

*Case No IV/M.773 -
WESTINGHOUSE /
EQUIPOS
NUCLEARES*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 18/12/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.12.1996

PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M. 773 WESTINGHOUSE/EQUIPOS NUCLEARES
Notification of 21.11.1996 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 21.11.1996 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Westinghouse Electric Corporation (WELCO), and Equipos Nucleares, S.A. (ENSA), an owned affiliate of the Spanish Public Corporation Sociedad Estatal de Participaciones Industriales (SEPI), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Westinghouse Technology Services, S.A. (ENWESA/TC) and ENWESA Operaciones, S.A. (PC) as result of restructuring of their pre-existing joint venture company, ENWESA Servicios, S.A. (ENWESA) and other related activities formerly carried out by the parents.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES' ACTIVITIES

3. a) WELCO is a corporation with diversified businesses. Within its power systems business, WELCO designs, manufactures and supplies power plant components and equipment to new and operating nuclear and fossil-fuelled power plants and

provides engineering, operation and maintenance services to operating power plants world-wide. Westinghouse Sistemas Energeticos España, INC, (WSEE), a 100% owned affiliate of WELCO provides, through its Spanish Branch nuclear engineering services to owners of operating nuclear power plants in Spain.

- b) ENSA manufacture nuclear power plant components and other heavy components in Spain for new and operating power plants world-wide and provides maintenance services (mechanical, electrical and instrumentation) to operating nuclear plants in Spain. ENSA Service Division (ESD) is a branch of ENSA which provides the ENSA field maintenance services to operating nuclear power plants in Spain.
- c) ENWESA Servicios, S.A. (ENWESA), a Spanish company, created in 1985 as a joint venture of WELCO and ENSA, provides field maintenance services and equipment repair services to operating nuclear and fossil-fuelled power plants, primarily in Spain.

II. THE OPERATION

- 4. According to the Joint Venture Restructuring and Implementation Agreement of 27 November 1996 the parties will group their present activities in the field of power plant services operated by ENWESA Servicios, S.A. (ENWESA), WELCO/Spanish branch and ESD into two jointly owned companies "Westinghouse Technology Services" (ENWESA/TC), S.A. and "ENWESA Operaciones, S.A."(PC). ENWESA/TC and PC shall market, sell and perform the operating power plant services in Spain and a subset of such services in a limited number of countries placed mainly in Europe. Both WELCO (and WSEE) and ENSA will withdraw from the supply of ENWESA/TC and PC services.

III. JOINT VENTURE

- 5. The major corporate and strategy decisions of both companies, ENWESA/TC and PC, will be adopted by super-majority voting (75% vote required for decisions) of the respective Boards of Directors. The directors of the two Boards will be appointed by WELCO and ENSA in different numbers, but the super majority (75%) could not be obtained unless representatives from each of the two companies represented on the Board were prepared to vote in the same way.

Both joint ventures will be jointly controlled by WELCO and ENSA and will perform on a lasting basis all the functions of an autonomous economic entity and the restructuring carried out will not give rise to coordination of the competitive behaviour of the parties. The operation accordingly constitutes a concentration within the meaning of Article 3(1)b of the Regulation.

IV. COMMUNITY DIMENSION

- 6. WELCO/WSEE and SEPI/ENSA have a combined aggregate worldwide turnover in excess of ECU 5,000 million (WELCO/WSEE, ECU 7.9 billion; and SEPI/ENSA, ECU 14.86 billion). Each of them has a Community-wide turnover in excess of ECU 250 million (WELCO/WSEE, ECU 259 million; SEPI/ENSA ECU 11.8 billion) but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a

Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

7. The notifying parties state that there is a relevant product market for engineering and field services for operating power plants (the operating power plant services). However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic market

8. The notifying parties state that the relevant geographic market is world-wide. However, it is not necessary to further delineate the relevant geographic markets because, in all alternative (european-wide, or national) geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Assessment

9. In the operating power plant services, WSEE/Spain, ENSA/ESD and ENWESA have a combined market share of less than 12% in Spain and less than 2% in the European Union.

The principal competitors are Siemens, General Electric, Framatome, ABB, MHI, CEG Alstom, Ansaldo as well as smaller local engineering and services vendors. Some individual power plant owners/operators perform the services at their own plants.

In view of the market position of the parties to the concentration, it appears that the notified operation will have de minimis impact on competition in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

VI. CONCLUSION

10. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,