

EN

***Case No M.7330 -
MITSUBISHI HEAVY
INDUSTRIES /
SIEMENS / METAL
TECHNOLOGIES JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 20/10/2014

***In electronic form on the EUR-Lex website under document
number 32014M7330***



EUROPEAN COMMISSION

Brussels, 20.10.2014
C(2014) 7797 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties

Dear Sirs,

**Subject: Case M.7330 – Mitsubishi Heavy Industries / Siemens / Metal Technologies JV
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹**

- (1) On 15 September 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Mitsubishi Heavy Industries, Ltd. ('MHI', Japan) and Siemens Aktiengesellschaft ('Siemens', Germany) intend to create a full-function joint venture ('JV') in the metal plant building sector within the meaning of Article 3(4) of the Merger Regulation.² MHI, Siemens and the JV are collectively referred to as 'Parties'. MHI and Siemens are collectively referred to as 'Parents'.

¹ OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 330, 23.9.2014, p. 11.

I THE PARTIES

- (2) **MHI** is a company headquartered in Tokyo, Japan. It is active as a heavy machinery manufacturer, with a diverse line of products and services such as shipbuilding, power plants and chemical plants. MHI is active in the metal plant building industry through Mitsubishi-Hitachi Metals Machinery, Inc. ('MHMM'), in which it holds a majority interest. MHMM was established in 2000 by the combination of the mechanical metal plant building divisions of MHI and Hitachi Ltd. The current shareholders of MHMM are MHI, Hitachi and the IHI Corporation, but it is solely controlled by MHI. MHMM's metal plant building activities are focused on mechanical metal plant building and mainly on flat rolled products and, to a more limited extent, the supply of mechanical maintenance and support services.
- (3) **Siemens** is a German stock corporation that offers a wide range of products and services to customers in multiple business sectors, including: energy, healthcare, industry and infrastructure. Siemens' mechanical metal plant building business was acquired as part of the VA Technologie AG acquisition in 2005³ and combined with Siemens' pre-existing electrical metal plant building business to form what is now Siemens VAI Metals Technologies. Siemens VAI Metals Technologies offers mechanical metal plant building solutions for the entire steel production process including the liquid phase (iron making, steel making), continuous casting and the production of flat rolled products and long rolled products. In addition, Siemens VAI Metals Technologies provides mechanical maintenance and repair services.
- (4) **The JV** will be jointly controlled by MHI and Siemens, the Parents, and it will be active in the field of metal plant building. The JV is to be headquartered in the United Kingdom.

II THE OPERATION

- (5) Pursuant to a Framework Agreement and a Joint Venture Formation Agreement signed on 6 May 2014, MHI and Siemens will contribute nearly all of their respective metal plant building activities into a new joint venture which will be controlled by a newly formed and jointly controlled private limited company, the JV, incorporated under English law.

III THE CONCENTRATION

- (6) Once the operation is implemented, MHI – indirectly through MHMM – will own 51% of the registered share capital of the JV and Siemens will own the remaining 49%. [Description of provisions relating to control over the JV]. The JV will therefore be jointly controlled by MHI and Siemens.
- (7) The JV is intended to operate on a lasting basis, and it will have access to sufficient resources to carry out its functions autonomously.⁴ The JV will also have an

³ COMP/M.3653 – *Siemens / VA Tech*.

⁴ The JV will have a management team dedicated to its day-to-day operations, approximately 9 000 employees, production and research facilities and other business assets that currently form part of the Siemens VAI Metal Technologies and MHMM businesses.

independent market presence, selling its products directly to its customers with the Parents making no or negligible purchases.

- (8) In view of the above, the operation constitutes a concentration within the meaning of Article 3(4) of the Merger Regulation.

