

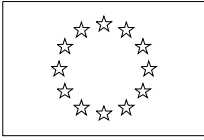
***Case No COMP/M.2110 -
DEUTSCHE BANK / SEI
/ JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/09/2000

*Also available in the CELEX database
Document No 300M2110*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.09.2000
SG(2000)D/106985

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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. COMP/M.2110- DEUTSCHE BANK/SEI/JV

1. Notification of 24 August 2000 pursuant to Article 4 of Council Regulation No 4064/89¹ (hereafter “the Merger Regulation”)
2. On 24.08.2000, the Commission received notification of a proposed concentration by which Deutsche Bank AG (DB) and Sei S.p.a. (SEI), a full-owned subsidiary of Enel Holding SpA (Enel), acquire joint control of Immobiliare Rio Nuovo S.p.a. (RIO) by way of purchase of shares in a newly created company constituting a joint venture.
3. 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 the functioning of the EEA Agreement.

THE PARTIES' ACTIVITIES AND THE OPERATION

4. DB is a commercial bank having its registered office in Frankfurt am Main, Germany, and operating world-wide. DB is active in a variety of banking activities, including deposit and lending operations, issuing businesses, asset management, investment

¹ OJ L 395, 30.12.89 p.1; corrigendum OJ L 257 of 21.09.90, p.13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 09.07.97, p.1, corrigendum OJ L 40, 13.02.98, p.17).

banking, as well as financial services such as home loan and savings contracts and mortgages.

5. SEI has its head office in Rome, and is the real estate managing entity of Enel, to which it provides real estate management and facility management services. Enel is the principal electricity company in Italy, and is involved in the generation, transmission, distribution and supply of electricity.
6. After completion of the operation, DB, through its wholly-owned subsidiary REIB International Holdings Limited (REIB), will hold 51% of the share capital of Rio, and SEI will hold 49%. SEI will nevertheless nominate 3 of a total of 6 members of the Board of Directors of Rio where the shareholders agreements require the vote of 5 Directors for a number of strategic business decisions, including the approval of annual budgets, the business plan and the making of substantial investments. SEI will thus have rights going beyond those normally attributed to minority shareholders that will grant it the power to determine the strategic commercial behaviour of Rio. REIB and SEI will therefore have joint control over Rio.
7. Rio will have its own management dedicated to its day-to-day operations and will have sufficient resources including finance, staff and assets in order to conduct on a lasting basis its business activities on the Italian real estate market. Rio will perform all the functions of an autonomous economic entity, and is therefore a full-function joint venture. Consequently, the notified operation constitutes a concentration within the meaning of Art. 3(2) of the Merger Regulation.

II. COMMUNITY DIMENSION

8. The notifying undertakings have a combined aggregate world-wide turnover in excess of EURO 5,000 million (DB EURO 47,067 million, Enel, EURO 20,960 million). DB and Enel have a Community-wide turnover in excess of EURO 250 million and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation has therefore a Community dimension, according to Article 1(2) of the Merger Regulation, and does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant product and geographic markets

The notified operation involves the real estate market in Italy, namely the market for owning, maintaining, operating and letting real estate.

9. In previous decisions, the Commission found that the real estate market may be subdivided into two smaller markets: properties for commercial use (offices, shops and industrial properties) and properties for residential use (housing) (see Commission decision of 15.06.2000, Case No COMP/M.1975 – DB/Eurobank/LAMDA Development, paragraph 10; Commission decision 12.05.2000, Case No COMP/M.1937 - Skandia Life/Diligentia, paragraph 8; Commission decision of 31.08.1998, Case No IV/M.1289 – Harbert Management/DB/Bankers Trust/SPP/Ohman,

paragraph 7). Both markets have a national geographic scope, but can be further segmented into local areas, such as regions, counties, or municipalities. However, the exact definition of the product market and its geographic scope can be left open in this case since even in the narrowest possible option, the operation will not have any appreciable competitive impact.

B. Assessment

10. The parties claim that no affected markets can be envisaged in the present operation because there is no overlap between the parties' activities and neither party has a share of sales exceeding 25% in any market upstream or downstream of the joint venture's activities.
11. SEI is only active in the Italian real estate market for offices, where it has an estimated market share nation-wide of [...], which is less than 1% of the total Italian real estate market (given that office real estate accounts for an estimated 19% of the total real estate market in Italy). Even assuming that the real estate market for offices were more limited in scope, the market shares of SEI would still be insignificant.
12. SEI will transfer to Rio only a limited portion of its office real estate line of business, namely [...] properties, equivalent to [...] in terms of surface of SEI's real estate portfolio. Rio will focus on the purchase, sale and management of the property portfolio and it will also focus on enhancement of the value of the properties, reduction of vacancies, and rent increase. In any of the Italian regions where Rio will be active (Lombardia, Lazio, Emilia Romagna, Piemonte), or in any municipality, Rio's market shares will not reach 1%.
13. DB is not active in the same geographic market(s). Although DB, through a few recent concentrations, has entered the market of real estate within some EU member states (see, for example, Case No COMP/M.1975 – DB/Eurobank/LAMDA Development, and Case No IV/M.1289 – Harbert Management/DB/Bankers Trust/SPP/Ohman, cited above), it is not active in the Italian market, nor are any of its controlled entities.
14. On the basis of the foregoing, and in view of the market position of the parties to the operation, it appears that 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.

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,

(Signed) Mario MONTI
Member of the Commission