

*Case No IV/M.1275 -  
HAVAS /  
BERTELSMANN /  
DOYMA*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 27/08/1998

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

Brussels, 27.08.1998

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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: IV/M.1275 –HAVAS/BERTELSMANN/DOYMA**  
**Notification of 24, July 1998 pursuant to Article 4 of Commission Regulation No. 4064/89**

1. On 24 July 1998 the Commission received a notification of a proposed concentration by which the undertakings Bertelsmann AG and Havas S.A. will acquire joint control over the medical press publisher Doyma.

**I. THE PARTIES INVOLVED**

2. Bertelsmann AG is the principal company of a group of companies which are internationally active in the publication of books and magazines, music records and in the field of private television.
3. Havas is a French company active in the communication business concerning local and multi media, advertising consultancy and publishing. Havas publishes medical publications in Spain, Italy and France.
4. Doyma is a Spanish press publishing company active in medical press publications in Spain and Latin America.

## **II. THE OPERATION**

5. The proposed operation involves the creation of a joint venture, Doyma, between Bertelsmann and Havas. Havas and Bertelsmann have succeeded in a competitive auction bid to purchase the entire shares in Doyma. The operation will be effected in two interdependent steps. According to the Sale and Purchase Agreement dated 24 June 1998, Havas acquires 100 % of the shares in Doyma and Bertelsmann then acquires 50% of the shares in Doyma from Havas.
6. According to the Joint Venture Agreement dated 11 June 1998 Bertelsmann and Havas will exercise joint control over Doyma, given the fact that they both will have the possibility to exercise decisive influence over the Target Company. All decisions relating to the strategic business behaviour of Doyma are subject to a unanimous vote of both parents, amongst others the adoption of the business plan, approval of the sale or liquidation of the joint venture, engagement in new business or the appointment of the management. Doyma is an already existing company and will continue to perform all the activities of a medical press publisher after the formation of the joint venture. The joint venture is intended to operate on a lasting basis, the participation of the parents is not limited in time.
7. [...]
8. It follows from the aforementioned that the joint venture will be created on a lasting basis and will perform all the functions of an autonomous economic unit on the market.

## **III. COMPATIBILITY WITH THE COMMON MARKET**

### *Relevant product market*

9. The relevant product market concerned by the concentration is the overall market for medical publishing comprising all kinds of medical publications and related products in all formats, such as for example books, periodicals, brochures and CD-ROM. The parties suggest that the overall market for medical publishing can be further subdivided into the medical books segment and the advertising in medical press segment.
10. The parties point out that the medical books segment concerns the publication of books with medical related content for general and specialist medical practitioners, other medical professions and students whereas the advertising segment provides specialised advertising channels in magazines or journals for suppliers of medical products like pharmaceutical companies.
11. In the present case, however, the final market definition can be left open because with every alternative definition the concentration does not create a dominant position of the parties in the Common market or any substantial part of it.

### *Relevant geographic market*

12. According to the view of the parties, the relevant geographic market for medical publishing still appears to be either of a national dimension or to extend to language areas. However, there are tendencies towards an international dimension of the market since multinational publishers increasingly offer multilingual publishing or publications in English language to reach a broader clientele.
13. In the present case, however, it is not necessary to define the geographic market because with every alternative definition effective competition will not be impeded in the Common market or a substantial part of it.

#### **IV. ASSESSMENT**

14. The joint venture is confined to the Spanish medical publishing market. In Spain there are overlapping activities of Doyma and Havas. Bertelsmann is only active in medical publishing in Germany, France and Switzerland.
15. In Spain, Doyma achieves shares of [between 10-20%] and Havas has [between 0-10%] in the overall market for medical publishing. Combined market shares therefore amount to around [between 20-30%]. Looking at the competitive situation in the overall Spanish medical publishing market, Doyma and Havas are currently the two market leaders with a considerable distance to the next competitors, Mc Graw and Mosby, each of them holding [between 0-10%] of shares.
16. After the concentration the parties will not be in a position to prevent effective competition and to behave independently of their competitors. The Spanish market is very open towards new competitors. There are no significant regulatory barriers to market entry, major investments are not required. In the field of medical publishing lists of medical practitioners who regularly read medical publications can easily be obtained. A customer/reader base can easily be built up.
17. For the purposes of the present case it is appropriate to also examine the segment of advertising in medical press which in Spain is very strong. The total market size of the overall medical publishing market amounts to 130 MECU, 102 of which -more than 80%- are created by advertisements in medical press.
18. In advertising in medical press, Doyma achieves [between 10-20%] market shares and Havas has [between 0-10%], meaning that concentration will produce combined shares of [between 20-30%].
19. In the advertisement segment in Spain as in most other Member States, a strong countervailing market power is exercised on the demand side. This circumstance is due to the fact that medical journals and magazines are not financed by subscriptions of readers but are almost completely financed by advertisement. The medical advertisement segment provides specialised advertising channels in regularly published magazines for suppliers of medical products. The big pharmaceutical companies which are clients of Havas/Doyma are internationally

operating companies with strong financial resources. When confronted with a lift in prices they could not only switch to numerous other suppliers but could use their market influence to dissuade Havas/Doyma from uncompetitive behaviour. This view is underlined by the fact that pharmaceutical companies only spend around 6% of their total advertising budget for advertising in medical publications, meaning that they can at any time switch to other marketing channels. As mentioned above, they could even easily enter the market of medical publishing themselves.

20. As a conclusion, the parties, notwithstanding the fact that they achieve quite important combined shares, will not be in a position to prevent effective competition and to behave independently of their competitors. Therefore, the concentration will not create or strengthen a dominant position of the parties in the Common Market or any substantial part of it.

## **V. ANCILLARY RESTRAINTS**

21. The seller, Mr. Dotú Roteta, has committed himself in the aforementioned Purchase and Sale Agreement not to engage or compete, whether directly or indirectly, in the principal business activity of Doyma or any of its subsidiaries for a duration of three years from the closing date. In particular, the seller is obliged not to solicit any employees or customers of Doyma for the purpose of providing services or business which competes with that of the joint venture and to refrain from requesting any customer or supplier of Doyma to withdraw or cancel any business placed with Doyma or its subsidiaries. The non-compete/non-solicit clause is limited to the territories where the joint venture is active at the closing date.
22. The non-compete/non-solicit clause as regard its substance and geographic field of application is considered as directly related and necessary for the implementation of the present concentration in order to allow the parents to take over the full value of assets. With regard to its duration, however, the Commission considers a period of two years as sufficient to allow the acquirers to gain the loyalty of customers. Given the fact that the major part of medical publications in Spain is distributed for free to interested readers, a customer base can easily be built up by addressing the relevant medical practitioners. An additional protection of the assimilation of specific know-how is not deemed necessary. First of all, Doyma at present is already active as a medical press publishing company. Therefore it can be assumed that the company disposes of the relevant know-how needed in this business. Second, as the parties informed the Commission, most pharmaceutical companies make their knowledge and research results freely available to the medical press which means that continuous access to know-how can easily be achieved by the new entity.
23. As a result the Commission considers the non-compete clause to be an ancillary restraint in the meaning of Article 6 (1)b of the merger regulation. Regarding its duration the non-compete clause is covered by the present decision for the period of two years.

## **VI. CONCLUSION**

24. For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the Common market. This decision is adopted in application of Article 6 (1) (b) of Council Regulation (EEC) No 4064/89.

For the Commission,