

***Case No COMP/M.1958 -
BERTELSMANN / GBL /
PEARSON TV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/06/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **29/06/2000**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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/M.1958- BERTELSMANN / GBL / PEARSON TV
Notification of 24.5.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. This operation concerns the proposed transaction by which Bertelsmann AG (“BERTELSMANN”) and Groupe Bruxelles Lambert S.A. (“GBL”) acquire, within the meaning of Article 3(1)(b) of the Council Regulation joint control of Pearson Television (“PEARSON TV”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. BERTELSMANN is active in the areas of publishing, printing and distribution of books and magazines, book clubs, publishing and distribution of music and records / compact discs, television, and multi-media related services.
4. GBL is a holding company with direct or indirect (via the Electrafina and Audiofina companies) shareholdings in various companies. GBL is the main shareholder in Suez Lyonnaise des Eaux, TotalFina and Imerys. It jointly controls CLT-UFA with BERTELSMANN.

5. PEARSON TV incorporates all of the television-related activities of the Pearson plc group. Its subsidiaries and shareholdings are principally focussed on television production and transmission.

II. THE OPERATION

6. This operation concerns the acquisition by BERTELSMANN and GBL of joint control of PEARSON TV.

III. CONCENTRATION

Joint control

7. Pearson plc. will transfer its television activities referred to as PEARSON TV to Audiofina, which will control PEARSON TV. In return Pearson plc. will receive a 22 % non-controlling stake in Audiofina, a holding company which is not active on the market. BERTELSMANN and GBL are jointly controlling Audiofina.

Full function

8. Pearson TV will perform on a lasting basis all the functions of an autonomous economic entity. It already has, and will continue to have, the necessary financial resources, personnel, and other assets to provide television services.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion¹. Each of BERTELSMANN, GBL and PEARSON TV have a Community-wide turnover in excess of EUR 250 million, 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

Relevant product markets

1. Television advertising

10. Previously the Commission defined free-access television (free TV), i.e. advertising-financed private television and public television financed indirectly through fees and partly through advertising as a relevant product market separate from that for pay-TV.² The situation in the UK is special to the extent that there is advertising also on pay-TV channels. The market could therefore be wider and include advertising on free

¹ 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.

² See Case No IV/M.469 - MSG Media Service, OJ L 364, 31.12.1994, paragraphs 32 and 33; Case No IV/M.779 - Bertelsmann/CLT of 7 October 1996, paragraph 16.

and pay-TV. However, the market definition can be left open since there are no competitive concerns even in the narrowest possible market of advertising on free-TV.

2. TV productions

11. With respect to TV productions, a distinction has to be made between in-house productions produced by broadcasters and used for captive use and productions commissioned by a broadcaster to a producer. Only the latter are offered on a market and the relevant product market has, therefore, be limited to TV productions which are not used for captive use.³

3. TV rights / licences

12. As regards the distribution of TV rights, a distinction can be made between film and other fiction rights on the one hand and sport rights on the other. Sport programs covering widely popular sports or major international events are often able to achieve high audience ratings and are generally considered to be particularly suited to carrying advertisements, as reflected by the amount of sponsorship involved. The TV rights for sport events must be acquired in advance of the event, but their attractiveness may change considerably depending on the actual participation and success of teams or participants appealing to national or regional audiences. Sport rights have, therefore, specific features as compared with film and other programme rights. For the purposes of the present case, it can, however, be left open whether or not there are separate relevant markets since even on the basis of a narrow market definition the proposed concentration would not lead to the creation of a dominant position.

Relevant geographic markets

13. Although in certain niche markets there are already programs broadcast throughout Europe, TV broadcasting still generally takes place on national markets. As already outlined in several decisions of the Commission⁴, the national character of TV broadcasting is mainly due to different regulatory regimes, existing language barriers, cultural factors and other different conditions of competition prevailing in the various markets. Correspondingly, the markets for TV advertising are national markets since TV advertising is directed to the area where the TV broadcasters have their main audience.
14. The markets for sale of TV productions may be sometimes broader and comprise a particular language region, although there are situations where even in a given language region the markets are, however, limited to each of the countries in this region⁵. The situation is similar with respect to the markets for TV rights. Although the demand for a large part of these rights is EC wide or even world-wide, in particular for international sport events, art movies, film and sport rights are normally granted for one specified

³ See Case No IV/M.553 - RTL / Veronica / Endemol, OJ L 134/32, 5.6.1996, paragraphs 24, 89, 90, confirmed by the Court of First Instance in case T-221/95, Endemol Entertainment Holding BV v Commission, ECR 1999 page II-1299

⁴ e. g. See Case No IV/M.553 - RTL / Veronica / Endemol, OJ L 134/32, 5.6.1996, paragraph 25, confirmed by the Court of First Instance

⁵ See Case No IV/M.553 - RTL / Veronica / Endemol, OJ L 134/32, 5.6.1996, paragraph 25, confirmed by the Court of First Instance

country or language region. In the present case, there is no need for an exact delineation of the geographic markets for TV productions and TV rights. The assessment would not change if Austria were to be included in the respective markets in Germany.

Compatibility with the common market

15. The parties are active in a number of markets, but there are only overlaps in the following areas:
16. **Television advertising in the UK:** The controlling stake of CLT-UFA in Channel 5 is increased by the stake of Pearson TV. Even in the narrowest possible market of free-TV advertising the market of Channel 5 is around [less than 10%].
17. **Sale of independent TV-programme production in Germany:** Both CLT-UFA and PEARSON TV are active in this market. Additionally, prior to this transaction, CLT-UFA and PEARSON TV have been active through a joint venture in Germany, Grundy-UFA. The combined market share is estimated at [between 5 and 15%] (CLT-UFA [less than 10%] Grundy-UFA [less than 10%], PEARSON TV [less than 5%]).
18. **TV fiction and non-fiction rights distribution:** The activities of the parties are mainly overlapping in Germany, with a combined estimated market share of [between 5 and 15%] (CLT-UFA [less than 10%], PEARSON TV [less than 5%]). There are also overlaps in France, the Benelux countries, Italy and Spain, but the combined market shares are always less than [less than 5%].
19. **Vertical integration in Germany:** As explained above, the addition of market shares in the upstream markets for the sale of independent TV-programme production and the distribution and licensing of TV rights is negligible. Pearson TV is not active at all in the sale of sports rights as well as in the downstream market for German free-TV advertising. The present operation therefore does not significantly improve the already existing vertical integration of CLT-UFA. In any event, CLT-UFA's (TV advertising market share [between 35 and 45%]) main competitor, the Kirch Group (TV advertising market share [between 45 and 55%]), is also vertically integrated and has access to a comprehensive library of programmes and rights.

VI. CONCLUSION

20. Based on the above information, the concentration will not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.
21. 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,