

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Thales S.A. and its subsidiary Thales Australia Holdings Pty Ltd ACN 84 058 583 841

CONTENTS

| CLAUSE | PAGE |
|--|------|
| 1. PERSON GIVING THE UNDERTAKING..... | 1 |
| 2. BACKGROUND | 1 |
| 3. COMMENCEMENT OF THIS UNDERTAKING | 2 |
| 4. CESSATION OF ONGOING OBLIGATIONS | 3 |
| 5. JURISDICTION | 3 |
| 6. DIVESTITURE IN ACCORDANCE WITH EC COMMITMENTS | 3 |
| 7. PROCESS FOR APPROVING A PROPOSED PURCHASER | 3 |
| 8. DIVESTITURE TRUSTEE AND MONITORING | 4 |
| 9. NOTIFICATION OF KEY DATES AND ACCC REQUESTS FOR INFORMATION | 5 |
| 10. DISCLOSURE OF THIS UNDERTAKING | 6 |
| 11. OBLIGATION TO PROCURE..... | 6 |
| 12. NO DEROGATION..... | 7 |
| 13. CHANGE OF CONTROL | 7 |
| 14. COSTS..... | 7 |
| 15. NOTICES | 7 |
| 16. DEFINED TERMS AND INTERPRETATION | 8 |
| Schedule | |
| 1 Dictionary and interpretation..... | 10 |
| 2 Proposed Purchaser Notice Form..... | 14 |
| 3 EC Commitments | 16 |

1. **PERSON GIVING THE UNDERTAKING**

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Thales S.A and its subsidiary Thales Australia Holdings Pty Ltd ACN 84 058 583 841 (together referred to as **Thales** in this Undertaking).

2. **BACKGROUND**

The parties to the proposed acquisition

Thales

- 2.1 Thales S.A. is an international electronics and communications group registered in France and listed on the Euronext Stock Exchange in Paris (Euronext Paris: HO). Thales provides systems and electronic services globally in five main areas: (i) aeronautics, (ii) space, (iii) ground transportation, (iv) defence and (v) security.
- 2.2 In Australia, Thales has operations in every mainland state and territory comprising: defence, aerospace, security, transportation and R&D.
- 2.3 Relevantly for this undertaking, Thales supplies General Purpose Hardware Security Modules (**GP HSMs**) to customers in Australia under its nShield brand.

Gemalto

- 2.4 Gemalto N.V. (**Gemalto**) is an international digital security company registered in the Netherlands and listed on the Euronext Stock Exchange in Paris and Amsterdam (Euronext Amsterdam and Paris: GTO). Gemalto is active globally in the development, manufacture or supply of, and the provision of services relating to, data encryption and security technologies and communications systems. The company's portfolio ranges from cryptographic software to back-office platforms for authentication, encryption and digital credential management.
- 2.5 In Australia, Gemalto's operations are run out of two locations, Melbourne and Sydney, and include activities in the following main areas: mobile, banking and payment, machine-to-machine and internet of things, government and enterprise security.
- 2.6 Relevantly for this undertaking, Gemalto supplies GP HSMs to customers in Australia under its Safenet brand.

The Proposed Acquisition

- 2.7 Thales proposes to acquire all issued and outstanding ordinary shares of Gemalto by way of a full public offer subject to the terms and conditions of a 17 December 2017 merger agreement between Thales and Gemalto (**Proposed Acquisition**). The Proposed Acquisition will result in Gemalto becoming a subsidiary of Thales.

The ACCC's review

- 2.8 On 24 September 2018, the ACCC commenced its public review of the Proposed Acquisition.
- 2.9 The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Acquisition, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.

The ACCC's competition concerns

- 2.10 The ACCC has concluded that, in the absence of the Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the supply of GP HSMs in Australia (**Relevant Market**).
- 2.11 The ACCC is concerned that, without the Undertaking, the Proposed Acquisition raises competition concerns that would have the effect, or be likely to have the effect, of substantially lessening competition in the market for the supply of GP HSMs in Australia. The parties are close competitors and are the market leading providers of GP HSMs in Australia. In particular, the ACCC is concerned that the Proposed Acquisition would lead to significant concentration and reduce competitive tension in the market for GP HSMs, resulting in higher prices, less innovation and lower quality products and services.
- 2.12 Thales does not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the Relevant Market. However, to address the concern that has been described by the ACCC at clause 2.11 above, Thales has offered this Undertaking pursuant to section 87B of the Act.

