation of an Alliance Management Board (AMB) and Alliance Steering Board (ASB) which had the role of developing a single sector and project management regime. In tandem, 2008 saw the development of a concept of using a much smaller set of weapons families taking advantage of technologies and sub-systems that could be used in a range of missiles. This work culminated in an initial business case in April 2008 to commence a three year non-competitive Assessment Phase to demonstrate the viability of the proposed approach and, through the launch of six weapons projects, to provide confidence in the ability of the Team CW initiative to deliver the benefits expected of it.

10. The contracting mechanism for the Assessment Phase was through two non-competitive contracts for the six launch projects with the two Team Complex Weapons Prime Contractors: MBDA UK Ltd and Thales Air Defence Ltd. These contracts were augmented by a Teaming Agreement, which was signed by all of the Team CW industrial members and by the MoD. The Teaming Agreement permitted the companies (and the MoD) to share commercially sensitive information as afforded by the PPEO. Such information was expected to relate to the individual companies assets, structures, facilities and strategic goals, in order to permit the companies to start to develop ways of transforming and rationalising the Complex Weapons sector in an informed and controlled manner.

11. In early 2009, and as part of the Assessment Phase, it became apparent from emerging legal advice (commissioned by the Team CW companies themselves) that the proposed Alliance construct could prevent Team CW members from being able to export any products that had benefited from the exchanges of commercially sensitive information made possible by the protection afforded by the PPEO. The reason for this was that the exclusion from the competition law regime was granted on the basis that it was a measure necessary for the protection of the UK's national interest and, therefore, the exclusion could only apply in so far as it was indispensable for the protection of UK national security. Exporting products developed as a result of co-operation between direct industrial competitors was not considered necessary for the protection of UK national security. There was also the risk that such co-operation could constitute a breach of competition law in other jurisdictions (particularly in the USA). Given these risks, the Team CW companies set out that they were reluctant to continue to operate under the protection of the PPEO. The MoD itself recognised the increasing importance of harnessing benefit through exploitation of the export market and the emerging drawbacks associated with the pursuance of an Alliance approach.

¹⁰ These practices included the exchange of commercially sensitive information between companies that operate as direct or indirect competitors in a market(s) (breach of the Chapter I prohibition) and, in so far as Team CW became a dominant player in a market(s), abusing that position by applying dissimilar conditions to equivalent transactions (breach of the Chapter II prohibition) Paragraph 7 of Schedule 3 of the Competition Act 1998 provides that if the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter I or Chapter II prohibitions should not apply to an agreement or category of agreements or to particular circumstances, he may by order exclude the agreement from such prohibitions. Protecting the interest of the UK's security by ensuring operational capability of CW was considered an exceptional and compelling reason of public policy.

12. Against this background, the MoD revisited aspects of the original analysis. The MoD also wished to ensure that a changed approach did not alter the fundamentals of the Team CW approach (namely that it was non-competitive and remained possible to deliver a family of weapons through management at sector level and that Operational Sovereignty would continue to be secured). The analysis concluded that the next best alternative was to move towards a series of bilateral partnering arrangements under the overall control of the MoD at sector level. This work also concluded that, while this approach was feasible, the process to operate it was likely to be more cumbersome and present greater risk in terms of ensuring Operational Sovereignty. However, the MoD judged that bilateral partnering was now the best option open to the MoD, as it was still capable of delivering the MoD's original objectives but also enabled the companies to export their weapons in the global market place which had become an essential requirement for the companies and for Government. The MoD therefore judged that, on balance, it should now pursue bilateral partnering arrangements. Recalling the earlier identified risk associated with the potential loss of sovereignty through a bilateral approach, subsequent work has confirmed that, while it has not been possible to negotiate two partnering arrangements in parallel, it has been possible to maintain operational sovereignty through careful management of the sector.

13. Building on the satisfactory conclusion of the Assessment Phase, and following the conclusion of negotiations, the MoD entered into an initial bilateral partnering agreement¹¹ with MBDA UK (as the UK's largest CW Prime Contractor) in March 2010. An associated £330M contract under the agreement was signed to develop a number of the launch projects started during the Assessment Phase. In order to operate at sector level, the MoD has augmented the bilateral agreement with a Complex Weapons Sector Steering Board, which includes representatives from both of the Team CW Prime Contractors. The Sector Steering Board sets the long-term vision and the broad parameters of a UK's Complex Weapons sector strategy.

