

90. THE REGISTRAR TO THE AGENT OF ITALY

14 March 1989.

I have the honour to transmit to Your Excellency herewith a copy of a letter dated 13 March 1989 from the Deputy-Agent of the United States in the case concerning *Elettronica Sicula S.p.A. (ELSI)*, setting out the comments of the United States on the written replies of Italy to questions put by Members of the Chamber during the oral proceedings in that case.

91. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

14 April 1989.

I have the honour to refer to the request made by the President of the Chamber formed to deal with the case concerning *Elettronica Sicula S.p.A. (ELSI)*, at the close of the last hearing in that case (2 March 1989, p. 383, *supra*), that the Agents of the Parties should "remain at the disposal of the Chamber for any further assistance it may require". Pursuant to this request, and with reference to Article 49 of the Statute of the Court, President Ruda, in his individual capacity as a member of the Chamber, wishes to put the following question to the Agent of the United States:

"The minutes of the meeting of shareholders of ELSI held on 28 March 1968, filed in English translation as Annex 32 to the United States Memorial, refer to a number of documents as being 'enclosed hereto' under identifying letters, but those documents do not form part of the Annex.

1. Are the 'financial statements (Balance Sheet and Revenue Statement)' referred to under identifying letter C identical with those attached to the Co-Agent's letter to the Registrar of 17 February 1989? If not, can a copy and (if appropriate) translation of these be supplied, please?

2. Can copies and translations of the other documents (identifying letters A, B, D and E) be supplied, please?"

I am transmitting a copy of this letter to the Agent of Italy for his information.

92. THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA
TO THE REGISTRAR

19 May 1989.

In response to your letter of 14 April 1989, enclosed are twenty copies of Attachments A through E¹ to Annex 32 to the United States Memorial in the case concerning *Elettronica Sicula S.p.A. (ELSI)* and an original and nineteen copies of certified English translations. I certify that the enclosed documents

¹ In Italian. Not reproduced.

constitute true copies of documents adduced in support of the contentions contained in the United States pleadings.

In response to President Ruda's questions:

1. The financial statements referred to under identifying letter C to Annex 32 are enclosed. They are not identical in form with those attached to the United States letter of 17 February 1989. However, the content of the financial statements referred to under identifying letter C is in agreement with and is the source of the balances per books reflected in the Coopers & Lybrand Report on the Financial Statements of Raytheon-ELSI, S.p.A. for the period ended 30 September 1967 that was attached to the 17 February letter.

2. Copies and translations of Attachments A, B, D and E are enclosed. I note that reference to "trimestre" in Italian (translated literally as "trimester") at Attachment D, p. 2¹ is synonymous with "quarter" for accounting purposes. Reference to "legge del terzo" in the Italian (translated literally as "law of the third party") at Attachment D, p. 3² appears to be a reference to the so-called "30% law" which required 30 per cent of government agency supply and job contracts to be made from companies located in the Mezzogiorno region.

The documents requested by the Court were not in United States Government files. Accordingly, upon receipt of your letter, the United States forwarded the request to the Raytheon Company which requested a search of the files of Studio Legale Bisconti, Raytheon's counsel in Rome. As soon as the documents were identified, they were sent by courier to the United States and certified English translations were made. I hope that the unavoidable delay in locating and translating the requested documents has not caused the Court any unnecessary inconvenience.

Enclosures: As stated.

(Translation)

ENCLOSURE

[A]

Report of the Board of Directors to the Regular and Special Stockholders' Meeting

Dear Stockholders:

We wish first of all to inform you that within a few days after the Board's drafting of this report and before the current meeting, at which this report is submitted to you, the increase in stock capital from 1,500,000,000 lire to 4,000,000,000 lire, decided on by the Special Meeting of March 31, 1967, will be effectuated on the formal level as well, by means of subscription and total payment for 2,500,000 newly issued shares: namely, 1,250,000 common shares marked with the letter "A" and 1,250,000 preferred shares marked with the letter "B". The *de facto* effectuation will be performed by means of payment of 2.5 thousand million lire on the part of the Raytheon Company partner before the approval of the fiscal year which ended on September 30, 1967.

Before explaining to you the economic and asset-related results of the balance

¹ P. 483, *infra*.

¹ See *I.C.J. Reports* 1989, p. 15.

sheet made out on September 30, 1967, we wish to briefly tell about the main events that marked our operations.

During the fiscal year, the executive organs decided:

- to carry out new corporate policies with a view to reorganizing the company's structure more effectively and increasing the efficiency of its means of production;
- to study the introduction of new products to augment sales;
- to put in effect a cost-reduction program, particularly in the area of overhead costs.

The benefits of the programs described above, which were realized only in part in the past fiscal year, should produce their effects in future operations.

