EN

Case No IV/M.1492 - HYUNDAI ELECTRONICS / LG SEMICON

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 23/06/1999

Also available in the CELEX database
Document No 399M1492

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.06.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No IV/M. 1492 – HYUNDAI ELECTRONICS/LG SEMICON
Notification of 26.5.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26 May 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[1] by which Hyundai Electronic Industries Co., Ltd ("HEI") acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of LG Semicom Co., Ltd. ("LGS").

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 AND THE OPERATION

3. HEI and LGS are companies incorporated under Korean law which manufacture and market semiconductors. HEI manufactures and markets other electronic products.

4. A Stock Purchase Agreement was signed on 20 May 1999 with regard to the acquisition by HEI of 59% of the share capital of LGS from the Korean group LG, the remaining shares being publicly held. HEI intends, in a second stage, to merge both semiconductors business into a new entity under the control of HEI.

[1] OJ L 395, 30.12.89 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

II. CONCENTRATION

5. HEI will hold a majority of LGS's issued share capital. No shareholder other than Industrial Bank of Korea, which owns […]% of the shares of LGS, owns more than 3% of LGS's issued share capital. However the Industrial Bank of Korea is not represented in the management of the company. No blocking minority exists. Further, under Korean law, minority shareholders of LGS who do not agree with the decision to merge have a put option at fair market value to HEI on their shares in LGS. Through the proposed concentration, HEI will acquire sole control of LGS within the meaning of Article 3 of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned exceeded 2,500 million EURO in the last financial year (HEI: […] million EURO; LGS: […] million EURO). The combined aggregate turnover of the undertakings concerned was more than 100 million EURO in each of at least three Member States […] in which the aggregate turnover of each of the undertakings concerned was more than 25 million EURO. The aggregate Community-wide turnover of each of the undertakings concerned was more than EURO 100 million (HEI: [...] million EURO; LGS: […] million EURO).

7. Furthermore, the undertakings concerned 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 within the meaning of Article 1(3) of Council Regulation (EEC) No 4064/89 but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

A.Relevant product markets

8. Both HEI and LGS are active in the manufacturing of memory and non-memory chips (semiconductors). They have a high dependence, over […]%, on DRAMS (Dynamic Random Access Memory semiconductor chips) inside their memory business. DRAMs are semiconductors which store binary data and are mainly used in computers. Semiconductors are part of the electronic components sector.

9. However, in the present case it is not necessary to conclusively define the relevant product markets because, even on the narrowest market definition, the 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.

B. Relevant geographic markets

10. The notifying party states that because of low transportation cost and the lack of both structural barriers to market entry and import tariffs, semiconductors are

distributed worldwide. Hence, the geographical scope of the market would be considered to be at least European-wide.

11. However, in the present case it is not necessary to conclusively define the relevant product markets because, even on the narrowest market definition, the 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.

C. Competitive assessment

12. The combined market share of HEI and LGS in Europe will not exceed [20%-23%] in the DRAMS segment. Strong competitors include Samsung (21%), Siemens (15%), Micron 12%, NEC (8%) IBM (5%), Mitsubishi (5%), etc. It is to be taken into account the demand side of the market, characterised by larger computer manufacturers who do not want to become too dependent on DRAMS on one supplier. Further, these market shares do not take into account the captive market of DRAMS production : the largest system makers, such as IBM and Micron produce more than 50% of their DRAM use.

13. 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.

V. ANCILLARY RESTRAINTS

14. Section 11.1.1 of the Stock Purchase Agreement contains a non-compete provision according to which LG will not build a new plant or will engage in DRAMS manufacturing business for a period of [less than three] years. Section 11.1.2 also prevents LG from soliciting or enticing away from HEI any person employed by LGS as assistant manager or in a more senior position for a period of [less than three] years following the closing date. Both provisions, insofar as they cover the EEA and they may be considered restrictive of competition, are directly related and necessary to the implementation of the concentration in accordance with Chapter III of the Commission Notice regarding restrictions ancillary to concentrations.

VI. CONCLUSION

15. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,