IV EU DIMENSION

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁵ (MHI: EUR 24 547 million; Siemens: EUR 74 004 million; JV: EUR [...]⁶). Each of them has a Union-wide turnover in excess of EUR 250 million (MHI: EUR [...]; Siemens: EUR [...]; JV: EUR [...]⁷), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

V COMPETITIVE ASSESSMENT

V.1. General remarks

- (10) The Parties' activities appear largely complementary both in terms of geography and the product offering. The Parties' presence in the EEA is mainly due to Siemens' presence as MHI's relevant activities are negligible: the assets MHI is to contribute to the JV only accumulated a turnover of EUR [...] in the EEA in 2013 while Siemens' assets to be contributed to the JV accumulated a turnover of EUR [...].⁸ The finding of complementarity is also supported by statements made by customers and competitors in the market investigation.⁹
- (11) Nonetheless, the proposed transaction leads to limited horizontal overlaps in the markets for (i) mechanical metal plant building, (ii) electrical metal plant building¹⁰ and (iii) maintenance and servicing of metal plants. However, there are no horizontally affected markets in electrical metal plant building¹¹ or maintenance and servicing. Within the market of mechanical metal plant building, some

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

⁶ The turnover attributed to the JV is the turnover of the assets to be contributed to the JV.

⁷ The turnover attributed to the JV is the turnover of the assets to be contributed to the JV.

⁸ On a worldwide level, MHI's relevant assets accumulated a turnover of EUR [...] in 2013 while Siemens' assets accumulated a turnover of EUR [...] in 2013.

⁹ Replies to Questionnaire to customers, questions 26–8, and replies to Questionnaire to competitors, questions 24, 26 and 27. See also, e.g. the approved minutes of a pre-notification conference call with a customer of 3 September 2014 and the approved minutes of a pre-notification conference call with a competitor of 9 September 2014.

¹⁰ While MHI has no internal competences or production related to electrical metal plant building, it resells other suppliers' electrical metal plant building solutions.

¹¹ It should be noted that one of the minority shareholders of MHMM, Hitachi Ltd. ('Hitachi'), which nonetheless does not control MHMM even jointly, is also active in electrical metal plant building. However, the proposed transaction would not result in an affected market with respect to electrical metal plant building even if Hitachi's market shares were added to the Parties' market shares.

potential sub-segmentations constitute affected markets at world-wide level, namely (i) continuous casting, (ii) hot rolling and (iii) cold rolling. However, there are no affected markets at the EEA-level due to the very limited scope of MHI's activities in the EEA.

- (12) Moreover, both Siemens and MHI produce and supply certain upstream components that can be used as inputs in metal plant building. Those activities will generally not be contributed to the JV. Nonetheless, Siemens' supply of certain electrical components may potentially give rise to vertically affected relationships in the EEA.

V.2. Horizontal effects – mechanical metal plant building

V.2.1. Relevant markets

V.2.1.1. Relevant product market definitions – mechanical metal plant building

- (13) Mechanical metal plant building plans the use of machines for the relevant metal production process, supplies those machines and installs them in the production plant. Traditionally it includes the area of process technology, but does not include the civil engineering construction of the physical premises in which the machinery will operate.
- (14) In *Siemens/VA Tech*, the Commission analysed the market of mechanical metal plant building and considered that a distinction could be made according to the metal production stages, namely (i) pig iron making, (ii) steelmaking, (iii) continuous casting plants, (iv) hot rolling mills, (v) cold rolling mills, (vi) strip plants, (vii) section rolling mills, (viii) pipe manufacturing plants and (ix) hot pressing and forging. In addition, the Commission considered that a distinction could be drawn between metal plant building for ferrous metals on the one hand and non-ferrous metals on the other hand. Nonetheless, the product market definitions were ultimately left open in that case.¹²
- (15) The Parties consider that there is a single market for mechanical metal plant building and that it should not be further subdivided. The Parties support their view by referring to significant degree of supply-side substitutability due to the fact that metal plant building is an engineering market where a significant range of players can supply a wide range of mechanical metal plant solutions.
- (16) The results of the market investigation do not support the Parties' view. In contrast, market participants responded that not all competitors supply all production stages and, even if many competitors do supply all or most of the production stages, the competitors' relative capabilities vary and different suppliers may be considered

¹² M.3653 – *Siemens / VA Tech*, paragraphs 230–2.

market leaders for different stages.¹³ Moreover, it appears to be a common practice for customers to order the different production stages from different suppliers.¹⁴

- (17) However, as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market even under the narrowest alternative product market definitions, it is not necessary to conclude on the exact scope of the product markets.

