

***Case No IV/M.1401 -
RECOLETOS /
UNEDISA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/02/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01-02-1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1401 – RECOLETOS / UNEDISA
Notification of 18.12.1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 18 December 1998 the Commission received a notification of a concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as amended¹ by which Recoletos Compañía Editorial, S.A (Recoletos), an undertaking controlled by Pearson plc (Pearson), acquires joint control of Unidad Editorial S.A. (Unedisa). The joint control will be exercised by Recoletos together with four Spanish individuals who founded Unedisa (the promoters) and RCS Editori S.P.A. (Rizzoli).
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 and with the EEA Agreement.

THE PARTIES

¹ Council Regulation (EEC) n° 4064/89, OJ L 395, of 30.12.1989; Corrigendum: OJ L 257, of 21.09.1990, pag. 13.; amended by Council Regulation (CEE) n° 1310/97, OJ L 180, of 9.7.1997.

3. Unedisa is the publishing company of the Spanish newspaper of general information “El Mundo del Siglo Veintiuno”. It also has interests in newspaper distribution. Before the notified operation it was owned by Rizzoli (45%), the promoters (26%) and other shareholders (29%).
4. Recoletos is a firm established in Spain whose activity consists in editing and publishing newspapers and magazines on its own and on behalf of third parties. It is the publishing company of the newspapers “Expansion” (economy and finance) and “Marca” (sports) as well as the magazine “Actualidad Económica” (economy and finance) among others. The 76% of its capital is owned by Pearson, an international media group that has interests in newspaper, magazines and book publishing, TV as well as other media sectors.
5. Rizzoli is an Italian media group that edits and publishes newspapers (“Il Corriere de la Sera”), magazines and books and is present in other media sectors.
6. The Promoters are four individuals of Spanish nationality, founders of Unedisa.

THE OPERATION

7. The Operation consists in the purchase by Recoletos of a shareholding between 20% and 30% in Unedisa as well as in a shareholding agreement between Recoletos Rizzoli and the Promoters. At the same time, Rizzoli and Recoletos have concluded an agreement to co-operate in the future through the combination of their shareholdings in Unedisa and other ventures.
8. According to the Share Purchase Agreement, concluded between Recoletos and the Promoters, Recoletos agrees to acquire a minority share of the capital in Unedisa from either the Promoters or third parties designated by them. The exact number of shares (between 20-30% of the capital) is to be determined by the Promoters.
9. The Promoters, Rizzoli and Recoletos also agree to amend the existing Unedisa’s Share Pooling Agreement in order to incorporate Recoletos as a member of the agreement as from the date of acquisition of the shares in Unedisa. The Pooling Agreement, as amended, is to remain in force until October 31, 2005 or until the Promoters exercise their Put option (see § 12 below).
10. The incorporation of Recoletos in the Pooling Agreement enables this company to participate in a Joint Committee, which will be composed of twelve members divided in two groups of six members each. The members of one of the groups would be appointed by Rizzoli. As to the members of the other group, four are appointed by the Promoters and two by Recoletos. The Joint Committee will adopt common positions for decisions to be taken by Unedisa’s governing bodies. Some decisions are taken by majority of the members, others require majority in each of the two groups and for some others unanimity will be required.
11. Finally, Rizzoli and Recoletos agree to develop a joint strategy for investment and other projects in the media market within Spain, Portugal and Latin America. For this purpose, the parties intend to set up a 50/50 joint venture, which would manage the parties’ interests in Unedisa and other industrial activities or projects to be determined. [.....]. These agreements are not covered by the present decision.

CONCENTRATION

12. The operation can be qualified as a concentration because Recoletos, through the purchase of a minority shareholding in Unedisa and the entry into the shareholding agreement gains joint control over Unedisa together with Rizzoli and the Promoters. Indeed, the three parties will be able to block decisions concerning, among others:
- the approval of General Budget and the approval of long and medium term strategic plans [...].
 - decisions of an economic and financial nature that do not form a part of the company's customary business or trade when they exceed [...] million pesetas;
 - [...]
13. These blocking rights go beyond the veto rights normally accorded to minority shareholders in order to protect their financial interests as investors and are sufficient to allow Recoletos to veto decisions which are essential for the strategic commercial behaviour of Unedisa. Therefore, they confer joint control of Unedisa to Recoletos within the meaning of Article 3.1 (b) of the Merger regulation.

