

*Case No COMP/M.2063 -
SEI / MITSUBISHI
ELECTRIC / JV*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.08.2000
SG(2000)/D106318-106319

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sirs,

Subject: Case No IV/M. 2063 - SEI / MITSUBISHI ELECTRIC / JV

Notification of 20.07.2000 pursuant to Article 4 of Council Regulation

1. On 20.07.2000, the Commission received a notification of a proposed concentration by which the Italian undertaking Sei S.p.a. ("Sei") and the Dutch undertaking Mitsubishi Electric Europe BV, acquire joint control of a newly created company, Conphoebus Technology Service ("CTS"), in which both parents acquire a 50% shareholding.
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 EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. Sei, belonging to Enel S.p.a. group, provides real estate management and facility management services to the companies of this group. The Enel group is the principal provider of electricity in Italy.
4. Mitsubishi Electric Europe BV, belonging to the Japanese Mitsubishi Electric Corporation, produces and sells air conditioning systems. Mitsubishi group is active in the manufacture, marketing, sales of electrical and electronic equipment, industrial technology, energy, transportation and construction.
5. CTS is constituted to address the growing demand for facility management services in Italy, including maintenance of air conditioning systems, electric systems, telecom systems,

cleaning services. It will target large Italian companies with large administrative buildings throughout Italy, such as banks, insurance companies as well as public utilities (Post, Telecommunications, and Railway). To a limited extent, CTS will also provide project design, supervision of installation and commissioning (setting-up) services, regarding electronic air conditioning systems in Italy.

6. Sei will contribute to CTS the existing facility management agreements with Enel companies related to open space offices. Mitsubishi Electric Europe will facilitate to CTS know how regarding maintenance of air conditioning systems for open office space. CTS is established for an unlimited duration.
7. CTS will have management for its day to day operations, staff, finance and assets to operate in Italy, on a lasting basis, as an autonomous economic entity. According with the Business Plan it will have an effective presence on the market with direct and free access to the procurement markets as well as growing and substantial sales of facility management services to thirds parties customers. Thus, the proposed joint venture constitutes a concentration in accordance with the dispositions of Article 3(2) of the Council Regulation.
8. Sei and Mitsubishi Electric Europe BV will each have a 50 percent share in the capital of CTS. Each parent will have the right to nominate three members of the six-member board of directors needing four votes for the quorum for the adoption of decisions. Resolutions in the shareholders meeting have to be made unanimously. So that both parent companies will have the possibility to exercise decisive influence over CTS. Thus, the notifying parties will exercise joint control in accordance with Article 3(3) of the Council Regulation

II. COMMUNITY DIMENSION

9. The Mitsubishi group and the Enel group have a combined aggregate worldwide turnover in excess of EUR 5,000 million¹ (Mitsubishi group, EUR 32.784 billion; and Enel group, EUR 20.960 billion). Each of them has a Community-wide turnover in excess of EUR 250 million (Mitsubishi group, EUR [above 250 million] ; and Enel group, EUR approximately 20.960 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, according to Article 1(2) of the Council regulation but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

10. The joint venture will be active in facility management services in Italy. Its initial market share will be well below 1% in this country. Neither the Enel nor the Mitsubishi group is active in the market offering this kind of services. Therefore, there is no horizontal affected market concerning this activity.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

11. To a limited extent the joint venture will also offer project design, supervision of installation and commissioning (setting-up) services regarding electronic air conditioning systems in Italy. Neither the Enel nor Mitsubishi group is present in the market in this type of activities. Therefore, there is no horizontal affected market either concerning these activities.
12. Neither the Enel nor the Mitsubishi group has to a significant extent activities in a market which is downstream or upstream from that of the joint venture or in neighbouring market closely related. Therefore, there is no risk of co-ordination.
13. In view of the market position of the parties to the concentration, it appears that the notified operation will have no 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.

IV. ANCILLARY RESTRICTIONS

14. The Parties will enter into non-compete arrangements whereby they agree not to compete with CTS' business for as long as they hold an interest in the joint venture, provided that the non-compete obligations expire on dissolution of the joint venture.
15. This non-competition obligation is covered by this decision to the extent provided in the paragraph V, letter A of the Commission Notice regarding the treatment of restrictions ancillary to concentrations.

V. CONCLUSION

16. 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,

Philippe BUSQUIN
Member of the Commission