V.2.1.2. Relevant geographic market definitions – mechanical metal plant building

- (18) In *Siemens/VA Tech*, the Commission considered the geographic market definition for mechanical metal plant building and its possible sub-segmentations as EEA-wide or wider leaving the exact definition ultimately open.¹⁵
- (19) The Parties put forward that the relevant geographic market for mechanical metal plant building is at least EEA-wide and possibly worldwide.
- (20) The results of the market investigation indicate that the market could be world-wide, and a majority of both customers and competitors indicated that their respective purchasing and selling patterns are worldwide and that the same suppliers are generally active at least in Europe, Asia and North America. However, a majority of both customers and competitors nonetheless indicated that a supplier needs to have a fixed presence in the EEA to be a viable competitor there. Many respondents also clarified that the presence should extend beyond a simple sales office and include, for instance research and development capabilities.¹⁶ Moreover, it should also be noted that the Parties' own activities are geographically complementary and, for instance MHI's activities in mechanical metal plant building in the EEA are negligible while Siemens is one of the major suppliers there.
- (21) However, as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal even under the narrowest alternative geographic market definitions, it is not necessary to conclude on the exact scope of geographic markets.

V.2.2. *Competitive assessment*

- (22) Within the overall market of mechanical metal plant building, the proposed transaction does not result in horizontally affected markets at the EEA or world-wide levels.
- (23) With respect to the potential sub-segments of mechanical metal plant building, the proposed transaction does not result in any affected markets within the EEA.

¹³ Replies to Questionnaire to customers, questions 4 and 24; and replies to Questionnaire to competitors, questions 4 and 22

¹⁴ Replies to Questionnaire to customers, question 4.

¹⁵ M.3653 – *Siemens / VA Tech*, paragraph 291.

¹⁶ Replies to Questionnaire to customers, questions 13 and 15–6; and replies to Questionnaire to competitors, questions 13 and 15–6.

However, on the world-wide level, the potential sub-segments for (i) continuous casting (ii) hot rolling and (iii) cold rolling would be affected. The Parties' estimations of their world-wide market shares in those potential sub-segments are set out in the table below.

Table 1 - The Parties' market shares, world-wide, cumulated 2009–2013¹⁷

	Siemens (%)	MHI (%)	Combined (%)
Continuous casting	[10-20]%	[0-5]%	[20-30]%
Hot-rolling	[10-20]%	[10-20]%	[20-30]%
Cold-rolling	[5-10]%	[10-20]%	[20-30]%

Source: The Notifying Parties

- (24) The Commission notes that the parties' market shares remain modest and are, as such, not indicative of significant market power. For continuous casting, the market share increment is also low.
- (25) The JV will continue to face competition after the transaction by notable competitors with similar or higher market shares than the JV. The main competitors in all of the potential sub-segments of mechanical metal plant building are SMS and Danieli. SMS has a market share of [20-30]¹⁸ in continuous casting, [20-30]% in hot-rolling and [20-30]% in cold-rolling. Danieli has a market share of [10-20]% in continuous casting, [10-20]% in hot-rolling and [10-20]%. In addition, there are a number of other competitors such as the Metallurgical Corporation of China and Andritz.
- (26) Moreover, respondents to the Commission's market investigation did not raise competition concerns related to the transaction. In fact, some customers even viewed the transaction positively because it could give them access to MHI's technology in geographic areas where it has not been available before the transaction. Some competitors also indicated that this might make competition tougher for them.¹⁹
- (27) In light of the above and on the basis of the evidence available to the Commission, the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market as regards mechanical metal plant building.

