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***Case No IV/M.0024 -
MITSUBISHI / UCAR***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04.01.1991

*Also available in the CELEX database
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VERSION FOR THE PUBLIC

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

Registered with advice of delivery

1. Notifying party
2. Notifying party

Dear Sirs,

Subject: Case n° IV/M024 - MITSUBISHI/UCAR
Your notification of 26.11.90 pursuant to Article 4 of
Council Regulation n° 4064/89

1. On 19 November Mitsubishi Corporation (Mitsubishi) and Union Carbide Corporation (Union Carbide) entered into an agreement, by which Mitsubishi purchases a 50% interest in Union Carbide's worldwide carbon business, consisting of UCAR Carbon Company (UCAR) and its 19 subsidiaries. The agreement involves the purchase of the voting securities, representing half of the interest in UCAR, a wholly owned subsidiary of Union Carbide. Four of the UCAR subsidiaries will be owned 50% by each of the parties and the voting rights will be transferred back to UCAR.
2. Following an examination of the notification the Commission has come to the conclusion that the notified operation falls within the scope of the Regulation and does not raise serious doubts as to its compatibility with the common market.

COMMUNITY DIMENSION

3. Worldwide and Community-wide turnover exceed Article 1(2) thresholds as follows (figures expressed in millions of ECU):

	<u>Union Carbide</u>	<u>Mitsubishi</u>
Worldwide turnover	7.400	115.447
Community-wide turnover	1.045	9.417

Only Mitsubishi has more than two-thirds of its aggregate turnover in one Member State (United Kingdom), and therefore the concentration has a Community dimension.

CONCENTRATION

4. The operation by which Mitsubishi purchases a 50% interest in Union Carbide's worldwide carbon business is a concentration within the meaning of Article 3(1)b of the Regulation.
5. UCAR will be jointly controlled by the two parent companies. This can be established from the fact that each party will own half the capital of UCAR and will have the right to appoint half of the members of the board which will manage UCAR. The chairmanship of the board will be on a rotational basis. Moreover, in respect of certain matters, all of which are related to the need to protect the value of the shareholders' investment, UCAR will be required to have the consent of both parent companies. It will be a joint venture performing on a lasting basis all the functions of an autonomous economic entity. The agreement is not limited in time. UCAR will be economically independent of its parent companies and will be responsible for its own commercial policy.
6. Four companies (two of them established in the Community) which were previously subsidiaries of UCAR and which will be jointly owned by Union Carbide and Mitsubishi (50/50), will be directly controlled by UCAR. They are present in the same market as UCAR, in carbon or electrode products. Mitsubishi and Union Carbide will each own 50% of the shares in all these four subsidiaries. Despite the ownership of these subsidiaries, control of them will be exercised directly and solely by UCAR. Taking into account that UCAR is itself jointly controlled by Mitsubishi and by Union Carbide, the purchase by Mitsubishi of 50% of these subsidiaries belongs to the same operation.
7. The joint venture does not have as its object or effect the coordination of the competitive behaviour of the undertakings involved. Union Carbide will not retain any interest in the carbon and graphite market other than its 50% participation in UCAR. It will therefore withdraw from UCAR's markets.
8. Mitsubishi is currently a worldwide trader in the market and holds a small number of minority equity investments in Japanese producing companies. Mitsubishi has a market share of 12% in Japan and a market share of 0.01% within the EC. By acquiring an interest in UCAR through the concentration it will lose all interest to remain on UCAR's markets. The agreements provide that Mitsubishi will withdraw from the joint venture markets and is committed to keep its Japanese investments limited and held as financial investments rather than for commercial reasons. An exception to this commitment is the right of Mitsubishi to act as an agent on behalf of Japanese producers of carbon products manufactured in Japan for sale to Japanese customers and for use at facilities located in Japan. UCAR has decided to withdraw

from the Japanese markets since Mitsubishi will operate as the exclusive distributor or sales agent for UCAR's products on the Japanese market. Taking into account that:

- Mitsubishi is only a trader for these products and has no decisive influence over any producers of carbon and graphite products
- Mitsubishi has only a negligible market share in the EC for its trading activities
- UCAR has the largest market share on the EC markets and worldwide, a dense and complete distribution network and technical expertise,

the non-competition obligation of Mitsubishi reflects the likely lack of interest in reentering the market and therefore appears to be merely the expression of the reality of a lasting withdrawal from the EC markets.

