

EN

*Case No IV/M.037 -
MATSUSHITA / MCA*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 10.01.1991

*Also available in the CELEX database
Document No 391M0037*

PUBLIC VERSION

Registered with advice of
delivery to

Notifying party

Dear Sirs,

Subject: **Case No. IV/M037 - Matsushita/MCA**

Notification of 3.12.1990 pursuant to Article 4 of Council
Regulation No 4064/89

1. The above notification concerns the acquisition of the whole of MCA Inc. (MCA) by Matsushita Acquisition Corp., a subsidiary of Matsushita Electrical Industrial Co. Ltd. (MEI). Excluded from the acquisition are the American television station WWOR-TV and the concessioner of Yosemite Park, the Yosemite Park and Curry Company.

2. After full examination of the notification, the Commission has come to the conclusion that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. Concentration

3. The acquisition of the whole of MCA by MEI through an agreed bid is a concentration within the meaning of Article 3 (1)(b) of Regulation No. 4064/89.

II. Community dimension

4. The combined turnover of MEI and MCA in the last financial year was 43 billion Ecu. Both undertakings concerned meet the requirements of Article 1(2)(b), MEI and MCA each having an

aggregate Community-wide turnover of more than 250 million Ecu, of which not more than two thirds is achieved in one and the same Member State. The proposed concentration therefore has a Community dimension.

III. Compatibility with the common market

1. Main characteristics of the proposed concentration

5. With regard to horizontal relationships, the activities of MEI and MCA do not overlap. MEI manufactures consumer electronic products ("Technics", "Panasonic", "JVC"), and consumer household electric appliances, as well as communication and industrial equipment, electronic components, kitchen-related products and batteries. MCA's activities are filmed and music entertainment ("Universal Pictures", "Universal Television", "MCA Records"), book publishing, retail and mail order and other businesses including theme parks. (Its broadcasting and cable business will be spun-off and not be taken over by MEI. The Yosemite Park and Curry Company will according to the parties, be sold to an American buyer after the closing of the acquisition).

6. The most important aspect of the proposed concentration is the possibility that the combination of the massive resources of MEI with the market position of either party might create considerable competitive advantages. These structural characteristics and their possible impact on competition have also to be appraised according to Article 2 (1)(b) of Regulation No. 4064/89 with regard to the market position of the undertakings concerned and their economic and financial power, their access to markets and any barriers to entry, in order to establish whether or not the concentration is compatible with the common market.

2. The relevant markets

7. Both parties hold significant market positions. MEI is one of the leading producers of consumer audio and video equipment. The company is especially strong in video equipment where it leads the world production of home-use video cassette tape recorders (VCR's) and related products; on these markets MEI has significant market shares within the Community. In VCR's, for instance, MEI's market share amounts to 15% Community-wide and from 7% to 34% according to the Member State in question. Furthermore, as far as the Commission is aware the VCR's produced within the Community under the VHS standard are produced under the licence of MEI, or in joint ventures with MEI.

8. MCA is a major producer of motion picture films for theatrical release, television, pay television, cable and home video with market shares below or slightly above 10% in the Community. It also manufactures and distributes recorded music, with a market share below 5% in the EEC.

9. Firstly, therefore, with regard to the relevant consumer "software" entertainment markets there is a linkage of the financial resources of MEI with MCA's activities where adequate finance is an important precondition of competitiveness. The principal competitors of MCA, however, have financially strong shareholders or parent companies as well, like Paramount (Gulf and Western), Warner (Time-Warner), Columbia Pictures (Sony) and Twentieth Century Fox (News Corporation). This linkage does, therefore, not raise serious doubts as to its compatibility with the common market.

10. Secondly, with regard to the consumer electronic hardware markets on which MEI is a major player, the linkage of MEI's "hardware" products with MCA's "software" seems likely to provide a significant competitive advantage to MEI. This linkage merits more consideration.

2. Possible impact of the hardware-software linkage on the relevant markets.

11. In view of the information currently available to the Commission, there is a sufficient supply of motion picture films and recorded music for every major technical standard or format used for broadcasting, home audio and video systems and cinemas. Even if MCA should apply a market strategy for its software products that favours MEI's hardware after the takeover, it is unlikely that this could lead to the creation or strengthening of a dominant position on the side of MEI. The same applies for MEI favouring MCA's software products.

12. In the short term, therefore, the proposed concentration will not significantly impede competition on relevant hard- and software markets within the Community as presently constituted. The appraisal of the proposed concentration has, however, to include future developments, especially the transformation of markets through technical progress.

Video equipment markets

13. The structure of competition on the video equipment markets will in a few years be affected by the introduction of HDTV (High Definition Television) and related products. The commercial success of new or improved electronic products may at least partly depend on the availability of software which is attractive to consumers. This is especially true, when the introduction of advanced hardware goes along with the creation of a new technical standard or format. Consumers will then be willing to buy new products only if an adequate quantity of new software is available.

14. It is therefore necessary to consider whether MEI will, after the takeover of MCA, be in such an advantageous position that the creation of a dominant position on future video equipment markets (as increasingly affected by HDTV technology) is likely.

15. A hardware-software link could be particularly important for the success of HDTV hardware products in the event of there being different standards or formats for HDTV broadcasts, HDTV home video systems and HDTV cinema. In those circumstances a hardware manufacturer with a link to a software producer could facilitate the timely launch of a complete package on to a market thus attracting consumers in the crucial early days, and thereby gaining a competitive advantage over its competitors. There are two competing HDTV standards under development, the Japanese HiVision/Muse standard and the European MAC standard.

16. On the assumption that there will be competing HDTV-standards, it seems very likely that MCA as a subsidiary of MEI will be one of the first software companies to offer motion pictures under the technical standard or format of MEI's video equipment. This may, prima facie, be a competitive advantage for MEI on future hardware markets, but this would depend on a variety of factors. One such factor will presumably be the way in which HDTV is introduced into the Community markets.

17. Another such factor is the availability of filmed entertainment from producers other than MCA. Currently, there is only one other major video equipment manufacturer who is linked with a competitor of MCA (Sony and Columbia Pictures). MCA and Columbia together take a share of 16% of consumer video entertainment products in the Community. This is less than one third of the combined share of all seven major US film producing companies. No other significant software company is linked with an important consumer electronics company. These software companies will have complete freedom as to whether and under which format they will offer motion pictures. Competition on software markets may even force MCA to offer its software under several HDTV-standards.

18. Thus, there would remain a sufficient number of software companies which could offer their motion pictures under the competing HDTV-standard. On the basis of information currently available on future developments in these markets, it does not appear likely that the privileged access to software that MEI will have after the proposed concentration will lead to a dominant position which significantly impedes competition.

Audio Equipment Markets

19. The above analysis of video equipment markets applies in principle as well for future audio equipment markets. Thus, it is not likely that the improved access to recorded music that MEI will have after the takeover of MCA will lead to a dominant position which significantly impedes competition on future audio equipment markets.

4. Conclusion

20. The proposed concentration does therefore not raise serious doubts as to its compatibility with the common market

x x
x

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 (1)(b) of Council Regulation No. 4064/89.

For the Commission,