14. The plan for the next stage of the initiative, under the aforementioned interim partnering agreement, is based upon placing two further project contracts to cover subsequent demonstration and manufacturing work on Complex Weapons systems. The MoD will then take a further decision on the potential to enter into a full long term partnering agreement with MBDA in 2012. Work is also underway to explore the potential for a commercial arrangement with the second Team CW Prime Contractor, Thales Air Defence Ltd.

15. In parallel with the Team CW Assessment Phase, and as announced at the UK/France Summit on 2 November 2010, the UK Government has also been working to widen and deepen its co-operation on CW with France. This is based on the development of a joint approach towards meeting UK/FR Complex Weapons military requirements through more efficient use of the industrial resource and skill available through MBDA UK, MBDA France and various elements of Thales UK, Thales France, and Sagem. A key principle of this approach has been to work towards achieving increasing dependency in which key technologies will be shared between the two nations. The notion of sovereign capability for Complex Weapons, as envisaged in the DIS, is therefore gradually evolving in a way which recognises this increasingly joint approach to retention of these long term technologies.

16. Noting the MoD's changed approach to a bilateral relationship with the Team CW Prime Contractors, the move towards increased co-operation with France, and the need to undertake a review of the Team CW PPEO at the three year point, it is now timely to consider the continued requirement for the PPEO.

Conclusion of PPEO and Suggested Policy Going Forwards

17. In undertaking the review of the Team CW PPEO, the MoD had considered the following three options:

¹¹ Termed the MoD/MBDA Interim Portfolio Management Agreement (PMA-I).

- a. Retaining the Team CW PPEO. This is the “Do Nothing” option. Given the move to a bilateral partnering approach, there is no longer a need for the Team CW companies to share commercially sensitive information and, therefore, there is no longer a requirement to retain the PPEO. The continued existence of the PPEO is negative for Team CW, does not meet its MoD objectives.
- b. Amending the Existing PPEO. Noting the ongoing requirement to manage at sector level, there is some merit in considering an amendment to the PPEO that still allows for some information exchange – albeit at a very strategic level. However, this option would leave the door open to legal challenge on the basis of anti-competitive behaviour not covered by the PPEO.
- c. Revoking the Existing PPEO. Given that the MoD has moved away from a cooperative Alliance based partnership to a bilateral partnering approach, the most appropriate option is to revoke the PPEO. Indeed, this is essential to prevent any exchanges of commercially sensitive information between the Team CW companies, which are no longer considered essential for the protection of the UK’s national interest.

18. Assessment of the above options leads the MoD to conclude that, given the change in strategy, it is not necessary and, it would be inappropriate, for the CW market to retain a derogation from the application of the Competition Act 1998 and that, therefore, the PPEO should be revoked.

19. The case for revoking the PPEO has been endorsed by the Team CW members and initial internal action has already been taken by the MoD to ensure that the PPEO cannot be inadvertently used during the period leading to the derogation of the Order. These measures include the termination of the Team CW Teaming Agreement and the removal of one of the necessary conditions to come under the scope of the PPEO, namely the requirement to be designated a “Team CW Member” by the Secretary of State.

20. While the Team CW companies did obtain greater visibility of each other’s project performance during the time building up to an Alliance, through the various joint programme meetings, this did not extend to highly sensitive information relating to commercial performance or facilities. This was expected to come later in our negotiations, given that the Team CW initiative was, and remains, a long term approach towards acquisition. Consequently, the MoD is not aware of any exchange of information between the companies that would have impacted upon the market.

Impacts of Removing PPEO and Adopting Bilateral Approach

The cost impacts of the removal of the PPEO will be negligible as this was never used due to the reasons identified above. The benefits are that firms will now be able to export with confidence that there is no legal challenge based on unfair competition. A non regulatory approach through bilateral exchanges will be pursued in future with no imposed costs. It is expected from the MoD initial analysis that this will have a similar level of benefits as was expected under the PPEO.

Annexes

Where the Specific Impact Tests yield information relevant to an overall understanding of policy options, the detailed results may be annexed.

Add annexes here.

Micro Firm Moratoria – There are no micro firms in the industry due to ... The approach we are recommending is a non-regulatory approach and therefore no need to exempt micro firms.

Equalities – From an initial screening, there are expected to be no disproportionate impacts on any protected group.

One In – One Out – there are no direct cost savings as a result of the repeal of the PPEO therefore no One Out can be claimed. Additionally, the approach going forward is non-regulatory, therefore, out of scope for One In – One Out.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p>

Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]