

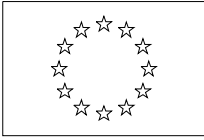
***Case No COMP/JV.24 -
BERTELSMANN /
PLANETA / BOL SPAIN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/12/1999

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

Brussels, 03.12.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/JV.24 – Bertelsmann/Planeta/BOL Spain

Notification of 03.11.1999 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 03.11.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Bertelsmann AG (“Bertelsmann”) and Planeta Corporación S.R.L. (“Planeta”) acquire joint control over the company Books On-Line Ibérica, S.A. (“BOL Spain”) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Bertelsmann heads a group of companies that operate internationally and form the Bertelsmann group. The main activities of the group are printing, publishing and distribution of books and magazines, book clubs, publishing and distribution of music and records and private television as well as related services.
4. Planeta is a [...] stock corporation headquartered in Spain. It heads the internationally active Planeta group of companies (“Grupo Planeta”). The main businesses of the Planeta group are publishing and distribution of cultural and leisure content by means of all types of print and other media such as books, broadcast services, television (including DVD) and electronic media (CD ROM).

5. BOL Spain is a stock corporation under Spanish law. Its business activity is the sale of books in the Spanish language as well as the other official languages of Spain (Catalan, Galician, and Basque) via the Internet. It is an existing company currently wholly owned by a subsidiary of Bertelsmann. BOL Spain will be part of a world-wide system of BOL companies, which will offer on-line book sales in various countries.

II. THE OPERATION

6. The basic structure of the proposed transaction can be described as follows:
7. Bertelsmann and Planeta will each have a 50% participation in the joint venture BOL Spain. The parties will establish the joint venture by Planeta acquiring a 50% stake in BOL Spain.
8. The parties will concentrate their on-line sale activities concerning Spanish books and books in the other official languages of Spain in BOL Spain.

III. CONCENTRATION

9. The proposed operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Joint control

10. BOL Spain was before the notified operation under the sole control of Bertelsmann. After the transaction BOL Spain will be equally held between Bertelsmann and Planeta (50/50).
11. Pursuant to the Shareholders Agreement, the Board of BOL Spain will have an equal number of directors from Bertelsmann and Planeta. Each director has one vote and decisions of the board are passed by an absolute majority of the board members. Deadlock situations are to be resolved by mutual call options for the shares of the other party without a casting vote for the chairman of the board. The chairman of the board will be designated by the shareholders on a one-year basis, the designating right alternating between Planeta and Bertelsmann. All other strategic decisions of the joint venture will also need the consent of both parties.
12. Therefore, the joint venture will be under the joint control of Planeta and Bertelsmann.

Autonomous economic entity acting on a lasting basis

13. BOL Spain is an existing company, having become active in 1999, with sufficient assets and personnel at its disposal. After the transaction the joint venture will continue to have all necessary tangible and intangible assets to perform all functions required for an autonomous economic entity active in on-line retailing of books, including an unlimited licence to use the trade mark "BOL", the technology, corporate image and other know-how of BOL International GmbH, a company of the Bertelsmann group. In conclusion, BOL Spain will be able to perform on a lasting basis all the functions of an autonomous economic entity.

IV. COMMUNITY DIMENSION

14. The combined worldwide turnover of the undertakings concerned is more than EUR 5 000 million (Bertelsmann: EUR 11 589 million, Planeta: EUR 507,59 million).
15. Each of them has an aggregate Community-wide turnover in excess of EUR 250 million (Bertelsmann: EUR [...], Planeta: EUR [...]), 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

A. The relevant market

16. Pursuant to its decision of 06.05.1999 in Case No IV/M.1459 – Bertelsmann/Havas/BOL, the Commission considers that the following product markets could be considered relevant for the assessment of this operation: (a) the market for distant sales of consumer books (including book clubs, mail order and sales by Internet), (b) the market for the Internet sales of books. According to the parties, the market for the publishing of books in Spanish or the other officially recognised languages in Spain is also relevant.
17. However, for the purposes of the present assessment the precise scope of the relevant product market can be left open, since on the basis of all plausible market definitions considered, the operation will not lead to the creation or strengthening of a dominant position.
18. The parties submit that the geographic market for the distant sales of books (including on-line sales via the Internet) is at least national, if not as wide as the Spanish-speaking world (including Spain and Latin America). With regard to the market for on-line sales of books, the parties submit that, as the sales are addressed to customers on a worldwide basis, the relevant geographic market in this case would be the entire Spanish-speaking world. On the other hand, it may also be true that the on-line sales need a national logistic system of storage and next-day delivery. In addition, BOL Spain will be active not only in the sale of books in Spanish but also in all other languages officially recognised in Spain. The parties submit furthermore that the market for the publishing of books is as wide as the Spanish-speaking world.
19. For the purposes of this case the exact determination of the geographic scope of the market can be left open because even in the narrowest market definition possible, i.e. Spain, the operation will not lead to the creation or strengthening of a dominant position.

