

***Case No COMP/JV.33 -
HEARST / VNU***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/12/1999

*Also available in the CELEX database
Document No 399J0033*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.12.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/JV33 Hearst/VNU Magazine Group International
B.V./VNU Hearst Romania SRL**

1. On 19 November 1999 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89 by which the undertakings HMI International Holdings Inc and VNU Magazine Group International create and acquire the joint control of VNU Hearst Romania SRL (VHR) within the meaning of article 3 (1) b.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation N° 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. HMI International Holdings, Inc (which along with its subsidiaries, affiliates and parent will hereinafter be referred to as "Hearst") is part of The Hearst Corporation, a large diversified communications company, whose major interests include newspaper, magazine and business publishing; television and radio stations; cable network programming; newspaper features syndication; television production and distribution together with internet activities.
4. VNU Magazine Group International is a subsidiary of VNU N.V., an international publishing and information company that provides consumer and professional information (consumer magazines, telephone directories, educational publishing...).

II. THE OPERATION

5. The basic structure of the transaction can be described as follows :

6. The concentration is a full-function joint venture company, which has been created as an autonomous economic entity. VHR is in charge of the edition of the Romanian version of “Cosmopolitan” and “Easy PC”, the VNU’s computer magazine.
7. Hearst and VNU owns respectively 35% and 65% of VHR.

III. CONCENTRATION

8. Following the agreement between VHR’s shareholders, the fundamental decisions (which are defined in clause 7 of the Agreement and include, inter alia, a proposed material change in the VHR’s stated purpose, a proposal to adopt the budget, and entering into certain contracts, the business plan, the appointment of the managing director...), shall be approved by unanimity
9. Consequently, the parents’ companies have the joint control of VHR.
10. VHR is a full-function joint venture; it fulfils all the functions of an independent undertaking. VHR has sufficient financial resources¹. VHR will be granted from Hearst an exclusive licence on Cosmopolitan’s copyright..
11. Therefore, the joint venture is of a concentrative character within the meaning of article 3 (1) of the merger regulation.

IV. COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion € (**Business Secrets**). The Community-wide turnover of both companies is in excess of EUR 250 million € (**Business Secrets**), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State (Hearst achieves more than two-thirds in the United Kingdom and VNU in The Netherlands). The notified operation therefore has a Community dimension.

V. RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS.

13. VHR is set up to produce and distribute a Romanian version of two magazines (the women’s magazine “Cosmopolitan” and the computer magazine “Easy PC”). The Commission considered in the decision COMP/M66 CEP/Groupe de la Cité (29 November 1995) that a separate market for magazines exists and that it can be divided into further sub-markets according to the topics and the category of readers it aims at³. The Commission identified a separate relevant market for women’s magazines.

¹ VHR has a capital of 1,050,000 \$ (867,000 €) and its parents commit themselves to make loans to the joint venture..

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

³ See point 9 of the CEP/Presse de la Cité decision

14. In the same decision, the Commission established that it was necessary for each sub-market to distinguish between the market for readers and the market for advertising space.
15. The relevant product markets in the present case follows the principles adopted in this previous decision. Two relevant markets must be identify: the women's magazine market and the computer's magazine market
16. Due to language and cultural differences, the relevant geographical market is limited to Romania⁴.
17. To the extent that Hearst has no activities in The Netherlands and VNU only limited activities in United Kingdom⁵ the question of the effects of the present operation on neighbouring, upstream or downstream markets has no relevance.

VI. COMPETITIVE ASSESSMENT

18. The only affected market is Romania and the operation has no effect in the community
19. Therefore there is neither addition of market shares nor vertical relations as a result of this operation and no competition concerns arise.

VII. ANCILLARY RESTRAINTS.

20. Parties identify two ancillary restraints :

- The first ancillary restriction is a non-compete covenant set out in a side letter to the Agreement which provides that Hearst shall, for the duration of the Agreement, publish in Romania, help others to publish in Romania or have a direct or indirect interest in any business which publishes or distributes in Romania any Romanian magazine which is a general interest glossy up-scale magazine aimed at women aged 18 to 34 which, as a result of its content, style and presentation, is directed at the same target readership as *Cosmopolitan*. VNU is not prevented from distributing magazines nor from having an interest in any business distributing magazines which fall within this definition.

- The second ancillary restriction is the exclusive Licence Agreement entered into by Hearst with VHR under Clause 1.6 of the Agreement. The Licence Agreement is for the duration of the joint venture.

21. The second clause is ancillary because HME needs a licence agreement to exploit the title "Cosmopolitan" in Romania.
22. The non-compete clause raises the question of its duration; The parties follow the principles established in the Commission notice regarding restrictions ancillary to concentrations⁶; it stipulates that non-compete commitments can last as long as the duration of the joint venture in order to ensure the lasting withdrawal of the parent

⁴ See the CEP/Groupe de la Cité case, cited above, point 11

⁵ Only 7% of the VNU's turnover came from United Kingdon in 1998.

⁶ O.J. C 203 14 August 1990 p.5

companies from the joint venture's market. Finally, the scope of the clause is designed very narrowly and the non compete clause on press distribution applies only to Hearst. As the Romanian market is rather small, VNU, the main shareholder, needs a guarantee that its investment will be preserved and in the same time must have the possibility to distribute other titles in order to reduce its unit costs.

Consequently, this provision can be considered as ancillary.

CONCLUSION

23. 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,
