

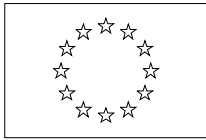
***Case No COMP/JV.39 -
BERTELSMANN /
PLANETA / NEB***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/02/2000

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

Brussels, 28.2.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.39 - Bertelsmann/Planeta/Nuevas Ediciones de Bolsillo (NEB)

1. On 31 January 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ the EC merger Regulation by which the undertakings Bertelsmann AG and Planeta Corporation SRL created and acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the business Nuevas Ediciones de Bolsillo (NEB), a newly created company constituting a joint venture.
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. 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 and related services in the multimedia sector.

¹ OJ L 395, 30.12.1989 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9. 7. 1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

4. PLANETA is a stock corporation headquartered in Barcelona. It heads the internationally active PLANETA group (Grupo PLANETA) of companies. The main businesses of the PLANETA Group are the 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).

II. THE OPERATION

5. The basic structure of the transaction can be described as follows :
6. The operation will create a 50%/50% full-function joint venture between BERTELSMANN and PLANETA under joint control of both parties. Upon completion of the transaction, NewCO will become NEB and PLANETA will acquire 50 % of the shares which will therefore be equally held by both parties.
7. Upon completion of the transaction, the parties will also transfer to NEB their entire paperback activities, to be described, as well as the material, immaterial and human resources necessary for independently carrying out these paperback publishing activities in Spain. The parties will publish paperback books in Spain almost exclusively through NEB, which will also hold the necessary rights to publish the paperback versions. NEB will not publish any hardcover editions, nor will it be active in the bookclub business or publish any kiosk or newspaper editions.

III. CONCENTRATION

8. Following the agreement between NEB's shareholders, the decision-making structure involves a board, which will consist of 4 or 6 members. Each parent company will appoint an equal number of members of this board. Decisions of the board are taken by an absolute majority of the board members and a quorum is compulsory. President and vice-president will rotate (in alternating years) between persons chosen by BERTELSMANN and persons chosen by PLANETA. Decisions of the annual shareholder meeting are taken by majority of two thirds, and therefore requiring both shareholders to approve.
9. In case a deadlock occurred, the situation must be resolved by a procedure escalating the matter without providing a casting vote to any party. In case of a failure of this escalating procedure to solve the impasse, the parties have provided for the dissolution and liquidation of NEB.
10. Consequently, the parent companies have joint control of NEB.
11. NEB is a full-function joint venture; the creation of NEB has been agreed for an unlimited term. The joint venture will be able to perform on a lasting basis all the functions of an autonomous economic entity in the book-publishing sector. The parent companies will transfer all paperback activities from their various publishing houses to NEB and, with marginal exceptions, will in future only publish paperbacks through NEB.
12. Furthermore, besides financial and personal resources transferred to NEB, NEB will obtain the necessary paperback publishing rights in part from its parent companies and otherwise from third parties. Pursuant to these rights, NEB will publish the paperbacks in Spain under its independent NEB label and based on its own layout and prices.

13. Therefore, the joint venture is of a concentrative character within the meaning of article 3 (1) of the EC merger regulation.

IV. COMMUNITY DIMENSION

1. The undertakings concerned have a combined aggregate worldwide turnover of more than €5 billion² (BERTELSMANN €13.1 billion and PLANETA €505 million). The Community-wide turnover of both companies is in excess of € 250 million (BERTELSMANN €[] billion and PLANETA €[] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
15. The notified operation therefore has a Community dimension.

V. RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS.

16. In Spain, several types of books can be identified: hardcover editions, softcover editions, paperback editions, kiosk editions³, newspaper editions⁴, books on sale⁵, club editions.
17. The parties proposed several possible market definitions :
- the market for the publishing of all consumer books;
 - the market segment for the publishing of all softcover and paperback editions (excluding only hardcover editions);
 - the market segment for the publishing of paperback editions (excluding only softcover and hardcover editions, but including kiosk editions, newspaper editions, books on sale and club editions); or
 - the market segment limited only to paperback editions.
18. The parties take the view that the geographical market includes all Spanish-speaking countries. Nevertheless, the parties provide figures limited to Spain considering that the merger will not lead to any competitive concerns even if the geographic market is limited to Spain.