Commitments to the European Commission

- 2.13 On 18 June 2018, Thales notified the European Commission of the Proposed Acquisition.
- 2.14 On 7 November 2018, Thales submitted the proposed EC Commitments to the European Commission, setting out the terms upon which Thales will divest the Divestiture Business.
- 2.15 This Undertaking incorporates the EC Commitments to divest or procure the divestiture of the Divestiture Business to an ACCC Approved Purchaser.

The Undertaking remedy

- 2.16 The objective of this Undertaking is to address the ACCC's competition concerns as set out above that would otherwise arise as a consequence of the Proposed Acquisition. The Undertaking aims to achieve this objective by placing obligations on Thales to:
- (a) ensure that the Divestiture Business is sold to an Approved Purchaser;
 - (b) create or strengthen a viable, effective, stand-alone, independent and long term competitor for the Relevant Market in Australia;
 - (c) ensure the purchaser of the Divestiture Business has all the necessary associated assets and rights to compete effectively with Thales in the Relevant Market in Australia;
 - (d) maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business in Australia prior to divestiture; and
 - (e) provide for the effective oversight of Thales' compliance with this Undertaking.

3. COMMENCEMENT OF THIS UNDERTAKING

- 3.1 This Undertaking comes into effect when:
- (a) this Undertaking is executed by Thales; and
 - (b) this Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).

4. **CESSATION OF ONGOING OBLIGATIONS**

Withdrawal

- 4.1 Thales may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

- 4.2 The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3 The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Survival

- 4.4 Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 9, 11, 12, 13, 14, 15 and 16 survive completion of the obligations in clauses 5, 6, 7, 8 and 10.

5. **JURISDICTION**

- 5.1 Thales S.A. irrevocably submits to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.
- 5.2 Unless and until notified in writing by Thales to the ACCC of the appointment of another person as agent within Australia, Thales appoints Thales Australia Holdings Pty Ltd ACN 84 058 583 841, as its agent for the purposes of any service of process in relation to this Undertaking.

6. **DIVESTITURE IN ACCORDANCE WITH EC COMMITMENTS**

- 6.1 On and from the Control Date, Thales must comply with the EC Commitments as they relate to the divestiture of the Divestiture Business. The EC Commitments will be interpreted in accordance with the applicable laws of interpretation in the EEA.

Divestiture only to an Approved Purchaser

- 6.2 Thales must, after the Control Date, complete the divestiture of the Divestiture Business only to an Approved Purchaser.

7. **PROCESS FOR APPROVING A PROPOSED PURCHASER**

Provision of a notice for a Proposed Purchaser

- 7.1 To seek ACCC approval for a Proposed Purchaser, Thales or the Divestiture Trustee must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**), including the Sale and Purchase Agreement and any Ancillary Agreement.
- 7.2 Thales must take all steps necessary to provide the Proposed Purchaser Notice no later than 20 (twenty) Business Days before the end of the First Divestiture Period or the end of the Trustee Divestiture Period, (as relevant).

- 7.3 If Thales is unable to provide the Proposed Purchaser Notice in accordance with clause 7.2, Thales must provide the Proposed Purchaser Notice as soon as practicable and at the latest by the date that the Proposed Purchaser is required to be notified to the European Commission under the EC Commitments.