B. Dominance

1. **The market for distant sales of consumer books (including book clubs, mail order and sales by Internet)**
20. The parties are active in the field of book clubs, mail order and sales by Internet. They estimate their combined market share in Spain at [...] (Bertelsmann: [...], Planeta: [...]). Given that position and the presence of a very significant number of competitors in the same market in Spain such as publishers, book stores and book chains, besides the book club, mail order and on-line activities entirely focused on distant sales, the

operation will not lead to the creation or strengthening of a dominant position. This conclusion has been confirmed by the results of the market test undertaken by the Commission.

2. The market for the Internet sales of books

21. The Internet sales of books in Spanish and the other officially recognised languages in Spain is a new market in which BOL Spain is a new entrant. The parties expect on-line sales of books to amount to [...] of the total Spanish book market in 1998/99, [...] in 1999/2000 and [...] in 2000/01 and to reach a total of [...] in 2010. They expect BOL Spain to reach between [...] and [...] of the total book retail market within the first year. The parties estimate the total volume of on-line book sales to have reached EUR [...] in 1998. The market for the Internet sales of books is growing very fast. If its volume is projected to 1999 and taking into account that BOL Spain started operations on [...] 1999 and has had revenues of EUR [...] until [...] 1999, its market share at this stage is estimated at under [...]. In the market for the Internet sales of books, there are already a significant number of specialised Internet booksellers as well as e-commerce ventures including book shops. In addition, many book shops also offer the possibility to order books on-line. Market entry barriers are low as the total costs of establishing an on-line book shop are relatively low and there are no legal or regulatory barriers to entry.
22. For the reasons referred to above the operation will not lead to the creation or strengthening of a dominant position. This conclusion has been confirmed by the results of the market test undertaken by the Commission.

C. Coordination of competitive behaviour

1. Definition of a candidate market for coordination

23. According to Article 2(4) second sub-paragraph of the Merger Regulation, the Commission shall, when making the appraisal of coordination of the competitive behaviour of undertakings that remain independent in accordance with the criteria of Article 81(1) and (3) of the Treaty, take into account in particular whether two or more parent companies retain to a significant extent activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market.
24. Both parent companies will remain active in the upstream market for the publishing of books in Spain, which is, according to the parties, a closely related market.

2. Assessment under Article 2(4)

25. It has to be examined whether the operation might have the effect of co-ordinating the competitive behaviour of the parents. There are no indications that the operation has the object of co-ordinating the competitive behaviour of Bertelsmann and Planeta as book publishers.
26. The Commission's investigation has revealed that, taking into account the parties' market position, no incentive for co-ordination in the market for the publishing of books in Spain is to be expected. Indeed, Bertelsmann's presence in this market is insignificant and Planeta is far from being dominant. Moreover, the markets for distant or Internet sales of books are emerging and still represent a very small part of the

overall market for books sales in Spain. BOL Spain is of a very minor commercial significance to its parents in relation to their activities upstream. Finally, there is no arrangement that prevents BOL Spain from marketing and selling other publishers' books. No incentive for coordination between the parent companies is created as a result of this operation. Therefore, the operation will not lead to any co-ordination of the parents' competitive behaviour in a market outside the joint venture.

VI. ANCILLARY RESTRICTIONS

27. The parties have notified the following clauses as ancillary restrictions:
28. (i) A non-competition clause binding the parties, including all undertakings under their control, not to engage in the joint venture's business during the validity of the agreement and for a period of one year after a shareholder's exit. Excluded from this non-competition clause are only ancillary Internet activities conducted prior to the execution of the Agreement, which are of an exclusively promotional nature.
29. According to the parties, the non-competition clause serves to concentrate the parties' efforts in the joint venture and to give the joint venture an unimpeded chance of market entry. The parties also argue that the clause is necessary to secure their investments and to ensure the future economic success of the joint venture.
30. The Commission considers that the non-competition clause is, indeed, directly related and necessary for the joint venture's penetration of the market during a start-up period of five years. Beyond this period, the parties have failed to justify the need for this clause. It is, therefore, only covered by the present decision for a period of five years.
31. (ii) The provisions in the Franchise Agreement with BOL International GmbH which oblige BOL Spain to accept certain conditions of the franchise network to allow it to make use of its business ideas [...].
32. These clauses in the Franchise Agreement provide to the joint venture the necessary assets to implement the joint venture's business by ensuring world-wide branding, economies of scale and high quality of customer care, and to protect the franchisor's intellectual property rights and maintain the common identity and reputation of the franchise network. BOL Spain has concluded this agreement in order to benefit from the BOL trademark/branding, e-commerce know-how and marketing strategy. The notified clauses are directly related and necessary for the implementation of the concentration. Insofar as they could constitute a restriction of competition, they are, therefore, covered by the present decision.

VI. CONCLUSION

33. 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,