¹⁷ The Parties have calculated the market share figures on the basis of total order intake during 2009–2013. The figures represent market shares on the market for steel production plants; however, the Parties submit that their market shares are at most comparative with respect to metal plants producing other metals. Mechanical metal plant building is a project market involving a relatively small number of valuable projects that typically take a number of years to complete each. Therefore, market shares for individual years can be volatile due to singular projects being won or lost by market participants and they do not generally represent market participants' market positions. For instance, the Parties' combined market share for cold-rolling has varied during the years 2009–2013 between [30-40]% in 2009 to [10-20]% in 2013. On the basis of 2013 figures only, the potential sub-segment for cold-rolling would thus not have been an affected market.

¹⁸ Market shares are the Parties' best estimates based on cumulated order intake 2009–2013.

¹⁹ Replies to Questionnaire to customers, questions 27–9; and replies to Questionnaire to competitors, questions 26–8.

V.3. Vertical effects – electrical metal plant building and the supply of components

- (28) The proposed transaction results in a potential vertical relationship between the JV's activities in electrical metal plant building and Siemens' supply of electric and automation components that can be used as inputs in that activity.

V.3.1. Relevant markets

V.3.1.1. Relevant product market definitions – electrical metal plant building

- (29) Electrical metal plant building consists of various levels of automation. Level 0 automation refers to the general electrification of the plant as well as the assembly of drives and sensors. Levels 1– 2 automation refer to the actual automation, which consists of the IT platform, human-machine interface, basic automation and drive control (as opposed to the drives themselves) as well as process automation. In addition, the more abstract levels of manufacturing execution systems, including plant logistics and production planning can be understood to be part of electrical metal plant building in the broad sense (level 3 automation).²⁰
- (30) In *Siemens/VA Tech*, the Commission analysed the market for electrical metal plant building, leaving open whether further segmentation of the market on the basis of, for instance the automation levels described above, process areas (such as liquid phase, hot phase or cold phase of metal production), process stages (such as different cold rolling process stages) or the metal produced in the plant were warranted.²¹
- (31) The Parties put forward that there is a single overall market for electrical metal building.
- (32) The results of the market investigation do not fully support the Parties' view. For instance, market participants responded that not all competitors supply all production stages (e.g. cold-rolling and hot-rolling) and, even if many competitors do supply all or most of the production stages, the competitors' relative capabilities vary and different suppliers may be considered market leaders for different stages.²² Moreover, it appears to be a common practice for customers to order the different production stages from different suppliers.²³

²⁰ M.3653 – *Siemens / VA Tech*, paragraphs 234–9 and 255–6.

²¹ M.3653 – *Siemens / VA Tech*, paragraphs 269–274.

²² Replies to Questionnaire to customers, questions 4 and 24; and replies to Questionnaire to competitors, questions 4 and 22

²³ Replies to Questionnaire to customers, question 4.

- (33) However, as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market as regards potential vertical links under any feasible plausible product market definition related to electrical metal plant building, it is not necessary to conclude on the exact scope of the relevant product markets in this case.

V.3.1.2. Relevant product market definitions – components

- (34) Siemens produces electric and automation components that can be used for a variety of different end-uses, including electrical metal plant building.
- (35) According to Siemens' estimates, the company's market shares with respect to some of those components, namely programmable logic controllers ('PLCs'), human machine interface hardware ('HMI-HW'), high voltage inverters, motion controls and motors and certain high voltage energy transmission products may be [30-40]% and thus result in potentially affected vertical relationships.
- (36) In *Siemens / VA Tech*, the Commission considered some of those products in connection to electrical metal plant building but found it not necessary to conclude on the market definitions.²⁴
- (37) However, as the proposed transaction would not give rise to serious doubts as to its compatibility with the internal market as regards vertical links under any plausible product market definition related to components used in electrical metal plant building, it is not necessary to conclude on the exact scope of the product markets in this case.