The fiscal year ended with an operating loss of 1.410 thousand million lire, owing in large part to the heavy impact of financial charges (926.5 million lire), to the competition's continuous pressure on selling prices, and to the sagging of sales. This operating loss includes writedowns of 573.4 million lire [Lmil. 573.4].

The total loss for the fiscal year is 2,683,460,080 lire, which includes the following non-operating items: 1. Shrinkage of inventory (Lmil. 478), 2. Depreciation of inventory (Lmil. 242), 3. Provisions for obsolescence of inventory (Lmil. 192), 4. Returns inwards (Lmil. 214), 5. Inventory clearance (Lmil. 32), 6. Set-asides for accrued liability (Lmil. 84), 7. Other items (Lmil. 32). Pursuant to Art. 2446 of the Civil Code, it is necessary to convene the Special Meeting to take the appropriate measures. In this Meeting, and in the relevant Report of the Board of Directors, the events and causes will be explained which defined the current statement of assets and liabilities.

The enclosed statement of assets and liabilities shows total assets on 9-30-1967 of 22,041,757,580 lire.

The most significant changes were recorded:

in Assets

- from a decrease in plant by Lmil. 507.9,
primarily owing to the writeoff of fully depreciated items;
- from an increase in the inventory on hand and the products in process, by Lmil. 490;
- from a decrease in debt by Lmil. 489.1.

in Liabilities

- from a decrease in writedown reserve by Lmil. 668.9
(see note regarding decrease in plant, above);
- from an increase in various reserves by Lmil. 972.1.;
- from a decrease in notes payable by Lmil. 733.1;
- from a decrease in mortgage loans by Lmil. 439.4;
- from an increase in debts owed to banks, suppliers, and accrued liability by Lmil. 550.6.

For the Board of Directors,
(Signed) John D. CLARE.

(Translation)

Raytheon-ELSI S.p.A.

[B]

*Report of the Board of Auditors on the Balance Sheet Made Out on
September 30, 1967*

Dear Stockholders:

We confirm to you, first of all, that the increase in stock capital decided on by the Special Meeting of March 31, 1967, has been effectuated. On February 24, 1968, in fact, 2,500,000 newly issued shares were subscribed and paid for at a total face value of L. 2,500,000,000 [lire].

The balance sheet made out on September 30, 1967, which the Board of Directors submits for your examination and deliberation, can be summarized in the following figures:

- Assets	L. 19,358,297,500
- Liabilities	<u>L. 22,041,757,580</u>
- Loss for the fiscal year	L. 2,683,460,080
- The suspense accounts are balanced by	<u>L. 1,151,637,706</u>

The above result finds confirmation in the economic account, which shows:

- Costs and opening inventory	L. 15,870,584,079
- Revenue and final inventory	<u>L. 13,187,123,999</u>
- Net loss	<u>L. 2,683,460,080</u>

We attest that the values recorded in the balance sheet are in conformity with the results of the regularly maintained account books. The valuations used in the balance sheet were obtained in conformity with the legal regulations; in particular, we can inform you that the accrued items and the audits were calculated in compliance with the provisions contained in Art. 2426 of the Civil Code.

The depreciations were performed pursuant to the legal regulations, and the personnel old-age pension fund covers the total owed by the Company under this heading.

Your Board of Directors has explained to you the changes that occurred in the Company's assets in connection with activity performed in the past fiscal year, and therefore, in accordance with Art. 2432, par. 2 of the Civil Code, we express an opinion favorable to the approval of the present balance sheet, as it is presented to you.

The Board of Auditors,
[Signature, illegible.]
[Signature, illegible.]

(Translation)

ENCLOSURE

*Balance Sheet as of 9/30/1967**Statement of Assets and Liabilities**Assets*

Land and buildings	1,082,636,651
Plant, machinery, and equipment	5,793,172,263

Furniture, fixtures, and motor vehicles	210,471,488
Construction in progress	138,170,315
Studies in progress	303,031,500
Items to be amortized	1,423,001,220
Materials and work in progress	6,579,127,637
Materials in testing	113,029,019
Cash, banks, and postal checking account	28,072,903
Notes in hand	124,628,337
Investments and holdings	119,209,490
Credits	3,013,109,521
Accrued assets and deferred charges	430,637,156
Loss for the fiscal year	<u>2,683,460,080</u>
Total	22,041,757,580
Order accounts	1,151,637,706

Liabilities

Stock capital:

– Shares of group A	750,000,000
– Shares of group B	750,000,000
Partners/capital increase account	2,500,000,000
Ordinary reserve	1,514,377
Reserve for depreciation	1,270,292,640
Reserve for employee severance pay	538,939,772
Reserve for writedown of credits	80,574,054 [?]
Taxed reserve	862,331,226
Notes payable	1,188,325,170
Mortgage loans	3,917,335,259
Miscellaneous debts	8,611,910,227
Debts owed to the parent company	1,004,020,481
Accrued liabilities	566,514,374
Total	22,041,757,580
Order accounts	1,151,637,706

