

*Case No IV/M.346 -
JCSAT / SAJAC*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30.06.1993

*Also available in the CELEX database
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the notifying parties

Dear Sirs,

Re. : Case No IV/M.346 - JCSAT/SAJAC
Notification of 1.6.1993 pursuant to Article 4 of Council Regulation No. 4064/89 (Merger Regulation)

1. On 1.6.1993, Itochu Corporation (Itochu), Mitsui and Co, Ltd (Mitsui), Sumitomo Corporation (Sumitomo) and Nissho Iwai Corporation (Nissho Iwai) will merge their domestic satellite communication business and acquire joint control of the newly created company Kabushiki Kaisha Nihon Satellite Systems (Newco).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Each notifying party is a large Japanese trading company dealing with a wide range of commodities, industrial goods and consumer goods. Besides trade and manufacture of goods, each offers a wide range of services and invests in various activities. Japan Communications Satellite Company Inc (JCSAT) concentrates Itochu and Mitsui's satellite operation business. JCSAT operates two communications satellites which provide domestic telecommunications services within Japan. Satellite Japan Corporation (SAJAC) concentrate Sumitomo and Nissho Iwai's satellite operations business. SAJAC is licensed to operate domestic communications satellites in Japan, but does not own or operate a satellite.

II. THE OPERATION

4. Following the acquisition by Itochu and Mitsui of 50 % of the shares of SAJAC and by Sumitomo, Nissho Iwai and possibly other minority SAJAC's shareholders of 50 % of the shares of JCSAT, SAJAC and JCSAT will merge. The shares of the new created entity Newco will be held in the following percentages : Itochu 27 % ; Mitsui 23 % ; Nissho Iwai 22 % ; Sumitomo 22 % ; other SAJAC shareholders 6 % ⁽¹⁾.

III. JOINT VENTURE

5. According to the terms of a Shareholders Agreement, entered into by the notifying parties, Newco will have a board of ten directors, four of whom will be representative directors. Itochu, Mitsui, Sumitomo and Nissho Iwai will each nominate two directors among which one representative director. The remaining two directors will be appointed by agreement of Itochu, Mitsui, Sumitomo and Nissho Iwai. Newco will also have four statutory auditors with each party appointing one of them. The full-time auditor will rotate among the four parties. Finally, a number of matters will require the approval of Itochu, Mitsui, Sumitomo and Nissho Iwai, including the annual settlement of accounts, the establishment of subsidiary or other major investment or withdrawal, any provision of satellite communication service by Newco, determination of medium- and long-term management plans and all important matters relating to the management of the company.
6. As a result of the above mentioned elements, it can be concluded that Newco will be jointly controlled by Itochu, Mitsui, Sumitomo and Nissho Iwai.

IV. CONCENTRATION

7. Newco will perform on a lasting basis all the functions of an autonomous economic entity. It has been created for an indefinite period of time. It will have its own assets and its own personnel. It will use the trademark JCSAT and will have its own logo. Marketing, accounting, finance and management support provided by the parties to Newco will be regulated by specific contracts in order to guarantee the independence of Newco.
8. As regards possible coordination between the various undertakings concerned, the notifying parties will not retain any activity related to the satellite communication business. Furthermore, there are no identifiable spill-over effects arising from linkages or means by which the enlarged group of undertakings could exploit the increase in the total range of products.
9. The present operation therefore constitutes a concentration in the sense of Article 3 of the Merger Regulation.

⁽¹⁾ In case that other SAJAC shareholders do not invest in JCSAT, and consequently in Newco, the notifying parties will adjust the above percentages with the condition i.a. that the order of the ownership is maintained.

V. COMMUNITY DIMENSION

10. The combined aggregate turnover of the undertakings concerned in their last financial year exceeds 5,000 million ECU (Itochu 127,135 million ECU ; Mitsui 109,795 million ECU ; Sumitomo 122,838 million ECU ; Nissho Iwai 69,734 million ECU). Their Community-wide turnover is more than 250 million ECU. ^[*]

The undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Therefore, the proposed concentration has a Community dimension.

VI. COMPATIBILITY WITH THE COMMON MARKET

11. Neither JCSAT nor SAJAC is licensed to provide telecommunications service outside Japan or between Japan and another location. Therefore, the concentration has presently no effect in the Community.

12. This situation is not likely to change for the following reasons :

- the current equipment of JCSAT is unsuited to transmission between Japan and the EC ;
- the Japan Minister for Post and Telecommunications has always insisted on separate licenses for domestic and international carriers. Up to now, it has also never allowed a company to obtain both a domestic and an international ⁽²⁾ common carrier license.

Finally, it can be added that European and international satellite operators providing telecommunications service within Europe or between Europe and Japan already exist and that the operation of a new satellite communications service between Japan and the Community would also require European regulatory approvals.

VII. CONCLUSION

13. Based upon the above considerations, the Commission has come to the conclusion 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 common market or in a substantial part of it.

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For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,

TEXTE RECONSTITUÉ ÉLECTRONIQUEMENT / ELECTRONICALLY RE-CREATED TEXT / ELEKTRONISCH NACHGEBILDETER TEXT

[*] deleted business secret

(2) This applies for Type 1 common carriers.