Since neither parent company of UCAR remains as a competitor in the EC, the joint venture is to be viewed as concentrative.

NO SERIOUS DOUBTS AS TO THE COMPATIBILITY OF THIS CONCENTRATION WITH THE COMMON MARKET

THE RELEVANT MARKETS

9. The concentration involves the markets for carbon, graphite and related products. These are in particular graphite electrodes, carbon electrodes, graphite specialities, and flexible graphite

Electrodes, whether carbon or graphite, operate as terminal conductors in industrial furnaces used for melting metals. Graphite specialities consist of moulded and extruded graphite products which are used for various specialised high temperature applications. Flexible graphite can be used as a heat sealant in various industrial applications.

10. These products are highly sophisticated. Quality and prices are very important and do not significantly differ between Member States. The demand side consists only of technically experienced industrial companies which buy internationally. Therefore Community-wide markets have to be considered for all products concerned.

CONDITIONS OF COMPETITION

11. Since UCAR achieved in the EC in the market for flexible graphite only a market share of 0.05%, and for carbon electrodes a market share of 15%, and since Mitsubishi is not active in these markets, the operation does not raise serious doubts as to the creation or strengthening of a dominant position in respect of these products.
12. According to the notifying parties and as confirmed by their main competitors, UCAR has market shares of approximately 35 to 40% in the markets for graphite electrodes and graphite specialities. Other competitors which include Sigri (a subsidiary of Hoechst AG) and the Groupe Péchiney, have market shares in the EEC for graphite electrodes and for graphite specialities between approximately 15 and 25%. Other minor competitors including Japanese suppliers (with 6%) account for the rest.

13. UCAR has prior to the concentration the largest market share of these products in the EC as well as worldwide. Its distribution network as well as its technological expertise might give rise to the presumption that UCAR has a dominant position. However the technological expertise of the competitors proved by their durable and important market position in the EC as well as in the different Member States is also significant and ensures competitiveness. Mitsubishi has no perceptible market positions within the EC (0.01%) but a 12% market share for graphite electrodes in Japan and also, due to export shipments from Japan in particular to the Middle East and Africa, a world market share of 13%.
14. In assessing whether a dominant position existed prior to the concentration other structural conditions of competition have to be taken into account, particularly barriers to market entry and the stage of development of the markets concerned. Concerning possible market entry, even the notifying parties state that there are no undertakings which could enter the affected markets. With regard to the markets, the market for graphite electrodes has reached a state of maturity and no new major technological development is likely. On the other hand graphite specialities are used in numerous industrial sectors and therefore it is possible that new applications will be found and R & D is vital for that market. Certain production overcapacities in the markets must also be taken into account.

EFFECT ON THE MARKETS

15. The proposed merger will not have significant effects on the relevant markets within the European Community for the following reasons:
 - The current competitive strength of Mitsubishi in the EC is reflected by its current market share. Even if Mitsubishi was capable of transferring its market share (0.01%) to UCAR the addition would be negligible. Being a mere trading company, the loss of Mitsubishi as a competitor will have no impact on the EC markets.
 - Taking into account the dense and complete distribution network of UCAR in Europe as well as worldwide, there is also no significant strengthening to be seen via the trading expertise of Mitsubishi. In any event Mitsubishi will now only operate in Japan as a trader.
 - There is also no indication that the withdrawal of Mitsubishi as a trading company will endanger the possibility of other Japanese producers selling their products on the EC markets as they already do.
 - The position of Mitsubishi in upstream markets, in particular for calcined needle petroleum coke, is not dominant. These markets are competitive and the competitors are able to have unrestricted access to them.

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For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6, paragraph 1(b) of Council Regulation n° 4064/89.

For the Commission,