Approval of a Proposed Purchaser

- 7.4 The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice.
- 7.5 Without limiting the ACCC's discretion, in making the decision pursuant to clause 7.4, the factors to which the ACCC may have regard include whether the:
- (a) Sale and Purchase Agreement and any Ancillary Agreement is consistent with this Undertaking and otherwise acceptable to the ACCC;
 - (b) Proposed Purchaser will complete the transaction as contemplated by the Sale and Purchase Agreement and EC Commitments;
 - (c) Proposed Purchaser is independent of Thales;
 - (d) Proposed Purchaser is of good financial standing;
 - (e) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern in Australia;
 - (f) Proposed Purchaser is able to conduct the Divestiture Business effectively in Australia; and
 - (g) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC in Australia, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.
- 7.6 The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

8. DIVESTITURE TRUSTEE AND MONITORING

Closing Period

- 8.1 Thales must ensure that Closing takes place within the Closing Period.
- 8.2 The ACCC may extend the Closing Period by providing written notice to Thales prior to the expiry of the Closing Period.
- 8.3 In the event:
- (a) Thales or the Approved Purchaser is required to obtain a Foreign Divestiture Clearance and, for this reason the Closing is prevented from occurring within the Closing Period; and
 - (b) the ACCC accepts Thales' submissions showing that it has been seeking the Foreign Divestiture Clearance in good faith,

then the ACCC may at its discretion extend the Closing Period until Thales receives the required Foreign Divestiture Clearances and will notify Thales of this in writing.

Appointment of Divestiture Trustee

- 8.4 Thales must procure that the terms of appointment of the Divestiture Trustee include obligations to the effect that the Divestiture Trustee must divest the Divestiture Business only to an Approved Purchaser approved by the ACCC (in accordance with clause 7 of this Undertaking) with the Divestiture Trustee acting in place of Thales.
- 8.5 Thales must provide the ACCC with a copy of the executed terms of appointment of the Divestiture Trustee within 5 (five) Business Days of execution.

Provision of copies of reports

- 8.6 Thales must procure that the Monitoring Trustee provide to the ACCC a copy of each report (including any confidential version) provided to the European Commission that indicates the progress of Thales' compliance with the EC Commitments within 3 (three) Business Days of providing such a report to the European Commission.
- 8.7 Thales must procure that the Divestiture Trustee provide to the ACCC a copy of each report (including any confidential version) provided to the European Commission that indicates the progress of the divestiture process in relation to the EC Commitments within 3 (three) Business Days of providing such a report to the European Commission.

9. NOTIFICATION OF KEY DATES AND ACCC REQUESTS FOR INFORMATION

- 9.1 Thales must notify the ACCC in writing of the occurrence of each of the following events within 2 (two) Business Days after the date the event occurs:
- (a) the Control Date; and
 - (b) the Closing date.
- 9.2 Thales must provide the ACCC with a copy of the Sale and Purchase Agreement and any Ancillary Agreement within 2 (two) Business Days after that agreement is executed.
- 9.3 Thales must respond in a timely manner to any questions or requests for information or documents made by the ACCC about this Undertaking.
- 9.4 The ACCC may directly request information from the Monitoring Trustee or the Divestiture Trustee at any time.
- 9.5 The ACCC may direct Thales in respect of its compliance with this Undertaking to, and Thales must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Thales' custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 9.6 Any direction made by the ACCC under clause 9.5 will be notified to Thales, in accordance with clause 15.2.
- 9.7 In respect of Thales' compliance with this Undertaking, the ACCC may request the Monitoring Trustee or Divestiture Trustee to furnish information, and produce documents and materials to the ACCC that may be within the Monitoring Trustee's or Divestiture Trustee's custody, power or control in the time and form requested by the ACCC.

- 9.8 Thales will use its best endeavours to ensure that the Monitoring Trustee or the Divestiture Trustee comply with any request from the ACCC in accordance with clauses 9.4 and 9.7.
- 9.9 Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 9 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 9.10 The ACCC may in its discretion:
- (a) advise the Monitoring Trustee or Divestiture Trustee of any request made by it under this clause 9; and/or
 - (b) provide copies to the Monitoring Trustee or Divestiture Trustee of any information furnished, documents and material produced or information given to it under this clause 9.
- 9.11 Nothing in this clause 9 requires the provision of information or documents in respect of which Thales has a claim of legal professional or other privilege.

10. **DISCLOSURE OF THIS UNDERTAKING**

- 10.1 Thales and the ACCC agree that Schedule 3 will remain confidential.
- 10.2 Thales acknowledges that the ACCC may, subject to clause 10.1:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 10.3 Nothing in clause 10.1 or the confidential parts of this Undertaking referred to in clause 10.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by section 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 10.4 Nothing in clause 10.1 or the confidential parts of this Undertaking referred to in clause 10.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

11. **OBLIGATION TO PROCURE**

- 11.1 Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Thales to take or refrain from taking some action, Thales will procure that Related Body Corporate to take or refrain from taking that action.