COMMUNITY DIMENSION

14. Pearson (including Recoletos), Rizzoli and Unedisa have a combined aggregate world-wide turnover in excess of Euro 5,000 million (Recoletos-Pearson: 3.312.273.221 Euros; Rizzoli: 1.262.714.974 Euros and Unedisa: 140.867.737 Euros). Two of them have a community-wide turnover in excess of Euros 250 million (Pearson-Recoletos: 1.457.478.970 Euros; Rizzoli: 1.229.226.144. Euros). The undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one Member State. The notified operation, therefore, has a Community dimension.

COMPATIBILITY WITH THE COMMON MARKET

The relevant market

The product market

15. The economic sectors involved in the operation are editing, publishing and distributing newspapers as well as selling advertising space in these newspapers.
16. From a product point of view, newspapers editors operate in two broad markets: the market for written press, in which the consumers are the buyers of the newspaper as a source of information and the market for advertising space, in which the consumers are the advertisers who buy space in order to promote sales.

Written press

17. Written press should be first differentiated from other media products. Even if all of them satisfy information needs from the consumer, they cannot be considered as substitutable products. Indeed, TV and radio products offer more ready coverage of news events, but cannot match the range and depth of information of written press (see Decision IV/M.423- Newspaper publishing).

18. Within the written press, from a reader's perspective, the various magazines and media publications offered for sale may be divided according to different criteria. According to frequency one would classify news publications in daily papers, on the one hand, and non-daily (weekly, monthly) magazines on the other. Using content as criteria, newspapers could be divided in three main categories: general information, sports and financial daily newspapers. Magazines could be divided even further. Finally, the editorial line of the newspaper or the quality of the publication (quality press as opposed to tabloids) could also be seen as a criteria in some countries.
19. As to the present case, the distinction between daily press and weekly magazines as well as the distinction of daily press according to different contents is particularly relevant.
20. As to the first one, daily press and weekly magazines should be considered as pertaining to two different relevant markets. First, both products satisfy diverse needs: daily press provides information about events the day after they have taken place while weekly magazines cannot offer such immediate coverage. Second, the price range of both products is different: weekly magazines are substantially more expensive than daily newspapers.
21. As to the second one, the daily papers for general information, sports papers and financial newspapers appear to be also separate markets. First, they satisfy different type of consumers' needs. General information newspapers include a wide range of sections (international news, opinion, national political news, environment, culture, society, science, education, a local news section or insert, sports pages, economic pages, TV programmes, etc.). Sport and financial newspapers meet a need for much more focused and specialised information than general information ones, although in some specific cases the dividing line between them may be blurred to a certain extent because of the overlap of some types of information.
22. Second, differences in price and selling patterns between these types of newspapers also tend to suggest that they belong to different markets. While most of the general information newspapers are sold in Spain at around 125 pesetas (0.75 Euros), and sports papers are sold in the same range, financial newspapers are sold at a substantially higher price, around 175 pesetas (1.05 Euros). Another relevant difference is found in the peak days of the week for each of them. Indeed, the day of the week when sports newspapers have higher sales is Monday, the day after the football matches and other sports events of the weekend. Economic/financial newspapers are especially strong in sales during the week, having only one edition for Saturday and Sunday. On the contrary, general information newspapers have a peak in their sales during the weekend, especially Sundays, when weekend inserts on culture and leisure activities are published. Spanish general information newspapers multiply daily sales during the weekend between 1,5 and 3 times.
23. The same conclusion would be obtained through the analysis of whether the customers of daily general press would switch to other daily press in response to a hypothetical small (in the range 5% to 10%) but permanent relative price increase in the daily general press. Indeed, for the reasons mentioned above, the increase of the price of a general information newspaper between 5 and 10%, for example from 125 pesetas (0.75 Euros) to 135 pesetas (0.81 Euros), cannot be expected to turn readers of a general information paper to a sports or to a financial newspaper.

24. On the supply side, no publisher of a sports paper or a financial paper would be expected to set up a new general information newspaper to take advantage of a small and permanent increase of prices in the market of the latter. Even if they already would have the infrastructure and the organisation skills to edit a newspaper, the need to train or hire journalists specialised in other fields would make difficult for them to launch a general information newspaper in the short term.
25. Nevertheless, as far as the present case is concerned, there is no need to conclude on the definition of these markets. Under all possible definitions the concentration does not give rise to the creation or strengthening of a dominant position.