V.3.1.3. Relevant geographic market definitions

- (38) In *Siemens/VA Tech*, the Commission considered the geographic market definition for electrical metal plant building and its possible sub-segmentations as EEA-wide or wider, leaving the exact definition ultimately open.²⁵ The Commission did also not conclude on the exact geographic market definition concerning components used for electrical metal plant building.
- (39) The Parties put forward that the geographic market for electrical metal plant building is at least EEA-wide and possibly worldwide. When it comes to components, the Parties' market shares generally do not rise above 30% on markets wider than the EEA.²⁶
- (40) However, as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market with respect to the potential vertical links under any plausible market definition, it is not necessary to conclude on the exact scope of the relevant geographic markets in this case.

²⁴ M.3653 – *Siemens / VA Tech*, paragraphs 414 and 422.

²⁵ M.3653 – *Siemens / VA Tech*, paragraph 296–8.

²⁶ However, Siemens reports an approximate [40-50]% market share in a potential worldwide market for high voltage coils.

V.3.2. *Competitive assessment*

- (41) It should first be recalled that there are no horizontally affected markets concerning electrical metal plant building at any geographic level as the Parties' combined market shares remain below 20% both in the EEA and at the world-wide level.
- (42) The potential vertical links are thus only the result of Siemens' market shares in the potential component markets. According to the Parties' submission, the market shares may rise above 30% generally only within the EEA.²⁷ None of the market shares would rise above 50%. According to the Parties, a number of competitors will also remain on the market for all of the components in question, including suppliers such as ABB, Alstom and Rockwell Automation.
- (43) The value of the components involved appears to be modest compared to the total value of electrical metal plant building projects. While there was some variation between the responses of competitors, many competitors noted that the value of their purchases of the components was 5–10% of all their purchases for their metal plant building businesses, some competitors indicating even smaller figures. Competitors also named a number of actual and potential alternative suppliers such as ABB, Rockwell Automation and WEG.²⁸
- (44) However, some market participants indicated that, particularly in brownfield upgrades of existing metal plants, the ultimate customer may require that the components used are those of a certain supplier and that,²⁹ within the EEA, the designated supplier may be Siemens³⁰. Many customers nonetheless commented that they would be willing to consider suppliers alternative to their initially requested ones if there were good reasons to do so.³¹
- (45) Nevertheless, the proposed transaction is de-concentrative in nature: the transaction only results in potentially affected vertical relationships within the EEA where any market position the Parties' may have is the result of Siemens' market position since MHI's activities both upstream and downstream are negligible or non-existent. While Siemens will contribute its electrical metal plant building business into the JV, it will retain its component business within itself and will not contribute those activities to the JV. Therefore, Siemens would also suffer any possible negative effects of an input foreclosure strategy alone while it would need to share the possible downstream profits with MHI after the proposed transaction.
- (46) In light of the above and on the basis of the evidence available to it, the Commission considers that the Parties do not have the ability or incentive to engage in input foreclosure of their downstream competitors as a result of the

²⁷ With the exception of high-voltage coils where the Parties report a market share of approximately [40-50]% world-wide.

²⁸ Replies to Questionnaire to competitors, question 25.

²⁹ Replies to Questionnaire to competitors, questions 25; and replies to Questionnaire to customers, questions 20–1.

³⁰ Replies to Questionnaire to competitors, question 25. See also confirmed minutes of a conference call with a competitor, 22 September 2014.

³¹ Replies to Questionnaire to customers, questions 20–1.

proposed transaction. Moreover, as the JV will only achieve a market share of less than 20% on the downstream market for components irrespective of such a market's exact boundaries, it is also unlikely that it could successfully engage in customer foreclosure.

- (47) Therefore, the Commission considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market due to vertical relationships.

VI CONCLUSION

- (48) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(signed)
Joaquín ALMUNIA
Vice-President