12. **NO DEROGATION**

- 12.1 This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Thales of any term of this Undertaking.
- 12.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Thales does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

13. **CHANGE OF CONTROL**

- 13.1 In the event that a Change of Control is reasonably expected to occur, Thales must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Thales pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Thales in writing that a section 87B undertaking under this clause is not required.

14. **COSTS**

- 14.1 Thales must pay all of its own costs incurred in relation to this Undertaking.

15. **NOTICES**

Giving Notices

- 15.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Merger and Authorisation Review Division

With a copy sent to: mergersru@acc.gov.au
Attention: Director, Remedies Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

- 15.2 Any notice or communication to Thales pursuant to this Undertaking must be sent to:

Name: Ashurst
Address: 123 Eagle Street, Brisbane, QLD 4000 Australia
Email Address: alyssa.phillips@ashurst.com and john.mckellar@ashurst.com
Fax number: +61 7 3259 7111
Attention: Alyssa Phillips and John McKellar

With a copy sent to:

Name: Cleary Gottlieb Steen & Hamilton LLP
Address: Rue de la Loi 57, 1040 Brussels, Belgium
Email Address: pbock@cgsh.com
Fax number: +32 2 231 1661
Attention: Patrick R. Bock

- 15.3 If sent by post, notices are taken to be received 3 (three) Business Days after posting (or 7 [seven] Business Days after posting if sent to or from a place outside Australia).
- 15.4 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 15.5 Thales must notify the ACCC of a change to its contact details within 3 (three) Business Days.
- 15.6 Any notice or communication will be sent to the most recently advised contact details and subject to clauses 15.3 and 15.4, will be taken to be received.

16. DEFINED TERMS AND INTERPRETATION

Definitions in the Dictionary

- 16.1 A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

- 16.2 Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

EXECUTED as an Undertaking

Executed by Thales S.A. by its authorised signatory

Signature



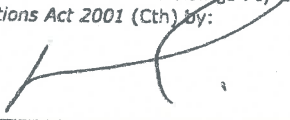
Name and Title

GROUP SECRETARY & GENERAL COUNSEL
16/12/18

Date

Executed by Thales Australia Holdings Pty Ltd ACN 84 058 583 841 pursuant to section 127(1) of the Corporations Act 2001 (Cth) by:

Signature of director

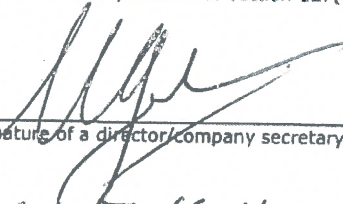


WARWICK STRACHAN
Name of director (print)

Date

17/12/18

Signature of a director/company secretary



C.L. JENKINS
Name of director/company secretary (print)

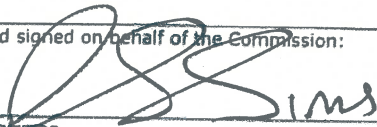
Date

17/12/18

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010 on:

And signed on behalf of the Commission:

Chairman



Date

19/12/18

SCHEDULE 1

Dictionary and interpretation

1. DICTIONARY

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Ancillary Agreement means an agreement relating to, and/or necessary for the operation of, the Divestiture Business (such as a technical support or transitional supply agreement) that is entered into in connection with the Sale and Purchase Agreement.

Approved Purchaser means the person approved by the ACCC under clause 7 of this Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Change of Control means:

- the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of [Company] to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- the sale or transfer of any assets necessary, or which may be necessary, to enable Thales to continue to comply with this Undertaking in its entirety.

Closing means the transfer of the legal title to the Divestiture Business to the Approved Purchaser.

Closing Period means the period referred to in the EC Commitments from the approval of the Approved Purchaser and the terms of sale by the European Commission.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Control Date means the date on which the Proposed Acquisition is completed.

Corporations Act means the *Corporations Act 2001* (Cth).