Advertising space

26. Newspapers advertisements are intended to promote sales of goods and services to readers, and their success depends on “targeting” appropriate socio-economic groupings. For some types of products or services, different media could be seen as substitutable advertising channels while for others, the appropriate channels will be limited to specific media reaching the “target” people.
27. This could suggest that different markets for selling advertising space in different media and particularly in the written press could be distinguished, according to the type of readers to which each publication is addressed. However, two factors plead in favour of considering the sale of advertising space in the written press as a single market. First, written press is generally addressed to the most educated segments of society, and therefore, its target public, even if different between the types of publications, is already more specific than the public that can be reached through TV or radio advertisements. Second, the main buyers of advertising space are not the companies promoting goods or services, but large buying media agencies (“centrales de medios”), that purchase space in different media and resell to advertisers according to their specific needs. These agencies represent around 75% of purchase of advertising space in Spain.
28. Nevertheless, as far as the present case is concerned, there is no need to conclude on the definition of these markets. Under all possible definitions the concentration does not give rise to a competition problem.

The geographic market

29. The geographic market for daily press is national. In some cases, it could even be considered infra-national. This is explained by language reasons as well as for the need for publishers to respond to the demand for national or local information.

Dominance

30. Even if it is assumed that the operation would lead to the economic integration of activities of Unedisa and Recoletos, the acquisition of joint control of Unedisa by Recoletos does not appear to affect competition in any of the sectors mentioned before. First of all, the activities of both Recoletos and Unedisa in the magazine area are relatively small. Indeed, the total Spanish market for magazines during 1997 was 252.369.993 units sold, of which Recoletos and Unedisa sold only 2.302.662, less than 1%.

31. As to daily press, should it be divided in different markets according to content, there would be no overlap between the activities of the parties. Recoletos is the publisher of the leading Spanish daily newspapers for sports (Marca) and economic and financial information (Expansion) while Unedisa publishes one of the best selling Spanish general information daily newspaper (El Mundo).
32. If daily press should be considered as a single market, the overlap of activities would not lead to the creation of a dominant position. Indeed, Recoletos and Unedisa sell 807.840 daily newspapers in average (El Mundo: 301.228; Marca: 458.441; Expansión: 48.170) over a total of 3.981.891 newspapers sold daily in Spain (General information: 3.063.498; sports: 830.682; financial: 87.711), which represents a share of 20,2 %. This would place them as the leading Spanish daily press publisher but it would not exceed substantially the shares of other operators. Indeed the daily newspapers sold by Prisa account for around 15% and those sold by Grupo Correo for around 12%. Given the relatively non concentrated nature of this market (Herfindahl-Hirschman Index around 900), this implies that no dominant position would result from the notified operation.
33. With regard to selling advertising space, even if daily press was considered as a single market, the concentration would not lead to the creation of a dominant position. Indeed, Recoletos and Unedisa derive yearly around 19.000 million pesetas (114,19 million Euros) from selling advertising space, while total volume of sales in Spain amounts to 202.400 million pesetas (1.216,45 million Euros). Their market share, therefore, amounts only to 9,4 %.
34. The Commission has also examined whether the operation would have any conglomeral effect. In other words, whether the addition of the leading sports and financial newspapers edited by Recoletos to one of the main general newspapers edited by Unedisa could lead to the creation of a dominant position in any market.
35. In this regard, the ability of Recoletos and Unedisa to obtain competitive advantages from its range of products is not significant. Indeed, other important market operators hold a similar range of products. This is particularly the case of Prisa which, in addition to a leading daily general newspaper (“El País”), publishes the second best selling sports newspaper (“As”) and the second best selling financial newspaper (“Cinco dias”).
36. Moreover, the scope for successfully tying the sales of these different products is limited. First, the market share and selling volume of the sports and financial newspapers of Unedisa, even if leading, is probably not large enough to allow these papers to be successfully tied to the daily general newspaper sold by Unedisa. Second, there are no capacity restraints either at the distribution or at the retailer level which could make tying successful in excluding competitors from the market. Indeed, there is a large number of retailers (more than 30.200 points of sale in Spain) and distributors (at present every publisher uses several of them) and barriers to entry to these business are very low.

Co-ordination of competitive behaviour

37. The notified operation does not have as its object or effect the co-ordination of the competitive behaviour of the parties jointly controlling Unedisa, namely Recoletos (including the Pearson group), Rizzoli and the promoters, and, therefore does not fall under the scope of Article 2(4) of the Merger Regulation. Indeed, there appears not to

be any market where at least two of the parties are present and could potentially cooperate either in Spain or in other European countries.

CONCLUSION

38. In the light of the above information, the proposed concentration does not raise serious doubts as to its compatibility with the common market. The Commission therefore has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA agreement. This decision is adopted in application of Article 6(1) b of the Council Regulation No 4064/89.

For the Commission