

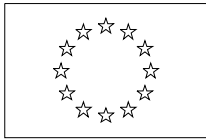
***Case No COMP/M.3084 -
SIEMENS / SEQUA / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/02/2003

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/02/2003

SG (2003) D/228817

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.3084 - SIEMENS / SEQUA / JV
Notification of 30.01.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 30 January 2003, the Commission received a notification of a proposed concentration by which Siemens AG (“Siemens”, Germany) and Sequa Corporation (“Sequa”, US) propose the creation of a joint venture consisting of three operating companies in the field of component repair and field service of mature technology industrial gas turbine engines for power generation.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Siemens is active mainly in the following business areas: information and communication, automation and control, power generation and transmission products and related services, transportation, lighting and medical applications.
4. Sequa is a diversified manufacturer active in the following sectors: aerospace, propulsion, metal coating and speciality chemicals, and power generation services (“PGS”).

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

II. THE OPERATION AND THE CONCENTRATION

5. The joint venture (JV) will be carried out through the acquisition by Sequa, through its subsidiary Chromalloy Gas Turbine Corporation (“CGTC”, USA), and Siemens of a joint venture consisting of three operating companies:
 - Turbine Services Ltd. (“TSL”, UK), currently wholly owned by CGTC
 - Gas Turbine Technologies S.p.A. (“GTT”, Italy), currently wholly owned by Siemens.
 - TurboCare Gas Turbine Services, LLC (“TurboCare”, USA), a newly created company which will be formed based on assets of CGTC and of Siemens.
6. The JV will be active in the provision of PGS for mature technology industrial gas turbine engines for power generation.
7. [description of how both Siemens and Sequa have the possibility of exercising decisive influence on the strategic decisions of the JV]
8. [description of how both Siemens and Sequa have the possibility of exercising decisive influence on the strategic decisions of the JV].
9. Regarding the full functionality of the operating companies, all of them will perform its activities on a lasting basis. Each company will have its day-to-day dedicated management as well as independent marketing, sales, engineering, personnel, tangible assets and intangible rights. Purchases from the parent companies will be limited (the parties estimate less than [...] % of the total purchasing volume) and are intended to be independent from their parent companies determining their own commercial policy.
10. In the light of the above, it can be concluded that Sequa, through its subsidiary CGTC, and Siemens will have joint control of the JV, and that the constituent operating companies will perform their activities as autonomous economic entities, together constituting a full -function joint venture.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of Siemens and Sequa have a Community-wide turnover in excess of EUR 250 million, 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.

V. COMPETITIVE ASSESSMENT

Relevant Product Market

² 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.

12. The parties submit that PGS providers can switch easily among the various services and that generally the nature of the power plant services to be provided does not vary significantly depending on the type of power plant concerned³, all major providers providing services for the various types such as gas plants or steam plants. This is because service providers can easily change from one type of service to another, and even among the different kinds of power plants, since only a small amount of skilled staff is necessary, being the rest of the staff general mechanics which generally are hired on a case-by-case basis.
13. The parties also submit that the PGS market can be subdivided, according to the cycle of life of the technology employed, into two general groups: (i) new plants with advanced technology, in most cases proprietary to the original equipment manufacturer (“OEM”) and often protected by intellectual property rights. In this sub-segment usually only the OEM can provide the services and the customers are more technology-oriented, giving more importance to the performance of the plant than to the cost of its maintenance. Customers can be considered as captive to the OEM; and (ii) plants where the technology employed is mature, the procedures, processes and technical aspects are no longer proprietary or protected under intellectual property law by the OEM, and third parties have reverse-engineered or developed components and processes and start to compete with OEM for the provision of PGS to customers which are more cost-oriented.
14. The Commission's investigation has shown that customers are indeed captive to OEM for the provision of PGS for the initial years of operation of a plant, because of constraints imposed by intellectual property rights and fixed-term guarantees. Indeed it seems that customers, when investing in a new power plant, will base their choice on the predicted maintenance costs over the initial years of operation, as well as the quality and cost of the initial plant investment. Thereafter, however, non-OEM PGS providers begin to compete with OEM for the provision of PGS, although the former may tend to specialise in a narrower range of services or component repair.
15. However, the exact definition of the relevant product markets can be left open as the present concentration does not give rise to competition concerns under any of the possible market definitions (see below).

Relevant Geographic Market

16. The parties submit that PGS markets are at least European-wide, for the following reasons: (i) the products for which the services are provided are sold at a world-wide scale (and obviously, at least during the guarantee period of the turbines, around 2 years, these services are provided by the OEM world-wide) and (ii) replacements and field service personnel are promptly transported where necessary at a reasonable cost in the two likely scenarios where a service is required: the typical planned outage for maintenance, which is known several months in advance, and the break-down scenario, where a delay of at least 24 hours is mandatory for the turbine to cool down before any repair service can be commenced. This minimal period of time makes not necessary a local presence for the service provider.

³ Exception is made for the services within nuclear reactors vessels, where any repair requires a significant degree of specialised knowledge on the part of the service provider. Such services are almost exclusively provided by highly specialised OEM service providers, and do not fall within the field of the regular power generation services.

17. The Commission's market investigation has clearly shown that the relevant product market is at least European-wide. All respondents have stated that the market for PGS is international or at least European-wide, supporting the arguments submitted by the parties in this respect.

Assessment

18. The JV will only be active, as stated above in PGS for heavy industrial gas turbines and will focus its activities on the cost-oriented mature-technology segment.

19. In the table below are shown the EU PGS market shares of the parties:

Relevant Product Market	Volume (Million €)				Market Shares		
	Market size	Siemens	Sequa	Siemens + Sequa	Siemens	Sequa	Siemens + Sequa
General PGS	12,500	[...]	[...]	[...]	[<10]%	[<5]%	[<10]%
PGS overall gas	1,100	[...]	[...]	[...]	[<10]%	[<5]%	[<10]%
PGS mature technology gas	1,000	[...]	[...]	[...]	[<10]%	[<5]%	[<10]%

(Source: parties and other publicly-available sources)

20. The parties' combined market shares are relatively modest. Furthermore, strong competitors will remain such as, in general PGS at European level, General Electric ([<10]%), Alstom ([<10]%) and Ansaldo ([<10]%).

21. In the light of the above it can be concluded that the operation does not give rise to competition concerns.

VI. CONCLUSION

22. 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

Mario MONTI
Member of the Commission
(signed)