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 In Spain, a considerable number of books are sold as so-called kiosk editions. They usually appear 15 - 18 months after the first edition. The price range is between PTS 800 (ECU 4.79) to 1,000 (ECU 5.98), sometimes even less.

⁴ Moreover, also Spanish newspapers from time to time publish books which are sold together with the newspaper's weekend editions. In particular, the widely read newspaper "El Mundo" published a series of 100 titles starting in 1998 (one new title per day; approx. 50,000 copies each).

⁵ Books usually go on sale a certain period of time after the original publication has been put on the market and are sold within a price range of PTS 100 and PTS 500 to 700 (ECU 2.99 to 4.19).

VI. COMPETITIVE ASSESSMENT

A. Dominance

19. As the Commission discussed in the case Bertelsmann/Springer⁶, market shares can be assessed on the basis of sales (revenues), number of books sold, or number of titles published.
20. For the purposes of the present assessment the precise scope of the relevant product and geographical markets can be left open, since even on the basis of the narrowest market definition the operation will not lead to the creation or strengthening of a dominant position.

If the relevant market is limited to paperback editions published in Spain, NEB will have a market share of []% on the basis of revenues, []% on the basis of number of books sold and []% on the basis of titles published.

21. In addition, there are several important competitors in Spain on the relevant market, which are subsidiaries of major international groups like Havas and Mondadori.
22. Consequently, the operation will not lead to the creation or strengthening of a dominant position.

B. 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, 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. On the publishing market excluding paperback editions, BERTELSMANN has a market share of up to []% and PLANETA of up to []%.
25. On the related market of the distribution of books, if parties are both active in the moment, however PLANETA is about to acquire sole control over BERTELSMANN's direct distribution activities. This operation is subject to the approval of the Spanish merger control authority. Consequently, this market has not to be included in the assessment under Article 2 (4) of the EC merger regulation.

⁶ Case Bertelsmann/Springer Wissenschaftsverlag (case N° COMP/M 1377, paras 8 and seq). OJ C122 4.05.1999 p 19.

2. Assessment under Article 2 (4).

26. Concerning the overall market for publishing, in the decision Bertelsmann/Planeta/BOL⁷ the Commission came to the conclusion that there was no economic incentive for the parties to coordinate their competitive behaviour for the following reasons :

- BERTELSMANN's activities in Spain are "insignificant"⁸ ([]% of the titles published, []% of the number of books sold and []% of the overall turnover);
- the joint venture has the possibility to market books from other editors; and
- the market where the joint venture is active is of a minor importance to its parents in relation to their activities upstream.

27. In the present case, the Commission comes to the same conclusion for the following reasons :

- the paperback market in Spain remains very small, less than 5% of the overall market for publishing and NEB only represents []% of this overall market;
- paperback activities are of secondary importance for the parent-companies; given that they represent []% of PLANETA's turnover and []% of BERTELSMANN's turnover in Spain that is limited to €[] million; and
- NEB can publish books from other editors. It has also a right of first refusal covering rights to paperback editions of books that were first published by its parent companies.

VII. ANCILLARY RESTRAINTS.

28. The parties have notified a non-compete clause as an ancillary restriction. This clause imposes upon the parent companies to exclusively perform through the joint venture their paperback activities in Spain and in the official languages of this State. The duration of this clause, just like the joint venture itself, is not limited in time.

29. The parties give three reasons to justify this clause namely the need:

- to concentrate the parties' efforts in the joint venture;
- to protect the substantial investment of the parties; and
- to avoid free riding by the parent companies.

30. Taking into account its limited geographical and linguistic scope, the Commission considers that the non-compete clause is, indeed, directly related and necessary for the joint venture's penetration of the market and to protect NEB from free-riding during a start-up period of years. Beyond this period, the parties have failed to justify the need

⁷ Decision in case COMP/JV 24, 3.12.1999

⁸ Para 26 of the decision

for this clause. It is, therefore, only covered by the present decision for a period of five years.

CONCLUSION

31. 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,