*Profit-and-Loss Account**Costs*

Opening inventory	6,029,305,429
Purchases	4,230,699,830
Personnel costs	2,616,874,247
Miscellaneous costs	480,924,476
Consumption	379,751,143
Amount of depreciation	573,391,898
Set-asides or costs made good	108,629,523
Sales expenses	432,713,818
Finance charges	926,503,392
Miscellaneous charges	85,144,048
Direct taxes	<u>6,646,275</u>
Total	15,870,584,079
[Total costs:	15,870,584,079]

Revenue

Sales	7,143,407,437
Self-produced plant and studies	372,206,598
Financing receipts	800,091
Miscellaneous receipts	106,582,236
Final inventory	5,564,127,637
Loss for the fiscal year	<u>2,683,460,080</u>
Total	15,870,584,079

We declare that the above balance sheet is in conformity with the facts.

The President,

(Signed) John D. CLARE.

The Managing Director,

(Signed) Ing. A. PROFUMO.

The Board of Auditors,

[Three signatures, illegible.]

[D]

March 18, 1968.

Report of the Board of Directors to the Regular and Special Stockholders' Meeting of March 28, 1968

Special Section

Dear Stockholders:

We have convened you in a special meeting to deliberate on the following

AGENDA

1. Losses of the fiscal year which ended on September 30, 1967, and relevant measures taken.
2. Any other business.

The fiscal year ended with an operating loss of 1.410 thousand million lire, owing in large part to the impact of financial charges (926.5 million lire), to the competition's continuous pressure on selling prices, and to the sagging of sales. The total loss for the fiscal year is 2,683,460,080 lire, which includes the following non-operating items: 1. Shrinkage of inventory (Lmil. 478 [million lire]), 2. Depreciation of inventory (Lmil. 242), 3. Provisions for obsolescence of inventory (Lmil. 192), 4. Returns inwards (Lmil. 214), 5. Inventory clearance (Lmil. 32), 6. Set-asides for accrued liability (Lmil. 84), 7. Other items (Lmil. 32). Pursuant to Art. 2446 of the Civil Code, it was necessary to convene the Special Meeting to take the appropriate measures.

The rate of loss for the first quarter of the 1967-68 fiscal year, which closed on December 31, 1967, continued to be high despite some signs of improvement in the company's trading position, owing mainly to the seasonal demand for television tubes. The losses for the first trimester of the current fiscal year amount to about 411 million lire. However, there is solid reason for believing that the rate of loss since December 31, 1967, became even greater because of interruptions of corporate activities owing to earthquakes and intermittent strikes.

Before reviewing the causes of the worsening in the company's situation since the end of the fiscal year which closed on September 30, 1967, it is important to recapitulate the corporate policies and the measures taken by the Board during the past fiscal year in conformity with the interpretation given by the Board itself to the wishes of the stockholders. In early 1967, the Board's corporate policy was initiated along the lines of the following measures taken by the stockholders about a year ago:

1. Acquisition from La Centrale Finanziaria Generale of the remaining 20 per cent of the ELSI block of stock for 300 million lire. This gave the Board the control necessary for the purpose of instituting appropriate programs for improving the situation of Raytheon-ELSI and for seeking a strong Italian partner.
2. Addition of a further 2.5 thousand million lire to the company's capital.
3. Contribution of a further 1.5 thousand million lire in bank sureties necessary to provide the company with the means with which to continue operating.
4. Deferral of collection by the Raytheon Company of sums owed by Raytheon-ELSI for previous sales and services rendered to it, which still amount to about 1.1 thousand million lire.

After these measures taken by the stockholders, the Board inaugurated a recovery program which can be summarized as follows:

- (a) strengthening of ELSI's management with a skilled group of persons chosen from among the staff for the Raytheon Company;
- (b) a search for new products for ELSI, particularly via attempts to have the Government apply the so-called "law of the third party" in ELSI's favor, and also via obtaining new products from Raytheon in America;
- (c) a search for an influential Italian partner, preferably among the companies with governmental participation, in a position not only to make a financial contribution to ELSI, but also to introduce new products into the company from Italian sources, to help it obtain the benefits that are due to companies of the Mezzogiorno [Southern Italy, including Sicily], and finally to ensure ELSI's future within the framework of the national five-year plan.