Divestiture Business means Thales' global GP HSM business, marketed under the nShield brand, as defined in Section B and in the Schedule of the EC Commitments, which Thales S.A. commits to divest.

Divestiture Trustee means one or more natural or legal person(s) who is/are approved by the European Commission and appointed by Thales S.A. and who has/have received from Thales S.A. the exclusive trustee mandate to sell the Divestiture Business to the Approved Purchaser.

EC Commitments means the commitments made by Thales, and formally accepted by the European Commission, in relation to the divestiture of the Divestiture Business on terms substantially in the form of those submitted to the European Commission by Thales on 7 November 2018 and enclosed at confidential Schedule 3.

Decision means the European Commission's decision pursuant to Article 8(2) of Council Regulation (EC) No. 139/2004 to declare the acquisition of 100% of the issued and outstanding ordinary shares of Gemalto N.V. by Thales S.A. compatible with the internal market and the functioning of the EEA Agreement.

EEA means the Member States of the European Union and Norway, Iceland and Liechtenstein.

Effective Date means the date of adoption of the Decision.

First Divestiture Period means the period referred to in the EC Commitments from the Effective Date.

Foreign Divestiture Clearance means an approval from a competition authority in any relevant jurisdiction to the closing of the divestiture of the Divestiture Business with an Approved Purchaser.

Gemalto has the meaning given in clause 2.4 of this Undertaking.

GP HSMs has the meaning provided in clause 2.3 of this Undertaking.

Monitoring Trustee means one or more natural or legal person(s) who is/are approved by the European Commission and appointed by Thales S.A., and who has/have the duty to monitor Thales S.A.'s compliance with the conditions and obligations attached to the Decision.

Proposed Acquisition is defined in clause 2.7 of this Undertaking.

Proposed Purchaser means a person named in a Proposed Purchaser Notice.

Proposed Purchaser Notice has the meaning given to it in clause 7.1 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

Relevant Market has the meaning provided in clause 2.10 of this Undertaking.

Sale and Purchase Agreement means the final sale and purchase agreement relating to the divestment of the Divestiture Business, executed with the Proposed Purchaser.

Thales means the entity or entities referred to in clause 1.1 of this Undertaking.

Trustee Divestiture Period means the period referred to in the EC Commitments from the end of the First Divestiture Period.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

2. INTERPRETATION

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:

- (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, Thales will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

SCHEDULE 2

Proposed Purchaser Notice Form

Please note in relation to information given on or in relation to this form that giving false or misleading information is a serious offence.

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – Undertaking given by Thales S.A.

Address: mergers@acc.gov.au

Attention: Executive General Manager - Merger and Authorisation Review Division

With an email copy sent to:

Address: mergersru@acc.gov.au

Attention: Director, Remedies Unit, Merger Coordination and Strategy Branch, Merger and Authorisation Review Division

1. In relation to the Proposed Purchaser, please provide the following information:
 - (a) Name of the Proposed Purchaser:
 - (b) Address:
 - (c) Contact name:
 - (d) Telephone number:
 - (e) Other contact details:
2. Please attach a submission containing the following information to this form:
 - (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
 - (b) details of the Proposed Purchaser's experience in the relevant market/s.
 - (c) the names of the [owner/s and the directors (delete any that do not apply)] of the Proposed Purchaser.
 - (d) a section addressing the factors set out in clause 7.5 of this Undertaking, including any information adverse to the Proposed Purchaser, in the power, possession or control of Thales.
 - (e) a section addressing the following factors, including any information adverse to the Proposed Purchaser, in the power, possession or control of Thales:
 - (i) whether the draft sale and purchase agreement is consistent with this Undertaking;

- (ii) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
- (iii) whether the Proposed Purchaser is of good financial standing;
- (iv) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
- (v) whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;
- (vi) whether the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser; and
- (vii) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Business, such as outstanding legal action or disputes.

3. Please also attach to this form:

- (a) Sale and Purchase Agreement for approval by the ACCC in accordance with this Undertaking;
- (b) any Ancillary Agreements in connection with the Sale and Purchase Agreement and
- (c) any documents required to support the information provided by Thales pursuant to this form.

SCHEDULE 3
EC Commitments