The last twelve months have seen a significant operating advance, but it has not been possible to achieve the inclusion of a suitable Italian partner in the company, just as it has not been possible to obtain new products and markets from public-sector sources. All the activity performed to obtain the aforesaid advance and the aforesaid products and markets has been documented in detail elsewhere. Three reports were presented to the Ente Siciliano per la Produzione Industriale [Sicilian Agency for Industrial Production]; documented proposals were made to the Central Government, emphasizing the need to obtain new products and identifying these products; substantial improvements were also obtained in the operating results. The energetic negotiating work conducted with all the key ministers and ministries concerned with the question, on both the central and the regional government levels, has not produced any result up to now. It has been constantly emphasized in all our reports and during all our negotiations that a strong and suitable Italian partner is indispensable for an economically healthy long-term future for Raytheon-ELSI. In the current circumstances, an electronics company entirely owned by foreigners cannot easily compete in a market all but dominated by orders and jobs that come from the public sector.

During the first months of this year, some events took place which caused a rapid deterioration in the company's position. The earthquakes in Sicily last January caused disruptions in production and negatively influenced not only the loss position but also the company's liquidity. These were followed by strikes of

an intermittent nature in the cathode-ray tube division, which produced negative effects larger than what the loss of working hours would suggest. This was inevitable once one considers the completely automated manufacturing process for this line of products. It was necessary to close the cathode-ray tube production department in order to negotiate conditions more in keeping with industrial and commercial needs with the unions. It also became necessary to announce the plan to reduce the staff by about 175. These events resulted in a total strike of the factory beginning on March 4 of this year, which has continued without interruption and shows no signs of being resolved in the immediate future. These events have seriously and perhaps irrevocably damaged the company's market position. There have been other events of a critical nature. We were informed by the President of the Sicilian Region that we did not succeed in obtaining the approval of the Central Government for an electronics plan in Sicily, and that it was also not possible to obtain the participation of IRI [Istituto per la Ricostruzione Industriale = Institute for the Reconstruction of Industry] in Raytheon-ELSI. At the same time, the stockholders, once informed of the losses of the past fiscal year, and therefore of the need for a recapitalization or writedown, have formally communicated their firm intent not to contribute further financial investments to Raytheon-ELSI.

Without a restructuring of company activities in conjunction with a suitable partner, as was continually emphasized during the last twelve months, with a normal rate of operating losses of about 120 million lire per month, with the present strike situation and the resulting harm to the company's market position, the Board of Directors is of the opinion that not only is it not possible to recover the losses in the course of the current fiscal year, but it would not be prudent to continue corporate activities by means of a simple writedown of corporate capital.

These circumstances, therefore, constrained the Board to adopt unanimously the following resolution at the Board meeting of March 16, 1968:

"After extensive discussion, the Board unanimously resolves upon the cessation of corporate activities, to be carried out in the following ways:

1. the cessation of production will be effectuated immediately;
2. the cessation of commercial activities and the dismissal of employees will be effectuated on March 29, 1968.

The Partners' Meeting called for March 28, 1968, will formally make the resolutions needed.

The Board directs the Managing Directors to explain the company's situation and the events which have led to the Board's resolutions to the unions and the representatives of the employees and to all the competent authorities."

Therefore, the Board submits this resolution to the attention of the stockholders for their ratification, and to receive any other directive which the stockholders may consider suitable to the circumstances of the case.

The Board of Directors.

(Translation)

[E]

Report of the Board of Auditors to the Special Meeting of March 28, 1968

[Translator's note: "February" is typewritten and crossed out; "March" is written in by hand.]

Dear Stockholders:

As can be seen from the balance sheet of September 30, 1967, which was already presented for your approval, the fiscal year closed with a loss of 2,683,460,080 lire, which exceeds one third of the corporate capital, and therefore, in accordance with Art. 2446 of the Civil Code, you have been convened in a special meeting to take the appropriate measures.

The Board of Directors has explained to you the causes which brought about the aforesaid loss, and has also informed you that without new financial contributions and without an expansion of markets, the loss itself not only cannot be recovered during the current fiscal year, but is destined to increase.

Moreover, since the conditions indicated for solving the Company's crisis have not come about, the Board of Directors has decided upon the cessation of corporate activities, and submits this decision for your approval.

The Board of Auditors.

93. THE DEPUTY-REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES
OF AMERICA

26 May 1989.

I have the honour to acknowledge receipt of the letter which you addressed to the Registrar on 19 May 1989 together with twenty copies of your Government's response to the questions put by the President of the Chamber at the close of the hearing in the case concerning *Elettronica Sicula S.p.A. (ELSI)*.

Copies of the letter and its enclosure have been transmitted to the Agent of Italy, who has further been informed, with reference to Article 72 of the Rules of Court, that any comments he may wish to make should be received in the Registry not later than 9 June 1989.

94. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

3 July 1989.

I have the honour to inform Your Excellency that the Chamber of the Court constituted in the case concerning *Elettronica Sicula S.p.A. (ELSI)* will hold a public sitting at the Peace Palace at 10.00 a.m. on Thursday, 20 July 1989, for the purpose of delivering its Judgment.